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**STATE OF CALIFORNIA**

**BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY**

**DEPARTMENT OF BUSINESS OVERSIGHT**

5 **In the Matter of :** )  
6 **LPL FINANCIAL LLC,** ) **CRD NO. 6413**  
7 **Respondent.** ) **ADMINISTRATIVE CONSENT ORDER**  
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14 The Commissioner of Business Oversight ("Commissioner") finds that:

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

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

24 WHEREAS, the investigation has identified Sales Transactions of non-traded REITs to  
25 investors in California, that were sold in excess of at least one of the above-stated prospectus standards  
26 or LPL's own guidelines, which California alleges constitutes a violation of Corporations Code section  
27 25218 as specifically defined by California Code of Regulations, title 10, section 260.218.4, subsection  
28 (c);

1 WHEREAS, LPL has agreed to resolve the investigations through the offer of a multistate  
2 settlement which includes this Consent Order;

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

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

8 NOW THEREFORE, the Commissioner hereby enters this Consent Order.

9 **I. FINDINGS OF FACT**

10 1. LPL, CRD # 6413, is an entity currently registered as a broker-dealer firm in California.  
11 LPL is also an investment adviser registered with the Securities and Exchange Commission.

12 2. LPL’s principal place of business is located at 75 State Street, 24th Floor, Boston, MA  
13 02109. LPL currently maintains branch offices in California.

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

16 4. Non-traded REITs are specifically identified by LPL as a form of “Alternative  
17 Investment.”

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

21 **Relevant Disciplinary History**

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

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

27 8. On January 28, 2014, LPL entered into an Acceptance, Waiver and Consent Agreement  
28 (“AWC”) with the Financial Industry Regulatory Authority (“FINRA”) which was accepted by FINRA

1 on March 24, 2014. This FINRA AWC sets forth that LPL accepted and consented to findings, without  
2 admitting or denying the findings, that between January 1, 2008 and July 1, 2012, LPL violated NASD  
3 Rules 3010(a) and (b), Rule 2110 and FINRA Rule 2010 by failing to implement an adequate  
4 supervisory system for the sale of alternative investments that was reasonably designed to achieve  
5 compliance with suitability requirements.

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

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

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

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

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

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

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



1 On the basis of the Findings of Fact, Conclusions of Law, and the consent of LPL to the entry of  
2 this Consent Order,

3 **IT IS HEREBY ORDERED:**

4 1. LPL shall Cease and Desist from violation of the California Corporate Securities Law of  
5 1968 (Corporations Code section 2500 et seq.).

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

13 a. Those transactions made which exceeded or were inconsistent with a non-traded  
14 REIT prospectus prescribed minimum net worth or annual income standards; or

15 b. Those transactions in which the principal invested amount exceeded LPL’s  
16 Alternative Investment Guidelines, or those transactions which were processed inconsistent with LPL’s  
17 policies and procedures, including LPL’s Compliance Manual and Written Supervisory Procedures (a  
18 and b referred to jointly as “California Investor Sales Transactions”).

19 3. LPL shall create a team of individuals who are primarily dedicated to assisting  
20 California Investors with LPL’s remediation of California Investor Sales Transactions (“Claim  
21 Team”). The Claim Team shall establish a dedicated phone number and be the central point of contact  
22 for any client or former client seeking information about a non-traded REIT Sales Transaction during  
23 the relevant time period, and for any California Investor making any inquiry or claim, until such time as  
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25 <sup>1</sup> The term “remediation” or “remediate” with respect to the offers contemplated herein shall be based on a  
26 methodology as agreed to by the representative designated by the North American Securities Administrators  
27 Association that takes into account, singularly or in any combination, the following:

- 28 (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 LPL delivers the Report required in paragraph 14 and the representative or representatives designated  
2 by the North America Securities Administrators Association (“NASAA”) (the “NASAA  
3 Representative”) confirms that the Claim Team is no longer necessary.

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

25 5. All eligible California Investors described above shall be given notice of and the  
26 opportunity to accept LPL’s offer of remediation as set forth in the above paragraphs 2 and 4.

27  
28 <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 California Investors additional time (not unacceptable to the State) to locate all physical certificate(s).

1           6.       LPL shall provide to California the most recent contact information for each California  
2 Investor.

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

6                   a. Identification of all accepted offers; and

7                   b. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

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

11                   a. Identification of all offers made;

12                   b. Identification of all accepted offers;

13                   c. Identification of all claims made to LPL;

14                   d. Identification of any claim denied by LPL; and

15                   e. Dates, amounts, and methods of the transfer of funds for all payments of remediation.

16           9.       In accordance with the terms of the settlement of this multiple jurisdiction investigation,  
17 and taking into consideration LPL's efforts to remediate supervisory and systems issues and to  
18 self-report sales violations to certain jurisdictions, and LPL's cooperation in this matter, LPL shall pay  
19 as and for a civil penalty within ten (10) business days of the entry of this Consent Order, \$140,220.11,  
20 the sum of which represents California's portion of the total civil penalty of One Million Four Hundred  
21 Twenty Five Thousand Dollars Even (\$1,425,000.00) to be paid by LPL. The check shall be made out  
22 to Department of Business Oversight and mailed to the attention of Erik Brunkal, Senior Counsel, 1515  
23 K St., Suite 200, Sacramento, California, 95814.

24           10.       At the request of LPL, California may extend, for good cause shown, any of the  
25 procedural dates set forth above.

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

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

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

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

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

27 16. On or before October 15, 2015, LPL shall provide a written report to the NASAA  
28 Representative regarding: the supervisory system for the review of Alternative Investment



1 transactions; the surveillance programs related to Alternative Investment transactions; and the systems  
2 for maintaining execution data related to Alternative Investments. Upon request, the NASAA  
3 Representative shall make a copy of the written report available to California.

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

10 Dated this 28 day of January, 2016.

11  
12 Jan Lynn Owen  
13 Commissioner of Business Oversight

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15 By: \_\_\_\_\_  
16 Mary Ann Smith  
17 Deputy Commissioner  
18 Enforcement Division  
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**CONSENT TO ENTRY OF CONSENT ORDER**

LPL Financial LLC, by and through its authorized representative, by signing below, agrees to the entry of this Consent Order, and waives any right to a hearing or to judicial review.

LPL by and through its authorized representative states that no promise of any kind or nature whatsoever that is not reflected in this Consent Order was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

David Bergers (name) represents that he or she has been authorized to enter into this Consent Order on behalf of LPL Financial LLC.

LPL Financial LLC

By: David Bergers

Title: General Counsel

Date: 1/11/16