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3 STATE OF OREGON  
4 DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
5 DIVISION OF FINANCIAL REGULATION

6 In the Matter of:

Case No. S-15-0126

7 LPL FINANCIAL LLC,

FINAL ORDER TO CEASE AND  
DESIST, FINAL ORDER ASSESSING  
CIVIL PENALTY, AND CONSENT TO  
ENTRY OF ORDER

8 Respondent.

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

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

19 WHEREAS, the investigation has identified Sales Transactions of non-traded  
20 REITs to investors in Oregon, that were sold in excess of at least one of the above-stated  
21 prospectus standards, state concentration limits, or LPL’s own guidelines, which Oregon  
22 alleges constitutes a violation of Oregon Administrative Rule (“OAR”) 441-205-0210(3);

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

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

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

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

8           8.    On January 28, 2014, LPL entered into an Acceptance, Waiver and Consent  
9 Agreement ("AWC") with the Financial Industry Regulatory Authority ("FINRA") which  
10 was accepted by FINRA on March 24, 2014. This FINRA AWC sets forth that LPL  
11 accepted and consented to findings, without admitting or denying the findings, that  
12 between January 1, 2008 and July 1, 2012, LPL violated NASD Rules 3010(a) and (b),  
13 2110 and FINRA Rule 2010 by failing to implement an adequate supervisory system for  
14 the sale of alternative investments that was reasonably designed to achieve compliance  
15 with suitability requirements.

16 Identification of Sales Transactions that constitute a state law violation

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

- 20           A.    the particular REIT's prospectus standards;
- 21           B.    a state's concentration limits (if applicable); or
- 22           C.    LPL's Alternative Investment Guidelines.

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

- 26           A.    the particular REIT's prospectus standards;





1 B. a state's concentration limits (if applicable); or

2 C. LPL's Alternative Investment Guidelines.

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

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

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

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

## 22 CONCLUSIONS OF LAW

23  
24 The Director CONCLUDES that:

25 15. At all times relevant, and pursuant to the Oregon Securities Law, LPL was  
26 required to establish, maintain and enforce an adequate supervisory system regarding the

1 sale of non-traded REITs that was reasonably designed to achieve compliance with OAR  
2 441-205-0210(1) and OAR 441-205-0210(3). In connection with those duties, LPL was  
3 required to enforce its written procedures regarding the sale of non-traded REITs.

4 16. Based upon the above facts, from and including January 1, 2008 through  
5 December 31, 2013, LPL failed to implement an adequate supervisory system that was  
6 reasonably designed to achieve compliance with OAR 441-205-0210(1) and OAR 441-  
7 205-0210(3) regarding its sale, through Oregon representatives, of non-traded REITs.

8 17. From and including January 1, 2008 through December 31, 2013, LPL failed  
9 to enforce its written procedures to supervise the activities of its registered  
10 representatives in violation of OAR 441-205-0210(1) and OAR 441-205-0210(3).

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

13  
14 **ORDER**

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

17 **IT IS HEREBY ORDERED:**

18 19. LPL shall Cease and Desist from violation of the Oregon Securities Law.

19 20. LPL shall offer to remediate<sup>1</sup> losses for all non-traded REITs sold by LPL to  
20 LPL clients, from and including January 1, 2008 through December 31, 2013, who were  
21

22 \_\_\_\_\_  
23 <sup>1</sup> The term “remediation” or “remediate” with respect to the offers contemplated herein shall be  
24 based on a methodology as agreed to by the representative designated by the North American Securities  
25 Administrators Association that takes into account, singularly or in any combination, the following:  
26 (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 Oregon residents at the time they purchased the non-traded REIT (regardless of whether  
2 the shares of the non-traded REIT are presently held in an LPL account or the individual  
3 or entity no longer resides in Oregon) ("Oregon Investors") that exceeded any of the  
4 following:

5 A. Those transactions made in which the principal invested amount exceeded  
6 the Oregon maximum concentration limitation imposed by certain non-traded REIT  
7 prospectuses, and all transactions which, when combined with other purchases by the  
8 same investor in the same non-traded REIT, exceed the concentration limitation;

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

11 C. Those transactions in which the principal invested amount exceeded LPL's  
12 Alternative Investment Guidelines, or those transactions which were processed  
13 inconsistent with LPL's policies and procedures, including LPL's Compliance Manual  
14 and Written Supervisory Procedures (A, B, and C referred to jointly as "Oregon Investor  
15 Sales Transactions").

16 21. LPL shall create a team of individuals who are primarily dedicated to assisting  
17 Oregon Investors with LPL's remediation of Oregon Investor Sales Transactions ("Claim  
18 Team"). The Claim Team shall establish a dedicated phone number and be the central  
19 point of contact for any client or former client seeking information about a non-traded  
20 REIT Sales Transaction during the relevant time period, and for any Oregon Investor  
21 making any inquiry or claim, until such time as LPL delivers the Report required in  
22 paragraph 32 and the representative or representatives designated by the North American  
23 Securities Administrators Association ("NASAA") (the "NASAA Representative")  
24 confirms that the Claim Team is no longer necessary.

25 22. LPL or its designee shall send an offer of remediation to eligible Oregon  
26 Investors with Oregon Investor Sales Transactions. ("Offer Letter"). A draft of the Offer

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1 Letter, not unacceptable to the NASAA Representative, shall be provided to the NASAA  
2 Representative within 30 days of the execution of the Nevada Consent Order. The Offer  
3 Letter will be sent to the LPL address of record for all eligible Oregon Investors, which  
4 shall be mailed to Oregon Investors within 15 days of the later of the completion of the  
5 third party review set forth in paragraph 31 or the execution of this Oregon Consent  
6 Order. The offer communicated in the Offer Letter shall remain open for 90 days from  
7 the date of mailing. Within 30 days of the mailing of the Offer Letter, LPL shall provide  
8 to the Director a list of all Oregon Investors for whom LPL receives an offer as return to  
9 sender ("Undeliverable Oregon Residents"). To the extent the Director has access to  
10 different mailing address information for Undeliverable Oregon Residents, LPL agrees to  
11 mail a second Offer Letter to Oregon Investors within 30 days of the Director providing  
12 such different address. Oregon Investors who choose to accept the offer of remediation  
13 shall be required to sign a release, in a form not unacceptable to the NASAA  
14 Representative, agreeing to waive any further claims against LPL or its agents relating to  
15 any violation set forth in this Consent Order, giving rise to the offer of remediation, and  
16 agreeing to offset any additional claims relating to identified transactions by the amount  
17 received by this Consent Order. In addition, Oregon Investors who choose to accept the  
18 offer of remediation must agree to tender their existing shares in the non-traded REIT  
19 giving rise to the offer of remediation to LPL or its designee, as a precondition to receipt  
20 of payment by LPL.<sup>2</sup> The offer of remediation shall be in the form of a credit to an  
21 existing LPL account or a check as elected by existing LPL clients or a check for former  
22 LPL clients.

23 23. All eligible Oregon Investor Sales Transactions described above shall be  
24 \_\_\_\_\_

25 <sup>2</sup> As pertaining to any investor who may have a physical certificate(s) of the identified non-traded  
26 REITs, LPL will provide these Oregon Investors additional time (not unacceptable to the Director) to locate  
all physical certificate(s).



1 given notice of and the opportunity to accept LPL's offer of remediation as set forth in the  
2 above paragraphs 20 and 22.

3 24. LPL shall provide to the Director the most recent contact information for each  
4 Oregon Investor.

5 25. Within 45 days of the expiration of the offer communicated in the Offer  
6 Letter, LPL agrees to prepare, and submit to the Director, a report detailing the amount of  
7 funds reimbursed pursuant to this Consent Order, which shall include:

8 A. Identification of all accepted offers; and

9 B. Dates, amounts, and methods of the transfer of funds for all payments of  
10 remediation.

11 26. Within 180 days of the date of the Offer, LPL agrees to prepare, and submit to  
12 the Director and the NASAA Representative, a report detailing the amount of funds  
13 reimbursed pursuant to the Order, which shall include:

14 A. Identification of all offers made;

15 B. Identification of all accepted offers;

16 C. Identification of all claims made to LPL;

17 D. Identification of any claim denied by LPL; and

18 E. Dates, amounts, and methods of the transfer of funds for all payments of  
19 remediation.

20 27. In accordance with the terms of the settlement of this multiple jurisdiction  
21 investigation, and taking into consideration LPL's efforts to remediate supervisory and  
22 systems issues and to self-report sales violations to certain jurisdictions, and LPL's  
23 cooperation in this matter, LPL shall pay to the Oregon Department of Consumer and  
24 Business Services, within ten business days of the entry of this Consent Order, a civil  
25 penalty of \$24,642.20 (twenty-four thousand, six hundred forty-two dollars and twenty  
26 cents), the sum of which represents Oregon's portion of the total civil penalty of



1 \$1,425,000 (one million, four hundred twenty-five thousand dollars even) to be paid by  
2 LPL.

3 28. At the request of LPL, the Director may extend, for good cause shown, any of  
4 the procedural dates set forth above.

5 29. LPL agrees that it shall not seek or accept, directly or indirectly,  
6 reimbursement or indemnification, including, but not limited to, any payments made  
7 pursuant to any commercial insurance policy, with regard to the penalty amount that LPL  
8 shall pay pursuant to paragraph 27 of this Order.

9 30. LPL and its designee agrees that it shall not claim, assert or apply for a tax  
10 deduction or tax credit with regard to any state, federal or local tax for the penalty  
11 amount that LPL shall pay pursuant to paragraph 27 of this Order, unless otherwise  
12 required by law.

13 31. LPL shall retain an independent third party, not objectionable to the NASAA  
14 Representative. The third party will be responsible for analyzing the electronic data set  
15 provided by LPL of Sales Transaction data representing the executed sales of non-traded  
16 REITs by LPL from and including January 1, 2008 through December 31, 2013. The  
17 third party shall identify Oregon Sales Transactions that violated (a) REIT prospectus  
18 standards, (b) a state concentration limit, or (c) LPL's own guidelines for the sale of  
19 Alternative Investments, and those transactions which were processed inconsistent with  
20 LPL's policies and procedures, including LPL's Compliance Manual and Written  
21 Supervisory Procedures. The Oregon Investor Sales Transactions identified by the third  
22 party shall be sent to LPL and the NASAA representative no later than 90 days from the  
23 date of Nevada's Administrative Consent Order. At the request of LPL, the NASAA  
24 Representative may extend this 90-day requirement, for good cause shown. This  
25 provision and the use of an independent third party does not relieve LPL of its obligations  
26 under paragraph 20 of this Order.

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

6 The Internal Audit department shall also review and confirm that LPL has made  
7 offers relating to the Oregon Investors Sales Transactions consistent with this Order. A  
8 report by the Internal Audit department of its review and confirmation that LPL has made  
9 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.

11 33. On or before October 15, 2015, LPL shall have provided a written report to  
12 the NASAA Representative regarding: the supervisory system for the review of  
13 Alternative Investment transactions; the surveillance programs related to Alternative  
14 Investment transactions; and the systems for maintaining execution data related to  
15 Alternative Investments. Upon request, the NASAA Representative shall make a copy of  
16 the written report available to the Director.

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

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1 35. This Order is a “Final Order” under ORS 183.310(6)(b). Subject to that  
2 provision, the entry of this Order does not limit other remedies that are available to the  
3 Director under Oregon law.

4 SO ORDERED this 29th day of April, 2016.

5 PATRICK M. ALLEN, Director  
6 Department of Consumer and Business Services

7  
8 /s/ David Tatman  
9 David C. Tatman, Chief of Enforcement  
10 Division of Financial Regulation

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CONSENT TO ENTRY OF CONSENT ORDER

LPL Financial LLC (“LPL”) 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.

LPL understands that this Order is a public document.

LPL Financial LLC

By: /s/ David Bergers

Title: General Counsel

Date: 4-25-2016

State of: Massachusetts

County of: Suffolk

Subscribed and affirmed before me by David Bergers (name) this 25 day of April, 2016.

/s/ Gloria B Saccoia  
Notary Public

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