

**STATE OF NORTH CAROLINA
DEPARTMENT OF THE SECRETARY OF STATE
SECURITIES DIVISION**

IN THE MATTER OF:)
)
) **ADMINISTRATIVE CONSENT ORDER**
LPL FINANCIAL LLC)
) NC File No. 14 SEC 035
Respondent.)

WHEREAS, state regulators from multiple jurisdictions conducted a coordinated investigation of LPL Financial LLC (“LPL”) to determine whether sales of non-traded real estate investment trusts (“REITs”) executed by LPL, during the time period beginning January 1, 2008 through December 31, 2013, violated state law; and

LPL has cooperated with the 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 the prospectus standards of the specific REIT, a state’s concentration limits, or LPL’s own guidelines for the sale of Alternative Investments, including, but not limited to, non-traded REITs; and

The investigation has identified Sales Transactions of non-traded REITs to investors in North Carolina, that were sold in excess of at least one of the above-stated prospectus standards or LPL’s own guidelines, which the Securities Division of the North Carolina Department of the Secretary of State (“Securities Division”) constitutes a violation of N.C.G.S. §78A-39(a1)(2)(a) and FINRA Rules 3110 and 3120; and

LPL has agreed to resolve the investigations through a multistate settlement, which includes this Administrative Consent Order (“Order”); and

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

LPL, without admitting or denying the Findings of Fact and Conclusions of Law contained herein, voluntarily consents to the issuance and entry of this Order, and waives any right to a hearing or to judicial review regarding this Order.

NOW THEREFORE, the North Carolina Securities Administrator (the "Administrator") hereby issues and enters this Order.

**I.
FINDINGS OF FACT**

1. LPL, CRD # 6413, is an entity currently registered as a dealer under the North Carolina Securities Act, G.S. Chapter 78A. LPL is also an investment adviser registered with the U.S. Securities and Exchange Commission, and notice filed under the North Carolina Investment Advisers Act, G.S. Chapter 78C.

2. LPL's principal place of business is located at 75 State Street, 24th Floor, Boston, Massachusetts 02109. LPL currently maintains branch offices in North Carolina.

3. During the period between January 1, 2008 and December 31, 2013, LPL offered multiple non-traded REITs in North Carolina.

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

5. 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

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

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

8. 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. Without admitting or denying, LPL accepted and consented to the findings. The AWC sets forth, that for the period of January 1, 2008 through July 1, 2012, LPL violated NASD Rules 2110 and 3010(a) and (b) 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

9. Subsequent to the above-referenced Massachusetts action, LPL began a review of its Sales 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.

10. 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 non-traded REIT 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.

11. During the period of 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.

12. 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.

13. Beginning in calendar year 2013, LPL contacted certain states and identified transactions that exceeded prospectus standards, state concentration limits, or its own Alternative Investment Guidelines.

14. 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: by providing information about transactions irrespective of the jurisdiction in which transactions occurred and identifying Sales Transactions that exceeded state concentration limits, REIT prospectus standards, or LPL's Guidelines applicable to the sale of non-traded REITs.

**II.
CONCLUSIONS OF LAW**

15. Pursuant to the North Carolina Securities Act, LPL was required to implement an adequate supervisory system regarding the sale of non-traded REITs that was reasonably designed to achieve compliance with the North Carolina Securities Act and to enforce its written supervisory procedures regarding the sale of non-traded REITs.

16. Based upon the facts above, for the period of January 1, 2008 through December 31, 2013, LPL failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with the North Carolina Securities Act, regarding its sale, through registered representatives under the North Carolina Securities Act, of non-traded REITs.

17. For the period of January 1, 2008 through December 31, 2013, LPL failed to enforce its written procedures to supervise the activities of its registered representatives in violation of North Carolina Securities Act.

18. As a result, this 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 the consent of LPL to the issuance and entry of this Order,

IT IS HEREBY ORDERED:

1. LPL shall Cease and Desist from violating 78A-39(a1)(2)(a).

2. LPL shall offer to remediate¹ losses for all non-traded REITs sold by LPL to LPL clients, for the period of January 1, 2008 through December 31, 2013, who were residents of North Carolina 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 North Carolina) (“North Carolina 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.

The transactions described in a. and b. are referred to as “North Carolina Investor Sales Transactions.”

3. LPL has created a team of individuals who are primarily dedicated to assisting North Carolina Investors with LPL’s remediation of North Carolina Investor Sales Transactions (“Claim Team”). The Claim Team has established a dedicated telephone number and acts as the central point of contact for any client or former client seeking information about a non-traded

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.

REIT Sales Transaction during the relevant time period, and for any North Carolina Investors making any inquiry or claim, until such time as the representative designated by the North American Securities Administrators Association (“NASAA”) (the “NASAA Representative”) confirms that the Claim Team is no longer necessary.

4. LPL, or its designee, shall send an offer of remediation to eligible North Carolina Investors with North Carolina Sales Transactions (“Offer Letter”). The Offer Letter shall be sent to the LPL address of record for all eligible North Carolina Investors, which must be mailed to North Carolina Investors no later than fifteen (15) days from the execution of this Administrative Consent Order. The offer communicated in the Offer Letter shall remain open for ninety (90) days from the date of mailing. No later than thirty (30) days of the mailing of the Offer Letter, LPL shall provide to the Securities Division a list of all North Carolina Investors for whom LPL receives an offer as return to sender (“Undeliverable North Carolina Residents”). To the extent the Securities Division has access to different mailing address information for Undeliverable North Carolina Investors, LPL agrees to mail a second Offer Letter to North Carolina Investors no later than thirty (30) days from the Securities Division providing such different address. North Carolina 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 Administrative Consent Order, giving rise to the offer of remediation, and agreeing to offset any additional claims relating to identified transactions by the amount received by this Administrative Consent Order. In addition, North Carolina 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.² The offer of remediation shall be in the form of a credit or check as elected by an existing LPL client or a check as elected by former LPL clients.

5. For all eligible North Carolina Investor Sales Transactions described above, LPL shall give notice of and the opportunity to accept LPL's offer of remediation as set forth in the above paragraphs 2 and 4.

6. LPL shall provide to the Securities Division the most recent contact information for all North Carolina Investors.

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

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

- a. Identification of all offers made;
- b. Identification of all offers accepted;
- c. Identification of all claims made to LPL;
- d. Identification of any claim denied by LPL; and

² As pertaining to any investor who may have a physical certificate(s) of the identified non-traded REITs, LPL will provide these North Carolina Investors additional time (not unacceptable to the Securities Division) to locate all physical certificate(s).

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

9. 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 the sum of \$24,342.35 to the State of North Carolina within ten (10) business days of the issuance and entry of this Administrative Consent Order. The sum represents a civil penalty of \$2,500 plus \$21,842.35 for investigative costs.

10. The sum paid to North Carolina represents North Carolina'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.

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

12. LPL agrees that it 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 9 of this Administrative Consent Order.

13. LPL, or its designee, agrees that it 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 shall pay pursuant to Paragraph 9 of this Administrative Consent Order, unless otherwise required by law.

14. LPL retained an independent third-party, not objectionable to the NASAA Representative. The third-party analyzed 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 identified North Carolina Sales Transactions that violated REIT prospectus standards, and/or LPL's own Alternative Investments Guidelines.

15. LPL's Internal Audit department confirmed that the data provided to the third party was the most complete data set available reflecting executed non-traded REIT Sales Transactions during the relevant period.

16. In 2015, LPL provided 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 Securities Division.

17. This Administrative Consent Order 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 Administrative Consent Order is not intended to be the basis for any such disqualifications.

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WITNESS MY HAND AND THE OFFICIAL SEAL of the North Carolina
Department of the Secretary of State, this the 26th day of MARCH 2018.

Time of entry: 8: 34 A.M.



ELAINE F. MARSHALL
SECRETARY OF STATE OF NORTH CAROLINA
and **SECURITIES ADMINISTRATOR**, by

REDACTED

KEVIN M. HARRINGTON
DEPUTY SECURITIES ADMINISTRATOR

CONSENT TO ISSUANCE AND ENTRY OF ADMINISTRATIVE CONSENT ORDER

LPL Financial LLC, by its authorized and undersigned representative, hereby acknowledges that it:

- (1) Has read the foregoing Consent Order and fully understands the contents thereof;
- (2) Voluntarily consents to the issuance and entry of this Administrative Consent Order without any force or duress, and expressly waives all further procedural and substantive rights, including hearings, issuance of notice of hearing, service, judicial review and collateral attacks or other proceedings contesting the terms of the Administrative Consent Order;
- (3) Understands that the Administrative Consent Order is a public record document; and
- (4) Further understands that the North Carolina Department of the Secretary of State is permitted to disseminate information concerning the Administrative Consent Order contained within this and all public records.

I, REDACTED, represent that I hold the position of Managing Director at LPL Financial LLC and that, under that position, have been authorized by LPL Finance LLC to enter into Administrative Consent Order for and on behalf of LPL Finance LLC.

Dated this 8th day of March, 2018.

By REDACTED

Position/Title: Managing Director

I, a Notary Public of the above County of YORK, State of SOUTH CAROLINA, certify that Tracy Calder personally appeared before me this day and acknowledged to me that he/she voluntarily signed the forgoing document for the purposes stated therein.

Witness my hand and official seal, this the 8th day of March, 2018.



REDACTED

Official signature of notary

Diane H. Carter

Notary's printed or typed name

, Notary Public

My Commission expires: Jan. 26, 2027