



STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

TENNESSEE SECURITIES DIVISION,
Petitioner,

vs.

LPL FINANCIAL, LLC,
Respondent

Order No . 15-002

CONSENT ORDER

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

WHEREAS, LPL has cooperated with 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 (a) the prospectus standards of the specific REIT, (b) a state concentration limit, or (c) LPL's own guidelines for the sale of Alternative Investments, including but not limited to non-traded REITs;

WHEREAS, the investigation has identified Sales Transactions of non-traded REITs to investors in Tennessee, that were sold in excess of at least one of the above-stated prospectus standards, state concentration limits, or LPL's own guidelines, which Tennessee alleges constitutes violations of certain provisions of the Tennessee Securities Act of 1980 ("Act"), as amended, TENN. CODE ANN. §§ 48-1-101 through 48-1-201 (2013), and rules promulgated thereto;

WHEREAS, the Commissioner of the Tennessee Department of Commerce and Insurance ("Commissioner") is authorized by TENN CODE ANN. § 48-1-115(a) to administer the Act;

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

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

WHEREAS, LPL, without admitting or denying the findings of fact and conclusions of law contained herein, voluntarily consents to the entry of this Consent Order, and waives any right to a hearing or to judicial review under the contested case provisions of the Tennessee Uniform Administrative Procedures Act as amended, TENN CODE ANN. §§ 4-5-301 through 4-5-325 (2013), regarding this Consent Order.

NOW THEREFORE, the Commissioner hereby enters this Consent Order.

I. FINDINGS OF FACT

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

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

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

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 regarding certain sales of non-traded REITs to Massachusetts residents ("MA Order") 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 to residents of jurisdictions other than Massachusetts, sold after October 1, 2010.

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. This FINRA AWC sets forth that LPL accepted and consented to findings, without admitting or denying the findings, that between January 1, 2008 and July 1, 2012, LPL violated NASD Rules 3010(a) and (b), 2110 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 time period from and including 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 began contacting certain states and identifying 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: (1) providing information about transactions irrespective of the jurisdiction in which transactions occurred; and (2) 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. At all times relevant, and pursuant to Tennessee law, LPL was required to implement an adequate supervisory system and to enforce its written procedures regarding the sale of non-traded REITs that was reasonably designed to achieve compliance with TENN CODE ANN. § 48-1-112(a)(2)(J) and FINRA Rules 3110 and 3120.

16. Based upon the above facts, from and including January 1, 2008 through December 31, 2013, LPL failed to implement an adequate supervisory system that was reasonably designed to achieve compliance with TENN CODE ANN. § 48-1-112(a)(2)(J) and FINRA Rule 3110 regarding its sale, through Tennessee representatives, of non-traded REITs.

17. From and including 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 TENN CODE ANN. § 48-1-112(a)(2)(J) and FINRA Rule 3120.

18. 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 the consent of LPL to the entry of this Consent Order,

IT IS HEREBY ORDERED:

1. LPL shall Cease and Desist from further violations of the Act.
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 Tennessee 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 Tennessee) ("Tennessee Investors") that exceeded any of the following:
 - a. Those transactions made in which the principal invested amount exceeded the Tennessee maximum 10 percent (10%) concentration limitation imposed by certain non-traded REIT prospectuses, including all transactions which singularly exceed the ten percent (10%) concentration limitation, and all transactions which, when combined with other purchases by the same investor in the same non-traded REIT, exceed the ten percent (10%) concentration limitation;
 - b. Those transactions made which exceeded or were inconsistent with a non-traded REIT

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.

prospectus prescribed minimum net worth or annual income standards; or

- c. 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, b, and c referred to jointly as "Tennessee Investor Sales Transactions").

3. LPL shall create a team of individuals who are primarily dedicated to assisting Tennessee Investors with LPL's remediation of Tennessee Investor Sales Transactions ("Claim Team"). 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 Sales Transaction during the relevant time period, and for any Tennessee Investor making any inquiry or claim, until such time as LPL delivers the Report required in paragraph 14 and the representative or representatives 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 Tennessee Investors with Tennessee Investor Sales Transactions ("Offer Letter"). A draft of the Offer Letter, not unacceptable to the NASAA Representative, shall be provided to the NASAA Representative within thirty (30) days of the execution of the Nevada Consent Order. The Offer Letter will be sent to the LPL address of record for all eligible Tennessee Investors, which shall be mailed to Tennessee Investors within fifteen (15) days of the later of the completion of the third party review set forth in paragraph 13 or the execution of this Tennessee Order. The offer communicated in the Offer Letter shall remain open for ninety (90) days from the date of mailing. Within thirty (30) days of the mailing of the Offer Letter, LPL shall provide to Tennessee a list of all Tennessee Investors for whom LPL receives an offer as return to sender ("Undeliverable Tennessee Residents"). To the extent the Commissioner has access to different mailing address information for Undeliverable Tennessee Investors, LPL agrees to mail a second Offer Letter to Tennessee Investors within 30 days of

Tennessee providing such different address. Tennessee 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 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, Tennessee 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 to an existing LPL account or a check as elected by existing LPL clients or a check for former LPL clients.

5. All eligible Tennessee Investor Sales Transactions described above shall be given 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 Commissioner the most recent contact information for each Tennessee Investor.

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 Commissioner, a report detailing the amount of funds reimbursed pursuant to this 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 and eighty (180) days of the date of the Offer, LPL agrees to prepare, and submit to the Commissioner and the NASAA Representative, a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:

- a. Identification of all offers made;

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

- b. Identification of all accepted offers;
- c. Identification of all claims made to LPL;
- d. Identification of any claim denied by LPL; and
- 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 and designate for the Securities Division- Enforcement/Legal Training Fund, a civil penalty within ten (10) business days of the entry of this Consent Order in the amount of thirty-three thousand, seven hundred fourteen dollars, and eleven cents (\$33,714.11), which represents Tennessee'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. This civil penalty shall be paid by mailing a check, payable to the State of Tennessee-Securities Division, to:

State of Tennessee Department of Commerce and Insurance
Securities Division
Attn: Assistant Commissioner for Securities
500 James Robertson Parkway
Nashville, TN 37243

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

11. 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 Order.

12. LPL and 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 Order, unless otherwise required by law.

13. LPL shall retain an independent third party, not objectionable to the NASAA Representative. The third party will be responsible for analyzing 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 shall identify Tennessee Sales Transactions that violated (a) REIT prospectus standards, (b) a state concentration limit, or (c) LPL's own guidelines for the sale of Alternative Investments, and those transactions which were processed inconsistent with LPL's policies and procedures, including LPL's Compliance Manual and Written Supervisory Procedures. The Tennessee Investor Sales Transactions identified by the third party shall be sent to LPL and the NASAA representative no later than ninety (90) days from the date of Nevada's Administrative Consent Order. At the request of LPL, the NASAA Representative may extend this ninety (90) day requirement, for good cause shown. This provision and the use of an independent third party does not relieve LPL of its obligations under Paragraph 2 of this Order.

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

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

15. On or before October 15, 2015, LPL shall have 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 Tennessee.

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

Dated this 4th day of March, 2016.

BY ORDER OF:



Julie Mix McPeak
Commissioner
Tennessee Department of Commerce and Insurance

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: February 17, 2015