

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF STATE  
BUREAU OF SECURITIES REGULATION  
25 CAPITOL STREET  
CONCORD, NH 03301

**CONSENT ORDER**  
**IN THE MATTER OF:**

LPL Financial, LLC (CRD # 6413)

C-2013000005

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, LPL Financial, LLC (“LPL”) has submitted an offer of settlement, which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein or any others incorporated by reference, LPL does hereby consent to the entry of this Consent Order and to the following undertakings and sanctions:

**THE FACTS**

1. LPL is an investment adviser and broker-dealer with a principal place of business at 75 State Street, Boston, Massachusetts 02109. LPL has been licensed in New Hampshire since 1982 and has been licensed with the Securities and Exchange Commission (“SEC”) and with the Financial Industry Regulatory Authority (“FINRA”) since 1973.
2. As part of its business, LPL advisors sell alternative investments (“AIs”) to LPL clients. AIs include products such as limited partnership interests, membership interests in limited liability companies, hedge funds, managed futures, business trusts, and real estate investment trusts (“REITs”). REITs can be further separated into two distinct sub-categories, REITs that are traded on a national securities exchange and those that are not. REITs that fall into this latter category are referred to as non-exchange traded REITs, or non-traded REITs for short.
3. Non-traded REITs have certain characteristics that differ from exchange-traded REITs. The secondary market for non-traded REITs is limited and redemption offers may be priced below the purchase price. Second, the front-end fees associated with the sale of non-traded REITs can be as high as 15% of the per share price and include selling compensation and expenses. Finally, investors in non-traded REITs may seek income from distributions over a period of years but distributions are not guaranteed and whether distributions are paid is often within the sole discretion of the REIT’s Board of Directors.

4. In the process of selling non-traded REITs to clients, LPL financial advisors fill out a form titled Alternative Investment Purchase Approved Public Direct Participation Program (“AII form”). The AII form requires that the LPL financial advisor records certain client financial information in order to determine whether the proposed sale would result in a concentration of AIs beyond specific guidelines established by LPL.
5. LPL Written Supervisory Procedures (“WSPs”) regarding AIs include guidelines for the sale of AIs in client accounts. Specifically, these guidelines outline the percentage of a client’s liquid net worth (“LNW”) that may be invested in AIs (“AI Concentration”). Determining what AI Concentration is appropriate for a particular client depends on several different factors including: 1) the client’s age at the time of investment; 2) the client’s LNW at the time of investment; and 3) the client’s investment objective.
6. Once an AII form is completed by the LPL financial advisor for a particular AI transaction, the form is submitted and passes through several levels of LPL supervisory personnel for review. If the AII form and the transaction it outlines are determined by LPL supervisory personnel to be in good order, LPL transmits the trade to the sponsor of the non-traded REIT for execution.

#### **Summary of the Bureau’s Initial Investigation**

7. The original complainant in this matter is an eighty-one (81) year-old New Hampshire resident who was sold non-traded REITs by LPL in 2008. The complainant filed a formal complaint with the Bureau in the summer of 2013. The Bureau initiated a formal investigation of LPL soon thereafter.
8. The Bureau’s investigation included a review of LPL’s WSPs, the AII forms used in non-traded REIT sales to New Hampshire LPL clients, account opening forms for those LPL clients, and other information related to LPL’s sales of non-traded REITs in the state since 2007. The investigation also included a review of additional information LPL supplied in response to various requests for information by the Bureau and information obtained by the Bureau from third-party sources.
9. During the course of its investigation, the Bureau identified numerous issues with LPL’s books and records as well as deficiencies in its supervisory systems and procedures as they relate to the sales of certain identified non-traded REITs since 2007. Specifically, the Bureau identified numerous instances in which the paperwork accompanying the sales of non-traded REITs, including both the AII forms and account opening documents, should have triggered additional supervisory review of the transactions before the sales were made. The Bureau also found that, for a number of those transactions, further

supervisory review would have identified violations of LPL's own WSPs regarding AI concentrations or product prospectus requirements.

10. Based on these determinations, on April 6, 2015, the Bureau filed a Staff Petition for Relief in this matter, a copy of which is attached hereto as Attachment A. The Bureau's Staff Petition for Relief outlined in detail the determinations made by the Bureau during its investigation of LPL and the violations of New Hampshire securities law alleged to have been committed by LPL.
11. All factual allegations outlined in the Bureau's Staff Petition for Relief dated April 6, 2015, are hereby incorporated by reference.

#### **Subsequent Complaint and Investigation**

12. Subsequent to the filing of the Bureau's April 6, 2015 Staff Petition for Relief, the Bureau received a second complaint from a New Hampshire investor regarding the sale of non-traded REITs by certain New Hampshire LPL agents. Based on the content of this complaint, the Bureau initiated a supplemental investigation.
13. During the course of its supplemental investigation and in addition to the factual allegations outlined in its April 6, 2015 Staff Petition for Relief the Bureau identified certain additional deficiencies in LPL's supervisory systems and books and records. More specifically, these deficiencies included the failure of LPL to identify or investigate discrepancies in calculations of LNW and contradicting LNW amounts in client records in connection with the sale of non-traded REITs by certain LPL agents.

#### **THE LAW**

- II. The Bureau hereby makes the following statements of law under the New Hampshire Revised Statutes Annotated, N.H. RSA 421-B, and regulations thereunder:
  1. LPL is a "broker-dealer" and a "person" within the meaning of N.H. RSA 421-B:2, III and XVI.
  2. LPL financial advisors are "agents" and "persons" within the meaning of N.H. RSA 421-B:2, II and XVI.
  3. The non-traded REITs at issue here are "securities" within the meaning of N.H. RSA 421-B:2, XX.

4. The sale of non-traded REITs as described herein constitute “sales” within the meaning of N.H. RSA 421-B:2, XIX.
5. Pursuant to FINRA Rule 3110(a) each FINRA member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Pursuant to FINRA Rule 3110(b) each FINRA member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. As a member of FINRA, LPL is subject to these rules yet failed to maintain an adequate supervisory systems and procedures as they relate to the identified non-traded REIT transactions in contravention of its regulatory obligations under FINRA Rule 3110.
6. Pursuant to N.H. RSA 421-B:8, X persons licensed under N.H. RSA 421-B to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers, national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. LPL is subject to this provision yet, as outlined above, failed to maintain an adequate system of supervision as it relates to the identified non-traded REIT transactions, each in contravention of its regulatory obligations under FINRA Rule 3110.
7. Pursuant to N.H. RSA 421-B:10, I(b)(10) and VI, the secretary of state may assess an administrative fine of \$2,500 per violation if he finds that the licensee has failed reasonably to supervise its agents. LPL is subject to this provision yet, as outlined above, failed to reasonably supervise its agents as it relates to the identified non-traded REIT transactions.
8. Pursuant to N.H. RSA 421-B:22, in any investigation to determine whether any person has violated or is about to violate this title or any rule or order under this title, upon the Secretary of State’s prevailing at hearing, or the person charged with the violation being found in default, or pursuant to a consent order issued by the Secretary of State, the Secretary of State shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney’s fees, in addition to any other penalty provided for under N.H. RSA 421-B. LPL is subject to this provision and should be ordered to pay the Bureau’s costs of investigation and enforcement of this matter.

9. Pursuant to N.H. RSA 421-B:23, I, whenever it appears to the Secretary of State that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under N.H. RSA 421-B, the Secretary of State shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of N.H. RSA 421-B. LPL is subject to this provision and should be ordered to cease and desist from further violations of N.H. RSA 421-B.
10. Pursuant to N.H. RSA 421-B:26, III, any person who violates a provision of the chapter may be subject to an administrative fine not to exceed \$2,500, with each act constituting a separate violation. LPL is subject to this provision.
11. Pursuant to N.H. RSA 421-B:26, V, the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated N.H. RSA 421-B, or a rule or order thereunder. According to N.H. RSA 421-B:26, V, rescission, restitution or disgorgement shall be in addition to any other penalty provided for under N.H. RSA 421-B.

III. In view of the foregoing, LPL agrees to the following undertakings and sanctions:

1. LPL agrees to cease and desist from further violations of N.H. RSA 421-B.
2. LPL agrees that this Order is entered into for purposes of resolving only the matter as described herein. This order shall have no collateral estoppel effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by LPL of which the Bureau has no knowledge at the time of the date of final entry of this order.
3. LPL agrees not to take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision shall affect LPL's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Bureau is not a party.
4. LPL agrees, upon execution of this Consent Order, to pay an administrative fine in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), the Bureau's costs in the amount of Two Hundred Fifty Thousand Dollars (\$250,000), and a contribution to the investor education fund in the amount of Two Hundred Fifty Thousand Dollars (\$250,000). Payment of the total Seven Hundred Fifty Thousand Dollars (\$750,000) shall be made to the State of New Hampshire, which will be applied to settlement of the

above-captioned matter. Payment must be made by 1) business check, certified check, or postal money order; 2) made payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.

5. In a manner agreeable to the Bureau, LPL agrees to undertake to enhance its technical and supervisory systems and procedures as they relate to the processing and supervision of AI sales to address the issues outlined herein and in the Bureau's April 6, 2015 Staff Petition for Relief and report such enhancements as outlined in paragraph 11 below. Such enhancements shall be completed within twelve (12) months of the execution of this Consent Order.
  
6. LPL shall engage an independent third-party, agreeable to the Bureau, to review, within six (6) months of the execution of this Consent Order, all non-traded REIT transactions involving New Hampshire residents from 2007 to determine whether those transactions complied with LPL's concentration guidelines and product prospectus requirements. The third party shall review all relevant documentation related to non-traded REIT transactions containing certain characteristics identified by the Bureau. The independent third-party shall report to the Bureau upon conclusion of the review as to the conclusions or determinations made by the independent third-party including, of those transactions targeted for review by the Bureau, which transactions were found to be entitled to remediation and those that were not, the reasons why, and a description of the documents and information reviewed. Once the independent third party's conclusions and determinations have been reviewed and approved by the Bureau, LPL shall offer remediation, in a form agreeable to the Bureau (the "Offer Letter"), for any New Hampshire residents who purchased a non-traded REIT in excess of LPL's concentration guidelines or prospectus requirements ("NH Investors"). Within thirty (30) days of the mailing of the Offer Letter LPL shall provide to the Bureau a list of all NH Investors for whom LPL receives an offer as return to sender ("Undeliverable NH Residents"). To the extent the Bureau has access to different mailing address information for Undeliverable NH Residents, LPL agrees to mail a second Offer Letter to NH Investors within thirty (30) days of the Bureau providing such different address. NH Investors who choose to accept the offer of remediation shall be required to sign a release in a form agreeable to the Bureau, agreeing to waive any further claims against LPL or its agents relating to any violation set forth in this 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 Consent Order. In addition, NH 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. 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 LPL clients.

7. After the review of non-traded REIT transactions since 2007 that contain any of the discrepancies identified by the Bureau as outlined in Section III, Paragraph 6 above and in a manner agreeable to the Bureau, LPL shall undertake a process of notifying investors who purchased in such transactions that a review was conducted to determine whether they might be eligible for remediation and that the results of the review established (i) that they were eligible for remediation or (ii) that they were not deemed eligible for remediation (depending upon which condition is applicable) and the means by which they may contact the Claim Team, as described in Section III, Paragraph 8 below, to make inquiry regarding the determination.
8. LPL will have a Claim Team of individuals who are primarily dedicated to assisting New Hampshire residents with LPL's remediation. The Claim Team shall 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 transaction from 2007 or any inquiry or remediation claim related to such transactions, until such time as the Bureau confirms that the Claim Team is no longer necessary. The Claim Team shall maintain, and produce to the Bureau upon request, a log of all communications sent or received by the Claim Team from any New Hampshire resident. The log shall include, but shall not be limited to, the contact information of the New Hampshire resident, the date and time of the call, and a brief description of the purpose of the call.
9. 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 Section III, Paragraph 4 of this Order.
10. LPL 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 Section III, Paragraph 4 of this Order, unless otherwise required by law.
11. In addition to the reports outlined in Section III, Paragraph 6 above, LPL agrees to submit two reports to the Bureau regarding compliance with all undertakings outlined herein. The first report will be due no later than six (6) months after the execution of this Consent Order and will detail LPL's progress in satisfying all undertakings outlined herein, including but not limited to all supervisory enhancements and remediation, and the specific means of compliance being employed. The second and final report shall be received by the Bureau no later than twelve (12) months after the execution of this

Consent Order and shall detail full compliance with each undertaking outlined herein, including but not limited to all supervisory enhancements and remediation, and the specific means of compliance. The Bureau shall have the right to request additional reporting as it deems necessary in the sole discretion of the Bureau.

12. LPL agrees that if it fails to meet any undertaking set forth in this Consent Order, such a failure shall constitute a violation of this Consent Order pursuant to N.H. RSA 421-B:26 and may subject LPL to additional enforcement action and penalties.
13. This Consent Order is not intended to be a final order based upon violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct. Furthermore, the Consent Order waives any disqualifications in the New Hampshire laws, or rule or regulations hereunder, including any disqualification from relying upon the registration exemptions or safe harbor provisions to which LPL or any of its affiliates may be subject. This Consent Order is not intended to be the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934 or Rule 506 of the Regulation D under the Securities Act of 1933. This Consent Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under the SRO rules prohibiting continuance in membership. This Consent Order is not intended to form the basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

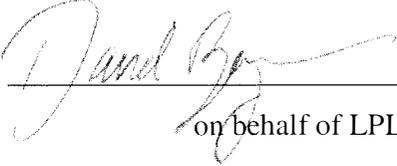
IV. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. LPL cease and desist from further violations of the New Hampshire Securities Act pursuant to N.H. RSA 421-B:23.
2. LPL pay an administrative fine of Two Hundred and Fifty Thousand Dollars (\$250,000), the Bureau's costs of Two Hundred and Fifty Thousand Dollars (\$250,000), and a contribution to the investor education fund of Two Hundred and Fifty Thousand Dollars (\$250,000), as outlined herein, for a total amount of Seven Hundred and Fifty Thousand Dollars (\$750,000).
3. LPL shall make offers of remediation to NH Investors as outlined herein.
4. LPL undertake compliance and supervisory enhancements regarding the sale of AIs as outlined herein.
5. LPL report to the Bureau within six (6) months and within twelve (12) months of

execution of this Consent Order regarding compliance with and completion of all undertakings as outlined herein.

6. LPL comply with all other undertakings and sanctions as outlined herein.

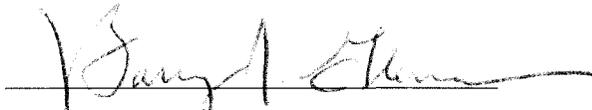
Executed this 9<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_ on behalf of LPL

Please print name below:

David Berger

Entered this 15<sup>th</sup> day of December, 2015.

  
\_\_\_\_\_

Barry Glennon, Director  
N.H. Bureau of Securities Regulation