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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING) Order No.: S-15-1795-15-CO01
whether there has been a violation of the)
Securities Act of Washington by:)
LPL Financial LLC,) CONSENT ORDER
Respondent.)

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INTRODUCTION

9 Pursuant to the Securities Act of Washington, RCW 21.20, the Securities Division of the Department of
10 Financial Institutions (“Securities Division”) and Respondent LPL Financial Corporation hereby enter into this
11 Consent Order in settlement of the matters described herein. Respondent LPL Financial Corporation neither admits
12 nor denies the Findings of Fact and Conclusions of Law as stated below.

13 WHEREAS, state regulators from multiple jurisdictions, led by Nevada, Maine and Texas, conducted a
14 coordinated investigation of LPL Financial LLC (“LPL”) to determine whether non-traded REIT sales transactions,
15 executed by LPL during the time period beginning January 1, 2008 through December 31, 2013, violated state law;

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

20 The investigation has identified Sales Transactions of non-traded REITs to investors in Washington that were
21 sold in excess of at least one of the above-stated prospectus standards, or LPL’s own guidelines, which Washington
22 alleges constitutes a violation of RCW 21.20.110(1)(j), NASD Rule 3010, FINRA Rule 3110, and FINRA Rule
23 3120;

24 LPL has agreed to resolve the investigations through the offer of a multistate settlement which includes this
25 Consent Order;

LPL, as part of this settlement, agrees to comply with all state and federal securities laws; and

1 LPL, without admitting or denying the findings of fact and conclusions of law contained herein, voluntarily
2 consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review regarding this
3 Consent Order.

4 NOW THEREFORE, the Securities Administrator, as administrator of the Securities Act of Washington,
5 RCW 21.20, hereby enters this Order:

6 **I.**

7 **FINDINGS OF FACT**

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

10 2. LPL's principal place of business is located at 75 State Street, 24th Floor, Boston, MA 02109. LPL
11 currently maintains branch offices in Washington.

12 3. Real Estate Investment Trusts ("REITs") are companies that own income-producing real estate or
13 real estate-related assets, and sell shares in the company to investors to allow them to invest in real estate with
14 relatively small amounts of capital. Although many REITs are traded on public stock exchanges, many are not.
15 REITs that are not traded on exchanges are generally referred to as "non-traded REITs."

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

18 5. Non-traded REITs are specifically identified by LPL as a form of "Alternative Investment."

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

22 Relevant Disciplinary History

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

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

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

9 Identification of Sales Transactions Constituting a State Law Violation

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

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

16 11. As a result of the multiple-jurisdiction coordinated investigation, LPL began a review of its sale
17 transactions from January 1, 2008 through December 31, 2013 to identify those non-traded REIT Sales Transactions
18 that exceeded one of the following:

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

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

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

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

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

12 II.

13 CONCLUSIONS OF LAW

14 16. At all times relevant herein, and pursuant to Washington law, LPL was required to implement an
15 adequate supervisory system regarding the sale of non-traded REITs that was reasonably designed to achieve
16 compliance with the supervision requirements of NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 3120
17 (incorporated as Washington law by WAC 460-21B-060(24)). Pursuant to these rules and to RCW 21.20.110(1)(j),
18 LPL was required to enforce its written procedures regarding the sale of non-traded REITs.

19 17. Based upon the above facts, from and including January 1, 2008 through December 31, 2013, LPL
20 failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with RCW
21 21.20.110(1)(j), NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 3120, regarding its sale, through
22 Washington representatives, of non-traded REITs.

23 18. From and including January 1, 2008 through December 31, 2013, LPL failed to enforce its written
24 procedures to supervise the activities of its registered representatives in violation of RCW 21.20.110(1)(j), NASD
25 Rule 3010, FINRA Rule 3110, and FINRA Rule 3120.

19. As a result, this Consent Order and the following relief is appropriate and in the public interest.

III.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and LPL's consent to the entry of this Order,

IT IS HEREBY AGREED AND ORDERED:

1. LPL shall cease and desist from violation of the Securities Act of Washington and incorporated NASD and FINRA rules, specifically RCW 21.20.110(1)(j), NASD Rule 3010, FINRA Rule 3110, and FINRA Rule 3120.

2. LPL shall offer to remediate¹ losses for all non-traded REITs sold by LPL to LPL clients, from and including January 1, 2008 through December 31, 2013, who were Washington residents at the time they purchased the non-traded REIT (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 Washington) ("Washington Investors") that exceeded any of the following:

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

3. LPL shall create a team of individuals who are primarily dedicated to assisting Washington Investors with LPL's remediation of Washington Investor Sales Transactions ("Claim Team"). The Claim Team shall

¹ 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.

1 establish a dedicated phone number and be the central point of contact for any client or former client seeking
2 information about a non-traded REIT Sales Transaction during the relevant time period, and for any Washington
3 Investor making any inquiry or claim, until such time as LPL delivers the Report required in paragraph 15 and the
4 representative or representatives designated by the North America Securities Administrators Association (“NASAA”)
5 (the “NASAA Representative”) confirms that the Claim Team is no longer necessary.

6 4. LPL or its designee shall send an offer of remediation to eligible Washington Investors with
7 Washington Investor Sales Transactions (“Offer Letter”). A draft of the Offer Letter, not unacceptable to the
8 NASAA Representative, shall be provided to the NASAA Representative within thirty (30) days of the execution of
9 the Nevada Consent Order. The Offer Letter will be sent to the LPL address of record for all eligible Washington
10 Investors, which shall be mailed to Washington Investors within fifteen (15) days of the later of the completion of the
11 third party review set forth in paragraph 13 or the execution of this Washington Order. The offer communicated in
12 the Offer Letter shall remain open for ninety (90) days from the date of mailing. Within thirty (30) days of the
13 mailing of the Offer Letter, LPL shall provide to the Securities Division a list of all Washington Investors for whom
14 LPL receives an offer as return to sender (“Undeliverable Washington Residents”). To the extent the Securities
15 Division has access to different mailing address information for Undeliverable Washington Investors, LPL agrees to
16 mail a second Offer Letter to Washington Investors within 30 days of the Securities Division providing such different
17 address. Washington Investors who choose to accept the offer of remediation shall be required to sign a release in a
18 form not unacceptable to the NASAA Representative, agreeing to waive any further claims against LPL or its agents
19 relating to any violation set forth in this Consent Order, giving rise to the offer of remediation, and agreeing to offset
20 any additional claims relating to identified transactions by the amount received by this Consent Order. In addition,
21 Washington Investors who choose to accept the offer of remediation must agree to tender their existing shares in the
22 non-traded REIT giving rise to the offer of remediation to LPL or its designee, as a precondition to receipt of
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1 payment by LPL.² The offer of remediation shall be in the form of a credit to an existing LPL account or a check, as
2 elected, by existing LPL clients, or a check for former LPL clients.

3 5. All eligible Washington Investor Sales Transactions described above shall be given notice of and the
4 opportunity to accept LPL's offer of remediation as set forth in the above paragraphs 2 and 4.

5 6. LPL shall provide to the Securities Division the most recent contact information for each
6 Washington Investor.

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

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

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

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

20 9. In accordance with the terms of the settlement of this multiple jurisdiction investigation, and taking
21 into consideration LPL's efforts to remediate supervisory and systems issues and to self-report sales violations to
22 certain jurisdictions, and LPL's cooperation in this matter, LPL shall pay as and for a civil penalty within ten (10)
23 business days of the entry of this Consent Order, \$65,766.07, the sum of which represents Washington's portion of
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25 ² As pertaining to any investor who may have a physical certificate(s) of the identified non-traded REITs, LPL will provide these Washington Investors additional time (not unacceptable to the State) to locate all physical certificate(s).

1 the total civil penalty of One Million Four Hundred Twenty Five Thousand Dollars Even (\$1,425,000.00) to be paid
2 by LPL.

3 10. At the request of LPL, the Securities Division may extend, for good cause shown, any of the
4 procedural dates set forth above.

5 11. LPL agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification,
6 including, but not limited to, any payments made pursuant to any commercial insurance policy, with regard to the
7 penalty amount that LPL shall pay pursuant to Paragraph 9 of this Order.

8 12. LPL and its designee agrees that it shall not claim, assert or apply for a tax deduction or tax credit
9 with regard to any state, federal or local tax for the penalty amount that LPL shall pay pursuant to Paragraph 9 of this
10 Order, unless otherwise required by law.

11 13. LPL shall retain an independent third party, not objectionable to the NASAA Representative. The
12 third party will be responsible for analyzing the electronic data set provided by LPL of Sales Transaction data
13 representing the executed sales of non-traded REITs by LPL from and including January 1, 2008 through December
14 31, 2013. The third party shall identify Washington Sales Transactions that violated (a) REIT prospectus standards
15 or (b) LPL's own guidelines for the sale of Alternative Investments, and those transactions which were processed
16 inconsistent with LPL's policies and procedures, including LPL's Compliance Manual and Written Supervisory
17 Procedures. The Washington Investor Sales Transactions identified by the third party shall be sent to LPL and the
18 NASAA representative no later than ninety (90) days from the date of Nevada's Administrative Consent Order. At
19 the request of LPL, the NASAA Representative may extend this ninety (90) day requirement, for good cause shown.
20 This provision and the use of an independent third party does not relieve LPL of its obligations under Paragraph 2 of
21 this Order.

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

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

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

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

15 18. The Securities Division does not intend disqualification under Rules 506(d) of Regulation D or Rule
16 262(a) of Regulation A of the Securities Act of 1933 to arise as a consequence of this Order.

17 19. The Securities Division has jurisdiction to enter this Consent Order.

18 20. LPL enters into this Consent Order freely and voluntarily and with a full understanding of its terms
19 and significance.

20 21. In consideration of the foregoing, LPL waives its right to a hearing and to judicial review of this
21 matter pursuant to RCW 21.20.440 and Chapter 34.05 RCW.

1 Signed this 12th day of January, 2016.

2 Signed by:

3 LPL Financial LLC

4
5 /s _____
6 David Berger
7 General Counsel

8 Approved as to form by:

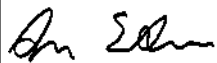
9 /s _____
10 Neal Sullivan, Attorney for Respondent
11 Sidley Austin LLP

12 SIGNED and ENTERED this 15th day of January, 2016.

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15 William M. Beatty
16 Securities Administrator

17 Approved by:

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20 Suzanne Sarason
21 Chief of Enforcement

Presented by:

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23 

24 Adam N. Yeaton
25 Financial Legal Examiner

Reviewed by:

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28 Jack McClellan
29 Financial Legal Examiner Supervisor

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