

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING AND SECURITIES
4

5 IN THE MATTER OF:) **ORDER NO. 15-1804-S**
6 LPL FINANCIAL LLC,) **CONSENT TO ORDER**
7)
8 Respondent.)
9 _____)

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

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

19 WHEREAS, the investigation has identified Sales Transactions of non-traded REITs to
20 investors in Alaska, that were sold in excess of at least one of the above-stated prospectus
21 standards or LPL’s own guidelines, which Alaska alleges constitutes a violation of the Alaska
22 Securities Act, AS 45.55. et. seq.;

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

1 residents (“MA Order”) during the time period of January 1, 2006 through February 6, 2013.

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

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

12 **Identification of Sales Transactions that constitute a state law violation**

13 9. Subsequent to the above referenced Massachusetts action, LPL began a review
14 of its sales transactions from October 2010 to August 2013 to identify those Sales Transactions
15 that exceeded one or more 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 10. As a result of the multiple jurisdiction-coordinated investigation, LPL began a
20 review of its sales transactions from January 1, 2008 through December 31, 2013 to identify
21 those non-traded REIT Sales Transactions that exceeded one of the following:

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

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

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

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

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

19 **II. CONCLUSIONS OF LAW**

20 15. At all times relevant, and pursuant to Alaska law, LPL was required to
21 implement an adequate supervisory system regarding the sale of non-traded REITs that was
22 reasonably designed to achieve compliance with Alaska Statute (AS) 45.55.060(b)(1), LPL was
23 required to enforce its written procedures regarding the sale of non-traded REITs.

24 16. Based upon the above facts, from and including January 1, 2008 through

1 December 31, 2013, LPL failed to implement an adequate supervisory system that was
2 reasonably designed to achieve compliance with AS 45.55.060(b)(1), regarding its sale,
3 through Alaska representatives, of non-traded REITs.

4 17. From and including January 1, 2008 through December 31, 2013, LPL failed to
5 enforce its written procedures to supervise the activities of its registered representatives in
6 violation of AS 45.55.060(b)(1).

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

9 III. ORDER

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

12 IT IS HEREBY ORDERED:

13 1. LPL shall Cease and Desist from violation of the Alaska Securities Act.
14 2. LPL shall offer to remediate¹ losses for all non-traded REITs sold by LPL to
15 LPL clients, from and including January 1, 2008 through December 31, 2013, who were Alaska
16 residents at the time they purchased the non-traded REIT (regardless of whether the shares of
17 the non-traded REIT are presently held in an LPL account or the individual or entity no longer
18 resides in Alaska) (“Alaska Investors”) that exceeded any of the following:

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

22 ¹ The term “remediation” or “remediate” with respect to the offers contemplated herein shall be based on a
23 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:

- 24 (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 b. Those transactions in which the principal invested amount exceeded
2 LPL’s Alternative Investment Guidelines, or those transactions which
3 were processed inconsistent with LPL’s policies and procedures,
4 including LPL’s Compliance Manual and Written Supervisory
5 Procedures (a and b referred to jointly as “Alaska Investor Sales
6 Transactions”).

7 3. LPL shall create a team of individuals who are primarily dedicated to assisting
8 Alaska Investors with LPL’s remediation of Alaska Investor Sales Transactions (“Claim
9 Team”). The Claim Team shall establish a dedicated phone number and be the central point of
10 contact for any client or former client seeking information about a non-traded REIT Sales
11 Transaction during the relevant time period, and for any Alaska Investor making any inquiry or
12 claim, until such time as LPL delivers the Report required in paragraph 14 and the
13 representative or representatives designated by the North America Securities Administrators
14 Association (“NASAA”) (the “NASAA Representative”) confirms that the Claim Team is no
15 longer necessary.

16 4. LPL or its designee shall send an offer of remediation to eligible Alaska
17 Investors with Alaska Investor Sales Transactions (“Offer Letter”). A draft of the Offer Letter,
18 not unacceptable to the NASAA Representative, shall be provided to the NASAA
19 Representative within thirty (30) days of the execution of the Nevada Consent Order. The
20 Offer Letter will be sent to the LPL address of record for all eligible Alaska Investors, which
21 shall be mailed to Alaska Investors within fifteen (15) days of the later of the completion of the
22 third party review set forth in paragraph 13 or the execution of this Alaska Order. The offer
23 communicated in the Offer Letter shall remain open for ninety (90) days from the date of
24 mailing. Within thirty (30) days of the mailing of the Offer Letter, LPL shall provide to Alaska

1 a list of all Alaska Investors for whom LPL receives an offer as return to sender
2 (“Undeliverable Alaska Residents”). To the extent Alaska has access to different mailing
3 address information for Undeliverable Alaska Investors, LPL agrees to mail a second Offer
4 Letter to Alaska Investors within 30 days of Alaska providing such different address. Alaska
5 Investors who choose to accept the offer of remediation shall be required to sign a release in a
6 form not unacceptable to the NASAA Representative, agreeing to waive any further claims
7 against LPL or its agents relating to any violation set forth in this Consent Order, giving rise to
8 the offer of remediation, and agreeing to offset any additional claims relating to identified
9 transactions by the amount received by this Consent Order. In addition, Alaska Investors who
10 choose to accept the offer of remediation must agree to tender their existing shares in the non-
11 traded REIT giving rise to the offer of remediation to LPL or its designee, as a precondition to
12 receipt of payment by LPL.² The offer of remediation shall be in the form of a credit to an
13 existing LPL account or a check as elected by existing LPL clients or a check for former LPL
14 clients.

15 5. All eligible Alaska Investor Sales Transactions described above shall be given
16 notice of and the opportunity to accept LPL’s offer of remediation as set forth in the above
17 paragraphs 2 and 4.

18 6. LPL shall provide to Alaska the most recent contact information for each Alaska
19 Investor.

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

- 23 a. Identification of all accepted offers; and

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

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

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

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

21 The Internal Audit department shall also review and confirm that LPL has made
22 offers relating to the Alaska Investors Sales Transactions consistent with this Order. A report
23 by the Internal Audit department of its review and confirmation that LPL has made offers
24 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.

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

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DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1850
ANCHORAGE, ALASKA 99501
(907) 269-8140

1 into this Consent Order and that it has entered into this Consent Order voluntarily.

2 David Bergers _____ (name) represents that he or she has been

3 authorized to enter into this Consent Order on behalf of LPL Financial LLC.

4 LPL Financial LLC

5 By: /s/ David Bergers

6 Title: General Counsel

7 Date: December 1, 2015

8
9 SUBSCRIBED AND SWORN TO before me this 1st day of December, 2015 at
10 Boston, Massachusetts.

11 /s/ Diane H. Carter

12 Notary Public in and for Massachusetts

13 Diane H. Carter

14 Notary Printed Name

15 My commission expires: July 15, 2016

16
17 Contact Person:
18 Ann Penniston
19 Securities Examiner
20 (907) 269-2090