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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES

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PA DEPARTMENT OF  
BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND  
SECURITIES, BUREAU OF SECURITIES  
LICENSING, COMPLIANCE AND  
EXAMINATIONS

Docket No. : 152046 (SEC-CAO)

v.

LPL FINANCIAL, LLC

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Bureau of Securities Licensing, Compliance and Examinations ("Bureau"), has conducted an investigation (through a coordinated investigation of state regulators from multiple jurisdictions, led by Nevada, Maine and Texas) as to whether the sales of non-traded REIT transactions executed by LPL Financial LLC ("LPL"), during the time period beginning January 1, 2008 through December 31, 2013, violated state law.

LPL has cooperated with state regulators conducting the investigation by responding to inquiries, providing documentary evidence, and identifying executed sales transactions ("Sales Transactions") that were sold in violation of (a) the prospectus standards of the specific REIT, (b) a state concentration limit, or (c) LPL's own guidelines for the sale of Alternative Investments, including but not limited to non-traded REITs;

The investigation has identified Sales Transactions of non-traded REITs to investors in Pennsylvania, that were sold in excess of at least one of the above-stated prospectus standards, state concentration limits as set in Pennsylvania by the Bureau's Release No. 89-CF-3 for Real

Estate Investment Trusts, or LPL's own guidelines, which Pennsylvania alleges constitutes failure to reasonably supervise agents or employees pursuant to Section 305(a)(vii) of the Pennsylvania Securities Act of 1972, 70 P.S. §1-305(a)(vii).

LPL has agreed to resolve the multiple state coordinated investigations through the offer of a multistate settlement which includes this Consent Agreement and Order ("CAO"). LPL, without admitting or denying the findings of fact and conclusions of law contained herein, voluntarily consents to the entry of this CAO, and waives any right to a hearing or to judicial review regarding this CAO.

### **BACKGROUND**

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the Pennsylvania Securities Act of 1972, 70 P.S. §1-101, et. seq. ("1972 Act")

2. The Bureau is primarily responsible for administering and enforcing the 1972 Act and its regulations for the Department.

3. LPL, CRD #6413, is an entity currently registered as a broker-dealer firm in Pennsylvania. LPL is also an investment adviser registered with the Securities and Exchange Commission, and notice filed in Pennsylvania.

4. LPL's principal place of business is located at 75 State Street, 24<sup>th</sup> Floor, Boston, MA 02109. LPL currently maintains branch offices in Pennsylvania.

### **FINDINGS OF FACT**

5. During the time period from and including January 1, 2008 through December 31, 2013, LPL offered multiple non-traded REITs through its branch offices in Pennsylvania.

6. Non-traded REITs are specifically identified by LPL as a form of an “Alternative Investment.”

7. Non-traded REITs generally carry significant investor risk in that they present liquidity risk and often have lengthy holding periods, restricted redemption options, and variable withdrawal periods determined by issuer specific programs.

#### **Relevant Disciplinary History**

8. On February 6, 2013, LPL entered into a Consent Order with the Commonwealth of Massachusetts regarding certain sales of non-traded REITs to Massachusetts residents (“MA Order”) during the time period of January 1, 2006 through February 6, 2013.

9. Subsequent to the MA Order, LPL began a review of its Sales Transactions involving non-traded REITs to residents of jurisdictions other than Massachusetts, sold after October 1, 2010.

10. On January 28, 2014, LPL entered into an Acceptance, Waiver and Consent Agreement (“AWC”) with the Financial Industry Regulatory Authority (“FINRA”) which was accepted by FINRA on March 24, 2014. This FINRA AWC sets forth that LPL accepted and consented to findings, without admitting or denying the findings, that between January 1, 2008 and July 1, 2012, LPL violated NASD Rules 3010(a) and (b), 2110 and FINRA Rule 2010 by failing to implement an adequate supervisory system for the sale of alternative investments that was reasonably designed to achieve compliance with suitability requirements.

#### **Identification of Sales Transactions that Constitute a State Law Violation**

11. Subsequent to the above referenced Massachusetts action, LPL began a review of its sale transactions from October 2010 to August 2013 to identify those Sales Transactions that exceeded one or more of the following:

- a. the particular REIT's prospectus standards;
- b. a state's concentration limits (if applicable); or
- c. LPL's Alternative Investment Guidelines.

12. As a result of the multiple jurisdiction-coordinated investigation, LPL began a review of its sales transactions from January 1, 2008 through December 31, 2013 to identify those Sales Transactions that exceeded one of the following:

- a. the particular REIT's prospectus standards;
- b. a state's concentration limits (if applicable); or
- c. LPL's Alternative Investment Guidelines.

13. During the time period from and including January 1, 2008 through December 31, 2013, LPL processed over 2,000 transactions in various jurisdictions that were sold in excess of the REIT's prospectus standards, various state concentration limits or LPL's Alternative Investment Guidelines.

14. LPL's internal review of its non-traded REIT sales transactions identified the date, amount of transaction, account number, product, client name, client age, state of residence at the time of the transaction, annual income, net worth, liquid net worth, total alternative investments, total non-traded REIT investments, and percentage of total alternative investments to the investor's Liquid Net Worth.

15. Beginning in calendar year 2013, LPL began contacting certain states and identifying transactions that exceeded prospectus standards, state concentration limits or its own Alternative Investment Guidelines.

16. LPL agreed to cooperate with the multiple jurisdiction coordinated investigation from the beginning of the investigation. LPL provided extensive cooperation with the multiple

jurisdiction investigation, including: (1) providing information about transactions irrespective of the jurisdiction in which transactions occurred; and (2) identifying Sales Transactions that exceed stated concentration limits, REIT prospectus standards, or LPL's Guidelines applicable to the sale of non-traded REITs.

### CONCLUSIONS OF LAW

17. The Bureau has jurisdiction over LPL because it regulates the offers and sales of securities in the Commonwealth of Pennsylvania pursuant to the 1972 Act, 70 P.S. §1-101 et. seq.

18. At all times relevant, and pursuant to Pennsylvania law, LPL was required to implement an adequate supervisory system for the sales of non-traded REITs and to enforce its written procedures for the sales of non-traded REITs, *see* 70 P.S. § 1-305(a)(vii).

19. Based upon the above facts, from and including January 1, 2008 through December 31, 2013, LPL failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with Section 305(a)(vii) of the 1972 Act, for its sales, through Pennsylvania agents, of non-traded REITs.

20. From and including January 1, 2008 through December 31, 2013, LPL failed to enforce its written procedures to supervise the activities of its agents and employees and failed to reasonably supervise pursuant to Section 305(a)(vii) of the 1972 Act.

### AUTHORITY

21. The Department has the authority to impose an administrative assessment against LPL where the Department determines that the firm failed to supervise its agents and employees, *see* 70 P.S. § 1-602.1(c).

22. As a result, this CAO and the following relief is appropriate and in the public interest.

**ORDER**

23. LPL shall cease and desist from violation of the Pennsylvania Securities Act of 1972, 70 P.S. § 1-101, et. seq.

24. LPL shall comply with the 1972 Act, and its Regulations as adopted by the Department, 70 P.S. § 1-101, et. seq.

25. LPL shall offer to remediate<sup>1</sup> losses for all non-traded REITs sold by LPL to its clients, from and including January 1, 2008 through December 31, 2013, who were Pennsylvania residents at the time they purchased the non-traded REIT(s) (regardless of whether the shares of the non-traded REIT are presently held in an LPL account or the individual or entity no longer resides in Pennsylvania) Pennsylvania Investors that exceeded any of the following ("Pennsylvania Investors"):

- a. Those transactions made in which the principal invested amount exceeded the maximum percent concentration limitation imposed by non-traded REIT prospectuses and by PA Bureau Release No. 89-CF-3, including all transactions which singularly exceed a 10% percent concentration limitation, and all transactions which, when combined with other

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<sup>1</sup> The term "remediation" or "remediate" with respect to the offers contemplated herein shall be based on a methodology as agreed to by the representative designated by the North American Securities Administrators Association that takes into account, singularly or in any combination, the following:

- (i) non-traded REIT shares still held;
- (ii) previously sold or redeemed non-traded REIT shares;
- (iii) non-traded REITs that are now publicly traded themselves, or are now subsumed within a publicly traded security; and
- (iv) non-traded REITs that have had a special or extraordinary capital distribution.

purchases by the same investor in the same non-traded REIT, exceed a 10% percent concentration limitation;

- b. Those transactions made which exceeded or were inconsistent with a non-traded REIT prospectus prescribed minimum net worth or annual income standards; or
- c. Those transactions in which the principal invested amount exceeded LPL Financial LLC's Alternative Investment Guidelines, or those transactions which were processed inconsistently with LPL's policies and procedures, including LPL's Compliance Manual and Written Supervisory Procedures (a, b, and c referred to jointly as "Pennsylvania Investor Sales Transactions").

26. LPL shall create a team of individuals who are primarily dedicated to assisting Pennsylvania Investors with its remediation of Pennsylvania Investor Sales Transactions ("Claim Team"). The Claim Team is ORDERED to establish a dedicated phone number and be the central point of contact for any client or former client seeking information about a non-traded REIT Sales Transaction during the relevant time period, and for any Pennsylvania Investor making any inquiry or claim, until such time as LPL delivers the Report required in paragraph 35 of this Order and the representative or representatives designated by the North America Securities Administrators Association ("NASAA") (the "NASAA Representative") confirms that the Claim Team is no longer necessary.

27. LPL or its designee shall send an offer of remediation to eligible Pennsylvania Investors with Pennsylvania Investor Sales Transactions. ("Offer Letter") A draft of the Offer Letter, not unacceptable to the NASAA Representative, shall be provided to the NASAA

Representative within thirty (30) days of the execution of the Nevada Consent Order. The Offer Letter will be sent to the LPL address of record for all eligible Pennsylvania Investors, which shall be mailed to Pennsylvania Investors within fifteen (15) days of the later of the completion of the third party review set forth in paragraph 34 or the execution of this Order. The offer communicated in the Offer Letter shall remain open for ninety (90) days from the date of mailing. Within thirty (30) days of the mailing of the Offer Letter, LPL shall provide to the Department a list of all Pennsylvania Investors for whom the receives an offer as return to sender ("Undeliverable Pennsylvania Residents"). To the extent the Department has access to different mailing address information for Undeliverable Pennsylvania Investors, LPL agrees to mail a second Offer Letter to Pennsylvania Investors within 30 days of the Department providing such different address. Pennsylvania Investors who choose to accept the offer of remediation shall be required to sign a release in a form not unacceptable to the NASAA Representative, agreeing to waive any further claims against LPL or its agents relating to any violation set forth in this CAO, giving rise to the offer of remediation, and agreeing to offset any additional claims relating to identified transactions by the amount received by this CAO. In addition, Pennsylvania Investors who choose to accept the offer of remediation must agree to tender their existing shares in the non-traded REIT giving rise to the offer of remediation to LPL or its designee, as a precondition to receipt of payment by LPL.<sup>2</sup> The offer of remediation shall be in the form of a credit to an existing LPL account or a check as elected by existing LPL clients or a check for former clients of the firm.

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<sup>2</sup> As pertaining to any investor who may have a physical certificate(s) of the identified non-trade REITs, LPL will provide these Pennsylvania Investors additional time (not unacceptable to the State) to locate all physical certificate(s).



28. All eligible Pennsylvania Investor Sales Transactions described above shall be given notice of and the opportunity to accept LPL's offer of remediation as set forth in the above paragraphs 25 and 27.

29. LPL shall provide to the Department the most recent contact information for each Pennsylvania Investor.

30. Within forty-five (45) days of the expiration of the offer communicated in the Offer Letter, LPL agrees to prepare, and submit to the Department, a report detailing the amount of funds reimbursed pursuant to this Order, which shall include:

- a. Identification of all accepted offers; and
- b. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

31. Within one hundred and eighty (180) days of the date of the Offer, LPL agrees to prepare, and submit to the Department and the NASAA Representative, a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:

- a. Identification of all offers made;
- b. Identification of all accepted offers;
- c. Identification of all claims made to LPL;
- d. Identification of any claim denied by LPL; and
- e. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

32. In accordance with the terms of the settlement of this multiple jurisdiction investigation, and taking into consideration LPL's efforts to remediate supervisory and systems issues and to self-report sales violations to certain jurisdictions, and LPL's cooperation in this

matter, LPL shall pay an administrative assessment within ten (10) business days of the entry of this Order, \$26,110.92, the sum of which represents the Department's portion of the total civil penalty of One Million Four Hundred Twenty Five Thousand Dollars Even (\$1,425,000.00) to be paid by LPL.

33. At the request of LPL, Pennsylvania may extend, for good cause shown, any of the procedural dates set forth above.

34. LPL shall retain an independent third party, not objectionable to the NASAA Representative. The third party will be responsible for analyzing the electronic data set provided by LPL of Sales Transaction data representing the executed sales of non-traded REITs by LPL from and including January 1, 2008 through December 31, 2013. The third party shall identify Pennsylvania Sales Transactions that violated (a) REIT prospectus standards, (b) a state concentration limit, or (c) LPL's own guidelines for the sale of Alternative Investments, and those transactions which were processed inconsistent with LPL's policies and procedures, including LPL's Compliance Manual and Written Supervisory Procedures. The Pennsylvania Investor Sales Transactions identified by the third party shall be sent to LPL and the NASAA representative no later than ninety (90) days from the date of Nevada's Consent Order. At the request of LPL, the NASAA Representative may extend this ninety (90) day requirement, for good cause shown. This provision and the use of an independent third party does not relieve LPL of any of its obligations under this Order.

35. LPL shall cause its Internal Audit department to confirm that the data provided to the third party is the most complete data set available reflecting executed non-traded REIT Sales Transactions during the relevant period and shall provide a notice to the NASAA Representative within ten (10) days of the delivery of the data to the third party.

The Internal Audit department of LPL shall review and confirm that LPL has made offers relating to the Pennsylvania Investors Sales Transactions consistent with this Order. A report by the Internal Audit department of its review and confirmation that LPL has made offers consistent with this Order shall be sent to the NASAA Representative within ten (10) days of the completion of the Internal Audit department's report.

36. On or before October 15, 2015, LPL shall provide a written report to the NASAA Representative regarding: the supervisory system for the review of Alternative Investment transactions; the surveillance programs related to Alternative Investment transactions; and the systems for maintaining execution data related to Alternative Investments. Upon request, the NASAA Representative shall make a copy of the written report available to the Department.

37. This CAO is not intended to subject LPL to disqualification under federal securities laws, rules or regulations thereunder, or the rules and regulations of any self-regulatory agency, nor the laws, rules or regulations of the various states and U.S. Territories, including without limitation, any disqualification from relying upon the registration exemption or the safe harbor provisions. In addition, this CAO is not intended to be the basis for any such disqualifications.

#### **FURTHER PROVISIONS**

38. Consent. LPL hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's authority under the 1972 Act and agrees that it understands all of the terms and conditions contained herein. LPL, by voluntarily entering into this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

39. Cooperation. LPL has cooperated with the multiple jurisdiction coordinated investigation from the beginning of the investigation. LPL provided extensive cooperation with the multiple jurisdiction investigation, including: (1) providing information about transactions irrespective of the jurisdiction in which transactions occurred; and (2) identifying Sales Transactions that exceeded state concentration limits, REIT prospectus standards, or LPL's Guidelines applicable to the sale of non-traded REITs.

40. Tax claims. LPL shall not claim, assert or apply for a tax deduction or tax credit with regard to any state, federal or local tax for the penalty amount that LPL is paying pursuant to Paragraph 32 of this Order, unless required to by other law.

41. Indemnification. LPL shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any commercial insurance policy, with regard to the penalty amount that LPL shall pay pursuant to Paragraph 32 of this Order.

42. Entire Agreement. This Order contains the entire agreement between the Department and LPL. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department and LPL.

43. Binding Nature. The Department and LPL and all heirs and assigns of them intend to be and are legally bound by the terms of this Order.

44. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

45. Effectiveness. LPL hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

46. Other Enforcement Action

- a. The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against LPL in the future regarding all matters not resolved by this Order.
- b. LPL acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office that has separate, independent jurisdiction over the issues described herein.

47. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

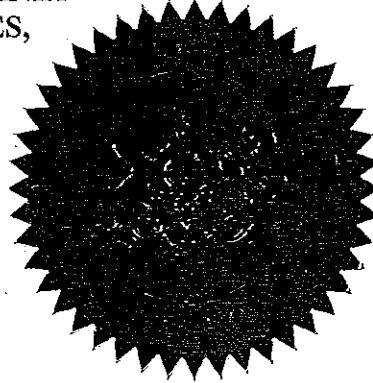
48. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

49. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

50. Finding. The Department finds that it is necessary and appropriate in the public interest and for the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1972 Act to issue this Order.

**WHEREFORE**, inconsideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking and Securities, Bureau of Securities Licensing, Compliance and Examinations and LPL Financial LLC, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF BANKING AND SECURITIES,  
BUREAU OF SECURITIES LICENSING,  
COMPLIANCE AND EXAMINATIONS



Redacted

Date: 11/30/15

LPL FINANCIAL LLC

Redacted

(Signature)

David Bergers  
(Print Name)

General Counsel  
(Title)

Date: 11/17/15

SUBSCRIBED AND SWORN TO before me. this 17 day of November, 2015.



Redacted

My Commission Expires  
JULY 15, 2016