IN THE MATTER OF:
LPL FINANCIAL, LLC – NON TRADED REITS
CONSENT ORDER
E-2012-0036

I. INTRODUCTION

This Consent Order ("Order") is entered into by the Massachusetts Securities Division ("Division") and LPL Financial LLC ("LPL") in connection with the Division’s Administrative Complaint filed on December 12, 2012 concerning certain non-traded REITs sold by LPL. On February 5, 2013, LPL submitted an Offer of Settlement ("Offer") to the Division for the purpose of disposing the allegations set forth in the Offer. LPL, admitting to the Statements of Fact as set forth in Section V, without admitting or denying the allegations contained in Section VI, and neither admitting nor denying the Violations of Law set out in Section VII herein, and consents solely for the purpose of these proceedings to the entry of this Order by the Division, consistent with the language and terms of the Offer, settling the claims brought hereby with prejudice.

II. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities, as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and entities offering and/or selling
securities; and 3) those individuals and entities transacting business as investment advisers within the Commonwealth.

2. The Division instituted this action pursuant to the enforcement authority conferred upon it by § 407A of the Act and Mass. Gen. Laws ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.

3. The proceeding was brought in accordance with §§ 204 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2006 to the present (the “Relevant Time Period”).

IV. RESPONDENT

5. LPL Financial LLC (“LPL”) is an entity currently registered as a broker-dealer firm in Massachusetts. LPL is also an investment adviser registered with the Securities and Exchange Commission and notice filed in Massachusetts. LPL is currently assigned Central Registration Depository (“CRD”) number 6413. LPL’s principal place of business is located at 75 State Street, 24th Floor, Boston, MA 02109.
V. STATEMENTS OF FACT

A. Introduction

6. The Enforcement Section initiated its investigation into LPL’s sales of non-traded REITs after receiving complaints in response to a Massachusetts Securities Division’s public service announcement.

7. After receiving both oral and written complaints, the Enforcement Section subpoenaed documents, answers to interrogatories, and testimony from LPL Representatives\(^1\) and a senior member of LPL’s supervision staff.

8. Pursuant to the Enforcement Section’s investigation, the Enforcement Section reviewed 597 Massachusetts resident transactions executed over a three-year period with a total of $28,301,582.77 invested by Massachusetts residents.\(^2\)

9. The Enforcement Section focused on seven non-traded REIT products approved for sale by LPL including, Inland American, Cole Credit Property Trust II, Inc. ("Cole Credit II"), Cole Credit Property Trust III, Inc. ("Cole Credit III"), Cole Credit Property 1031 Exchange ("Cole 1031"), Wells Real Estate Investment Trust II, Inc. ("Wells II"), W.P. Carey Corporate Property Associates 17 ("CPA 17"), and Dividend Capital Total Realty ("Dividend Capital").

10. From 2006 through 2009, LPL received a gross commission starting at six percent (6%) and received approximately $1.4 million from the sale of non-traded REITs by LPL Representatives to Massachusetts residents.

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\(^1\) "LPL Representative(s)" includes both LPL broker-dealer agents and investment adviser representatives.

\(^2\) After the filing of the Division’s Administrative Complaint, LPL amended information that was incorrectly and erroneously produced during the Division’s investigation. LPL has represented through its amended information that there were 495 Massachusetts resident REIT transactions executed over a three-year period with a total of $23,232,705.75 invested by Massachusetts residents. The information, including, but not limited to, the number of non-traded REIT transactions and dollar amounts of non-traded REIT transactions contained within this Order reflect LPL’s amended information. Final non-traded REIT transaction numbers and dollar amounts of all non-traded REIT transactions are subject to a final review not unacceptable to the Division.
11. In 33 transactions, LPL Representatives sold non-traded REITs in violation of prospectus requirements imposing Massachusetts heightened concentration limitations—for a total of $2,096,210.

12. On three (3) occasions LPL Representatives sold non-traded REITs in excess of Massachusetts heightened prospectus net worth, annual income and liquid net worth requirements (one (1) in Inland American & two (2) in Cole Credit II) for a total of $36,000.

13. In total LPL Representatives sold non-traded REIT products in violation of prospectus requirements in 36 transactions resulting in $2,132,210 of improper sales.

B. Real Estate Investment Trusts Are Complex Illiquid Investment Products

14. A real estate investment trust ("REIT"), is generally an entity that owns and often manages income-producing real estate.

15. REITs are either publically traded on a recognized exchange, non-traded with limited disclosures, or entirely private offerings.

16. REIT entities do not list non-traded REITs on a public securities exchange; they often have limited liquidity, lengthy holding periods, restricted redemption options, and variable withdrawal periods determined by issuer specific programs.

17. As described in testimony by a senior member of LPL's supervision staff, "[non-traded REITs are] illiquid, long-term, they're usually for income . . . . There are risks to that income that can be called at any time, reduced at any time."

C. Initial Investor Complaints to the Division
18. The Division began receiving complaints regarding LPL's sale of non-traded REITs in the fall of 2011.

19. One investor, age 70, a resident of Massachusetts, purchased multiple non-traded REIT products, including a significant number of Inland American shares, at the suggestion of an LPL Representative.

20. The Division alleged that the investor stated LPL's Representative described non-traded REIT products as providing stable principal preservation and income generation.

21. The Division further alleged that the investor stated LPL's Representative downplayed the illiquidity of non-traded REIT products.

22. Another investor sold long-held blue chip stocks for the purchase of non-traded REIT shares.

23. The Division alleged that the investor stated LPL's Representative failed to provide a thorough and complete presentation of the risks involved with non-traded REITs.

24. Both investors expressed specific dissatisfaction with LPL's Representatives' sales of Inland American, a specific non-traded REIT approved by LPL.

25. LPL Representatives testified to soliciting sales of Inland American to both investors.

26. When the Enforcement Section asked one former LPL Representative what the LPL Representative meant by solicited, the LPL Representative testified, "[m]y definition of solicited would be that I said to the client – I offered the investment to the client."

27. The Division alleged both investors stated they are unable to exit their non-traded REIT positions without selling at a tremendous discount.

D. LPL Financial LLC Has Maintained an Extensive Non-Traded REIT Platform
28. Pursuant to initial Massachusetts investor complaints, the Enforcement Section subpoenaed documents specific to LPL’s compliance structure and Inland American, beginning on May 14, 2012.

29. On July 10, 2012, in response to a subpoena issued by the Enforcement Section, LPL produced a document titled LPL’s Alternative Investment Due-Diligence Process, outlining LPL’s process for initially approving alternative investments for sale by LPL Representatives—including non-traded REITs.

30. In relevant part, LPL’s Alternative Investment Due-Diligence Process document provides, “[t]he goals of LPL’s Alternative Investments due-diligence process are . . . . To help prevent the approval of flawed offerings by thoroughly reviewing offering documents and third party reports.” (Emphasis added).

31. According to the LPL’s Alternative Investment Due-Diligence Process document, before approving of all non-traded REIT products, LPL’s Research Department reviews any third party due diligence reports, collects additional product data, and consults with LPL’s legal and compliance teams.

32. LPL approved all non-traded REITs through the same process described in LPL’s Alternative Investment Due-Diligence Process document.

E. LPL Compliance Requirements for the Sale of Non-Traded REITs

a. The LPL Compliance Manual and LPL Written Supervisory Procedures

34. The Compliance Manuals provide specific requirements regarding the sale of alternative investment products to investors.

35. LPL’s Compliance Manuals identify non-traded REITs as alternative investments.


37. In relevant part the 2006, 2007, and 2008 Operating Independently manuals provide:

Current LPL guidelines allow individuals under 70 years old to invest a maximum of 20% of their liquid net worth in a single alternative investment, and an aggregate of not more than 20% of the client’s liquid net worth in all alternative investments. Clients over 70 years old are limited to 10% of their liquid net worth in a single alternative investment and 10% of their liquid net worth in all alternative investments.

(Emphasis added).

38. The 2006, 2007, and 2008 Operating Independently manuals continue, “[a]ll client accounts will be aggregated to reach these limits.”

39. In addition to LPL guidelines, the 2006, 2007, and 2008 Operating Independently manuals provide, “[p]lease note: LPL cannot make exceptions to prospectus suitability requirements or the regulatory imposed limit of 10% of net worth in public managed futures.” (Emphasis in original).

40. In 2009, LPL reformatted its compliance manual, developing additional guidelines for the sale of alternative investments based on age and investment objective.
41. LPL’s 2009 Advisor Compliance Manual maintained the following: “Note: Prospectus requirements supersede [sic] these guidelines where applicable.” (Emphasis added).

42. As of January 16, 2009, LPL’s Written Supervisory Procedures (“WSP”) contained identical suitability guidelines as provided in the 2009 Compliance Manual regarding age and investment objective concerning alternative investments—including non-traded REITs.

43. As with the 2009 Advisor Compliance Manual, the WSP provides, “Note: Prospectus requirements supersede [sic] these guidelines where applicable.” (Emphasis added).

b. LPL’s AI-1 Form

44. In addition to the Compliance Manuals and WSPs, LPL also required use of an Alternative Investment-Purchase of an Approved Public Direct Participation Program form (“AI-1 Form”)—to be completed by a LPL Representative and client prior to purchase of all non-traded REITs.

45. Among other information, LPL’s AI-1 Form required listing an investors liquid net worth.

46. LPL’s AI-1 Form in relevant part, defines liquid net worth as “all assets that can be liquidated in thirty days, exclusive of real estate holdings.”

F. The Enforcement Section’s Investigation into Inland American Real Estate Trust

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47. The Inland Group, Inc. ("Inland") created Inland American, a non-traded, REIT on October 4, 2004.


49. LPL contracted with Inland for sale of Inland American shares through a Soliciting Dealers Agreement ("Inland Agreement One") entered into on September 30, 2005.

50. LPL again contracted with Inland for sale of Inland American shares through a Soliciting Dealers Agreement ("Inland Agreement Two") entered into on August 17, 2007.

51. Inland Agreement Two included the following restriction:

    [I]f the investor is a resident of . . . Massachusetts. . . the investor’s investment in the Shares may not exceed ten percent (10%) of the investor’s liquid net worth, which may be defined as the remaining balance of cash and other assets easily converted to cash, after subtracting the investor’s total liabilities from its total assets.

(Emphasis added).


53. In addition to other suitability requirements, the September 28, 2005 Report provided Massachusetts residents may not invest more than ten percent (10%) of the investor's liquid net worth. (Emphasis added).

55. In addition to other suitability requirements, the August 7, 2007 Due Diligence Report provided “residents of certain states must meet higher minimum suitability standards, which are further detailed in the Prospectus.”

56. Inland American prospectuses contained heightened Massachusetts specific suitability standards.

57. All Inland American prospectuses stated that Massachusetts residents must have a minimum net worth of at least $250,000; or both a minimum annual gross income of at least $70,000 and a minimum net worth of at least $70,000.

58. The December 8, 2006 Inland American prospectus further provided, under the heading Standards for Massachusetts, Missouri, Nebraska, Ohio or Pennsylvania Residents, “[i]n addition to meeting the applicable minimum suitability standards . . . your investment may not exceed 10% of your liquid net worth.” (Emphasis added).

59. The August 1, 2007 and January 7, 2009 Inland American prospectuses also provided, that with respect to Massachusetts residents, “your investment may not exceed 10% of your liquid net worth . . .” (Emphasis added).

60. The Enforcement Section subpoenaed documents and interrogatory responses detailing all sales of the investment product Inland American to all Massachusetts residents from January 1, 2006 to May 14, 2012.

61. LPL identified 323 Massachusetts resident transactions involving Inland American from January 1, 2006 to May 14, 2012.

62. In total, Massachusetts investors invested approximately $15,397,952.52 in Inland American.
LPL received gross commissions of approximately $1,077,856.68 from sale of Inland American.

G. Expansion of the Enforcement Section’s Investigation Based On LPL Representative Testimony

According to testimony given by one current and one former LPL Representative, LPL Representatives identified six additional REITs also offered for sale to Massachusetts investors.

Pursuant to the LPL Representatives’ testimony, the Division expanded its review to include non-traded REIT products offered by Wells Capital, Inc., Cole Capital Corporation, W.P. Carey & Co., LLC, and Dividend Capital Total Advisors Group LLC from March 1, 2006 to May 31, 2009.

LPL identified 172 Massachusetts resident transactions involving Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital from March 1, 2006 to May 31, 2009.

Massachusetts investors invested approximately $7,834,753.23 in Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital products.

LPL approved Wells II, Cole II, Cole III, Cole 1031, CPA 17, and Dividend Capital for sale by LPL Representatives.

a. Wells II

From March 1, 2006 to May 31, 2009 Wells II prospectuses contained detailed suitability standards.
70. From March 1, 2006 to May 31, 2009 Wells II prospectuses contained detailed heightened Massachusetts specific suitability standards.

71. Under the heading “SUITABILITY STANDARDS” the 2005, 2006, 2007 Wells II prospectuses provided that Massachusetts “[i]nvestors must have either (1) a net worth of at least $225,000 or (2) gross annual income of at least $60,000 and a net worth of at least $60,000.”

72. Starting on October 1, 2008, Wells II increased the heightened Massachusetts specific suitability standards to include a requirement that Massachusetts investors have a liquid net worth of at least 10 times their investment in addition to a net worth of at least $250,000; or gross annual income of at least $70,000 and a net worth of at least $70,000. (Emphasis added).

73. LPL identified 39 Massachusetts resident transactions totaling $1,515,047.13 in Wells II from March 1, 2006 to May 31, 2009.

b. Cole Credit II & III

74. From March 1, 2006 to May 31, 2009 Cole Credit II prospectuses contained detailed suitability standards.

75. From March 1, 2006 to May 31, 2009 Cole Credit II prospectuses contained detailed heightened Massachusetts specific suitability standards.

76. Under the heading “SUITABILITY STANDARDS” the 2007 and 2008 Cole Credit II prospectuses provided that Massachusetts “[i]nvestors must have either (a) a minimum net worth of at least $250,000 or (b) an annual gross income of at least $70,000 and a net worth of at least $70,000.”
77. The 2007 and 2008 Cole Credit II prospectuses further provided, "[t]he investor's maximum investment in the issuer and its affiliates cannot exceed 10% of the Massachusetts . . . resident's net worth." (Emphasis added).

78. LPL identified 85 Massachusetts resident transactions totaling $3,659,406.10 in Cole Credit II from March 1, 2006 to May 31, 2009.

79. From 2008 through 2009 Cole Credit III prospectuses contained detailed suitability standards.

80. Under the heading "SUITABILITY STANDARDS" the 2008 and 2009 Cole Credit III prospectuses provided, "[t]hese suitability standards require that a purchaser of shares have, excluding the value of a purchaser's home, furnishings and automobiles, either: a net worth of at least $250,000; or a gross annual income of at least $70,000 and a net worth of at least $70,000."

81. LPL identified 16 Massachusetts resident transactions totaling $654,000 in Cole Credit III from March 1, 2006 to May 31, 2009.

82. LPL identified two Massachusetts resident transactions totaling $520,000.00 in Cole Capital 1031 Exchange.

c. W.P. Carey Corporate Property Associates 17

83. From March 1, 2006 to May 31, 2009 CPA 17 prospectuses contained detailed suitability standards.

84. From March 1, 2006 to May 31, 2009 CPA 17 prospectuses contained detailed heightened Massachusetts specific suitability standards.

85. Under the heading "SUITABILITY STANDARDS" the 2007 and 2008 CPA 17 prospectuses provided, "a purchaser of shares [must] have either: a gross annual
income of at least $70,000 and a net worth (excluding the value of a purchaser’s home, furnishings and automobiles) of at least $70,000; or a net worth of at least $250,000.”

86. The 2007 and 2008 CPA 17 prospectuses further provided, “[t]he maximum investment in CPA: 17 and its affiliated programs cannot exceed 10% of a Massachusetts resident’s net worth.” (Emphasis added).

87. LPL identified seven (7) Massachusetts resident transactions totaling $330,000.00 in CPA 17 from March 1, 2006 to May 31, 2009.

d. Dividend Capital Total Realty


89. From March 1, 2006 to May 31, 2009 Dividend Capital prospectuses contained detailed heightened Massachusetts specific suitability standards.

90. Under the heading “SUITABILITY STANDARDS” the 2006 and 2007 Dividend Capital prospectuses provided, “[Massachusetts] [i]nvestors must have either (1) a net worth of at least $250,000 or (2) gross annual income of at least $70,000 and a net worth of at least $70,000.”

91. Under the heading “SUITABILITY STANDARDS” the 2008 and 2009 Dividend Capital prospectuses provided, “a purchaser of shares of our common stock have either: a net worth (excluding the value of an investor’s home, furnishings and automobiles) of at least $250,000 or a gross annual income of at least $70,000 and a net worth (excluding the value of an investor’s home, furnishings and automobiles) of at least $70,000.”
92. The 2006, 2007, 2008, and 2009 Dividend Capital prospectuses further provided that Massachusetts "investors must have a net worth of at least 10 times their investment in us and any of our affiliates." (Emphasis added).

93. LPL identified 23 Massachusetts resident transactions totaling $1,156,300 in Dividend Capital from March 1, 2006 to May 31, 2009.

H. LPL’s Approval of Massachusetts Resident Transactions

94. Pursuant to the Enforcement Section’s investigation, LPL identified 495 Massachusetts resident transactions in seven non-traded REIT products with a total of $23,232,705.75 invested.

   a. LPL Representatives Sold Non-traded REITs in Excess of Heightened Massachusetts Prospectus Requirements

95. LPL Representatives sold non-traded REITs in excess of Massachusetts maximum concentration limits imposed by non-traded REIT prospectuses in 33 Massachusetts resident transactions.

96. Out of the 33 identified Massachusetts resident transactions sold by LPL Representatives in violation of Massachusetts concentration limits, 29 Massachusetts resident transactions singularly exceeded Massachusetts concentration limits.

97. Out of the 33 Massachusetts resident transactions identified in violation of Massachusetts concentration limits, four (4) Massachusetts resident transactions, when combined with other purchases by the same investor in the same non-traded REIT, exceeded Massachusetts concentration limits.

98. LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in 29 Inland American Massachusetts resident transactions.
99. The 29 identified Inland American Massachusetts resident transactions, which violated heightened prospectus requirements, totaled $1,761,210.

100. LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in three (3) Cole Credit II Massachusetts resident transactions.

101. The three (3) identified Cole Credit II Massachusetts resident transactions violated specific prospectus requirements for a total of at least $235,000.

102. An LPL Representative sold a non-traded REIT in excess of Massachusetts heightened concentration limits in one (1) Wells II Massachusetts resident transaction.

103. The identified Wells II Massachusetts resident transaction violated specific prospectus requirements for a total of $100,000 invested.

104. In summation, LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in 29 Inland American Massachusetts resident transactions for a total of at $1,761,210; three (3) Cole Credit II Massachusetts resident transactions for a total of $235,000; and one (1) Wells II Massachusetts resident transaction for a total of $100,000 invested.

b. LPL Representatives Sold Non-traded REITs in Excess of Guidelines

105. LPL Representatives additionally sold non-traded REITs in excess of Massachusetts heightened prospectus net worth and annual income requirements in at least three (3) Massachusetts resident transactions (one (1) in Inland American and two (2) in Cole Credit II) totaling $36,000.

VI. LPL's TRAINING AND OVERSIGHT CONCERNING NON-TRADED REIT SALES

I. Overview
106. LPL’s AI-1 Form mandates calculating an individual investor’s percentage of liquid net worth in alternative investments by combining all alternative investments held by an investor and dividing by liquid net worth.

107. The December 8, 2006 Inland American prospectus provided that liquid net worth consists of the remaining balance of cash and other assets easily converted to cash after subtracting the investor’s total liabilities from total assets—a more stringent calculation than applied on LPL’s AI-1 Form.

108. In discussing the calculation of percentage of liquid net worth and the combination of all alternative investments, a senior LPL supervision employee testified “the advisor is supposed to list all of their alternative investments; however, we also look at all of their accounts as well to see if they’re missing anything.”

109. LPL received a gross commission of seven percent (7%) on all Inland American transactions effectuated through LPL.

110. According to testimony given by two LPL Representatives, LPL approved as many as 30 other non-traded REIT products for sale by LPL Representatives.

111. LPL received a gross commission of approximately $470,085.19 from the sale of Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital from March 1, 2006 to May 31, 2009.

112. The August 1, 2007 and January 7, 2009 Inland American prospectuses also provided, that with respect to Massachusetts residents, “your investment may not exceed 10% of your liquid net worth...” (Emphasis added).

J. The Division alleges LPL’s Training and Oversight Concerning Non-Traded REIT Sales Were Insufficient
113. According to LPL’s 2009 WSPs “[a]ll alternative investment purchases by customers must receive prior review by, and approval of, LPL Financial Alternative Investment Department.”

114. The WSP further explains, “[t]ransactions for clients of an OSJ Manager are routed to their [Designated Principal] for principal review, prior to submission to the sponsor, if approved.”

115. According to a senior member of LPL’s supervision staff and designated principal at LPL responsible for review of approximately 120 LPL Representative transactions, with respect to OSJ transactions, “the OSJ faxes in the AI paperwork . . . . The alternative investments group will then review the paperwork and then forward it on to the designated principal.”

116. According to the senior member of LPL’s supervision staff, with respect to OSJ transactions, the designated principal was the last individual to review a trade for suitability before execution.

117. According to the senior member of LPL’s supervision staff, with respect to non-OSJ transactions, non-traded REIT paperwork would go through surveillance, an additional department within supervision.

118. When asked to describe the length of time committed to reviewing each transaction the senior member of LPL’s supervision staff testified, “[o]ur window is 48 hours, so I would say 30 to 45 minutes per alternative investment would probably be a typical review.”

119. After reviewing the 2007 Operating Independently manual, when asked whether LPL had any additional restrictions regarding the sale of non-traded REITs, aside from
LPL age and concentration guidelines, the senior member of LPL’s supervision staff responded, “I don’t believe so.”

120. When provided with an opportunity to re-review the 2007 Operating Independently manual excerpt, the senior member of LPL’s supervision staff failed to identify any additional restrictions to the sale of non-traded REITs.

121. In discussing prospectus requirements the senior member of LPL’s supervision staff was asked:

Q. [Designated Principal], if we could flip to . . . [the] . . . note in bold. ‘LPL cannot make exceptions to prospectus suitability requirements or the regulatory proposed limit of 10 percent net worth in public managed futures.’ Was this something that you were also looking at when you were reviewing the paperwork?

A. Let’s see. I don’t believe that was a restriction that we would look at.

122. The senior member of LPL’s supervision staff further testified that LPL did not make the designated principal aware of any Massachusetts requirements until at least 2009.

a. Training of LPL Designated Principals Concerning Non-traded REITs

123. LPL provided LPL employees responsible for the review of numerous non-traded REIT purchases only limited training.

124. Aside from experience in “risk management,” LPL required a passing mark on the Series 24 securities examination for a designated principal designation.

125. LPL allowed individuals to approve transactions without formal training on specific products or issuers.

126. A senior member of LPL’s supervision staff, responsible for the review of numerous non-traded REIT purchases testified in relevant part:
Q. Have you had any training in regards to non-traded or non-listed real estate investment trusts...?

A. You know, we’ve had PowerPoint presentations on REITs. Management has gone over certain training aspects of it, so that’s probably the extent of our training.

127. When questioned on specific approved products, the same senior member of LPL’s supervision staff testified:

Q. Did you receive any specified training as to specific REITs?

A. No. Specific REITs?

Q. Yes.

A. No, just REITs in general.

128. According to testimony by the senior member of LPL’s supervision staff, “[w]e never took a prospectus and reviewed it and trained on an actual prospectus. That’s not something the designated principal would do. That would be left to management, senior management . . . .”

b. Training and oversight of LPL Representatives Concerning Non-traded REITs

129. LPL also failed to provide formal training specific to non-traded REITs to LPL Representatives, including OSJs responsible for review of LPL Representative sales of non-traded REITs.

130. As with designated principals, LPL required a passing mark on the series 24 securities examination in order to become an OSJ.

131. A former LPL Representative, also an OSJ, provided the following testimony:

Q. As an OSJ did you receive any special training with regards to non-traded REITs?
A. Well, as an individual advisor I took it upon myself to fly out to Chicago and spend two days with the principals out there going over their method of managing money. . . . So I actually made sure on my own dime that this was an appropriate vehicle to use for our clients.

132. A current LPL Representative added the following description of training:

Q. Did you receive any training at all in addition to receiving the compliance manual that you discussed earlier?

A. I just Googled non traded REITs and started reading articles, and becoming more familiar with what they were all about, and just gathering information.

VII. VIOLATIONS OF SECURITIES LAWS

a. Count I - Violations of §204(a)(2)(G) by LPL

133. Section 204(a)(2)(G) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

134. 950 CODE MASS. REGS. §12.204 (1)(a)(28) provides in pertinent part:

(1) Dishonest and unethical practices in the securities business,

(a) Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:
28. Failure to comply with any applicable provision of the NASD rules of Fair Practice.

135. The applicable NASD (now known as FINRA) rules provide in pertinent part:

**2010. Standards of Commercial Honor and Principles of Trade**

A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

136. The conduct of LPL Financial, LLC as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

**b. Count II - Violations of § 204(a)(2)(G) by LPL**

137. Section 204(a)(2)(G) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]

138. 950 CODE MASS. REGS. §12.205(9)(a)(c) states in pertinent part:

(9) **Fraudulent Practices/Dishonest or Unethical Practices.**

(a) As used in 950 CMR 12.205(9), "adviser" refers to any person, including persons registered or excluded from registration under M.G.L. c. 110A, who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase and sale, whether through the issuance of analyses or reports or otherwise. It is a rebuttable presumption that such term includes all investment advisers and investment adviser representatives, as well as other persons who charge fees based on assets under management or portfolio performance for rendering investment advice.
(c) The following practices are a non-exclusive list of practices by an adviser which shall be deemed "dishonest or unethical conduct or practices in the securities business" for purposes of M.G.L. c. 110A, § 204(a)(2)(G).

139. The conduct of LPL Financial, LLC, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

c. Count III - Violations of § 204(a)(2)(J) by LPL

140. Section 204(a)(2)(J) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter.[.]

141. The conduct of LPL Financial, LLC, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

VIII. ORDER

LPL consents to the entry of this Order,

IT IS HEREBY ORDERED:

LPL Financial LLC in full settlement of these matters, and solely for the purpose of resolution of the allegations of fact and violations of law in the Division's Complaint and admitting to the Statements of Facts as set forth in Section V, and neither admitting nor denying the allegations contained in Section VI and Violations of Law set out in Section VII herein,
makes the following representations and agrees to the undertakings herein as part of the Order:

A. Respondent LPL Financial LLC agrees to permanently cease and desist from conduct in violation of the Act and Regulations in the Commonwealth;

B. Respondent LPL Financial LLC agrees to be censured by the Division;

C. Respondent LPL Financial LLC agrees to offer restitution\(^3\) to all LPL Financial LLC customers who were Massachusetts residents at the time they purchased a non-traded REIT in their LPL Financial LLC account (regardless of whether the shares of the non-traded REIT are presently held in an LPL Financial LLC account or the individual or entity no longer resides in Massachusetts) between January 1, 2005 and the present (as identified on Appendix 1\(^4\) hereto) in violation of any of the following:

a. Those transactions made in violation of the Massachusetts maximum ten 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;

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\(^3\) Restitution as used in this Order means the offer by LPL Financial LLC to purchase from LPL customers, as further defined herein, their presently held non-traded REIT shares at the purchase price as reflected in the corresponding non-traded REIT offering document, less the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts residents previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, LPL Financial LLC shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

\(^4\) Appendix I shall include all transactions identified within Section VIII, Subsection C, subparts (a)-(c), for the following non-traded REITs: Inland American, Cole Credit Property Trust II, Inc., Cole Credit Property Trust III, Inc., Cole Credit Property 1031 Exchange, Wells Real Estate Investment Trust II, Inc., W.P. Carey Corporate Property Associates 17, and Dividend Capital Total Realty.
b. Those transactions made in violation of non-traded REIT prospectus prescribed net worth and annual income suitability standards; or
c. Those transactions made in violation of LPL Financial LLC’s Compliance Manual and Written Supervisory Procedures prescribed alternative investment suitability requirements.

D. Respondent LPL Financial LLC agrees that the offer of restitution shall be sent to Massachusetts investors identified in Section VIII, subsection C, in a letter ("Offer Letter One") sent to the LPL Financial LLC address of record for such investors, a draft of which shall be provided to the Division within thirty (30) days of entry of the Order, and a finalized version not unacceptable to the Division, which shall be mailed to Massachusetts investors identified in Section VII, subsection C within fifteen (15) days of the Division’s approval of such letter. Offer Letter One will remain open for ninety (90) days. Within thirty (30) days of entry of the Order, LPL Financial LLC shall provide the Division with a list of the names and addresses of all Massachusetts residents listed on Appendix 1. Within thirty (30) days of the mailing of Offer Letter One, LPL Financial LLC shall provide the Division with a list of all Massachusetts residents for whom LPL receives an offer as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different mailing address information for Undeliverable Massachusetts Residents; LPL Financial LLC agrees to mail a second Offer Letter One to Massachusetts residents within 30 days of the Division’s providing such different address. Massachusetts residents who choose to accept the offer of restitution shall be required to sign a release in a form not unacceptable to the Division, agreeing to waive any further claims against LPL
Financial LLC or its agents relating to any violation identified in Section VIII, subsection C, subpart a through c, giving rise to the offer of restitution, and agreeing to offset any additional claims relating to identified transactions by the amount received by this Order. In addition, eligible customers who choose to accept the offer of restitution must agree to tender their existing shares in the non-traded REIT giving rise to the offer of restitution to LPL Financial LLC or its designee, as a precondition to receipt of the payment of restitution by LPL Financial LLC. The offer of restitution shall be in the form of a bank check unless requested otherwise by the Massachusetts resident. LPL Financial LLC shall be permitted to reduce its offer of restitution to each client listed on Appendix 1 by the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts resident listed on Appendix 1 previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, LPL Financial LLC shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

E. Within forty-five (45) days of the expiration of Offer Letter One, LPL Financial LLC agrees to prepare, and submit to the Division, a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:

i. Identification of all accepted and verified offers;

ii. Dates, amounts, and methods of the transfer of funds for all payments of restitution;

5 As pertaining to any investor who may have a physical certificate(s) of the identified non-traded REITs, LPL will provide these Massachusetts residents additional time to locate all physical certificate(s) not unacceptable to the Division.
iii. Identification and detailed descriptions of any objections received by LPL Financial LLC.

F. Respondent LPL Financial LLC further agrees to undertake the identification of all LPL Financial LLC customers who were Massachusetts residents at the time they purchased a non-traded REIT in their LPL Financial LLC account (regardless of whether the shares of the non-traded REIT are presently held in an LPL Financial LLC account or the individual or entity no longer resides in Massachusetts) between January 1, 2005 and the present. This identification process will be completed within thirty (30) days of the entry of the Order. LPL agrees to offer restitution to those further LPL clients identified on Appendix 2 as a result of the above-referenced identification process, if the identified transaction(s) was made in violation of any of the following:

a. Those transactions made in violation of the Massachusetts maximum ten percent (10%) concentration limitation imposed by certain non-traded REIT prospectuses, including all transactions which singularly exceeded 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 in violation of non-traded REIT prospectus prescribed net worth and annual income suitability standards; or

c. Those transactions made in violation of LPL Financial LLC’s Compliance Manual and Written Supervisory Procedures prescribed alternative investment suitability requirements.

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6 Appendix 2 shall include all transactions identified within Section VIII, Subsection F, subparts (a) – (c).
G. Respondent LPL Financial LLC agrees that the offer of restitution shall be sent to Massachusetts investors identified in Section VIII, subsection F, in a letter ("Offer Letter Two") sent to the LPL Financial LLC address of record for such investors, a draft of which shall be provided to the Division within thirty (30) days of the completion of the above referenced identification process, and a finalized version not unacceptable to the Division, which shall be mailed to Massachusetts investors identified in Section VIII, subsection F within fifteen (15) days of the Division's approval of such letter. Offer Letter Two will remain open for ninety (90) days. Within thirty (30) days of entry of the Order, LPL Financial LLC shall provide the Division with a list of the names and addresses of all Massachusetts residents listed on Appendix 2. Within thirty (30) days of the mailing of Offer Letter Two, LPL Financial LLC shall provide the Division with a list of all Massachusetts residents for whom LPL receives an offer as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different mailing address information for Undeliverable Massachusetts residents, LPL Financial LLC agrees to mail a second Offer Letter Two to Massachusetts residents within 30 days of the Division's providing such different address. Massachusetts residents who choose to accept the offer of restitution shall be required to sign a release in a form not unacceptable to the Division, agreeing to waive any further claims against LPL Financial LLC or its agents relating to any violation identified in Section VIII, subsection F, subpart a through c, giving rise to the offer of restitution, and agreeing to offset any additional claims relating to identified transactions by the amount received by this Order. In addition, eligible customers who choose to accept the offer of
restitution must agree to tender their existing shares in the non-traded REIT giving rise to the offer of restitution to LPL Financial LLC or its designee, as a precondition to receipt of the payment of restitution by LPL Financial LLC. The offer of restitution shall be in the form of a bank check unless requested otherwise by the Massachusetts resident. LPL Financial LLC shall be permitted to reduce its offer of restitution to each client listed on Appendix 1 by the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts resident identified in the above referenced identification process previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, LPL Financial LLC shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

H. Within forty-five (45) days of the expiration of Offer Letter Two, LPL Financial LLC agrees to prepare, and submit to the Division, a report detailing the amount of funds reimbursed pursuant to the Order, which shall include:

i. Identification of all accepted and verified offers;

ii. Dates, amounts, and methods of the transfer of funds for all payments of restitution;

iii. Identification and detailed descriptions of any objections received by LPL Financial LLC.

I. Respondent LPL Financial LLC agrees to pay an administrative fine within 20 calendar days following the date the Order is entered into the docket in the amount of $500,000 (USD). Payment shall be: (1) made by United States postal money order,

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7 As pertaining to any investor who may have physical certificates of the identified non-traded REITs, LPL will provide these Massachusetts residents additional time to locate all physical certificate(s) not unacceptable to the Division.
certified check, bank cashier’s check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108; or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies payment by Respondent LPL Financial LLC and the docket number of the proceeding;

J. The Chief Executive Officer ("CEO") of Respondent, LPL Financial LLC shall certify in writing to the Division within sixty (60) days of the date of entry of this Order the following in a written report to the Division ("Report"):

a. That LPL Financial, LLC has conducted a comprehensive review of (1) LPL Financial LLC’s policies and procedures for the sale of all alternative investments, including, but not limited to all non-traded REITs and (2) LPL Financial LLC’s policies and procedures for review and approval for the sale of all complex products, including, but not limited to all non-traded REITs;

b. At a minimum, LPL Financial LLC shall enhance its policies and procedures to:

(1) Develop and implement mandatory complex products training, including, but not limited to non-traded REITs, for all registered representatives and their OSJ supervisors before the registered representatives may sell, and before an OSJ supervisor may approve the sale, of non-traded REITs;

(2) Create a new supervisory structure for the review and approval for the sale of all complex products. The supervisory structure shall
include dedicated supervisory staff whose primary function is the
review and approval of the sale of complex products;

(3) Develop enhancements to LPL Financial LLC’s surveillance of the
purchase of complex products, including, but not limited to, non-
traded REITS, and;

(4) Alter LPL Financial LLC’s AI-1 Form to include a plain language
statement providing a reminder that prospectuses may contain different
suitability requirements and methodologies for calculating liquid net
worth and net worth and that in all instances, prospectus limitations
and directives supersede LPL guidelines and methodologies. In
addition, LPL shall add to the AI-1 form an additional line item
reflecting the client’s liquid net worth calculated in accordance with
prospectus methodology, if different from LPL’s.

c. That as a result of that review, LPL Financial LLC has made findings
and conclusions regarding the firm’s practices, policies, and procedures
together with recommendations for improvements and changes to such
practices, policies and procedures, which shall be detailed in the Report;

d. That LPL Financial LLC has adopted all required remediation as set
forth in paragraph J(b) above, as well as such other and further
recommendations for changes in practices, policies, and procedures; provided,
however, that in the case of any recommendations not yet adopted, an
undertaking as to when such recommendations will be made effective.
K. One year after the termination of the process set forth above in Section VIII, subsection J(a-d), LPL Financial LLC shall undergo, at its own expense, a review by its Internal Audit Department to confirm the implementation of the recommendations set forth in the Report and to assess the efficacy of such changes to LPL Financial LLC’s practices, policies, and procedures. At the conclusion of this review, which in no case shall take more than sixty (60) days, LPL Financial LLC’s Internal Audit Department shall issue a report of its findings and recommendations concerning LPL Financial LLC’s adherence to and the efficacy of the Report’s recommendations. The report shall be promptly delivered to the Division within ten (10) days of its completion. No later than thirty (30) days after receipt of the report, LPL Financial LLC shall provide a detailed, written response to any and all findings and recommendations in the Internal Audit Department’s report to the Division, including, but not limited to, the reason(s) for any deficiencies identified, and a process and procedure to address said deficiencies, recommendations, or other issues identified in the report.

i. LPL Financial LLC shall retain copies of any and all report(s) as set forth in paragraphs J(a-d) and K above in an easily accessible place for a period of five years from the date of the reports.

L. At the request of the Respondent, LPL Financial LLC, the Division’s staff may extend, for good cause shown, any of the procedural dates set forth above;

M. Respondent LPL Financial LLC 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 insurance policy, with regard to all amounts that Respondent LPL Financial LLC shall pay pursuant to the Division's Order;

N. Respondent LPL Financial LLC 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 any amounts that Respondent LPL Financial LLC shall pay pursuant to the Division's Order, unless otherwise required by law;

O. Respondent LPL Financial LLC agrees that, upon issuance of this Order, if LPL Financial LLC fails to comply with any of the terms set forth in the Division’s Order, the Enforcement Section may take appropriate action pursuant to Sections 204, 407A and 408 of the Act. Additionally, LPL Financial LLC agrees that, after a fair hearing and the issuance of an appropriate order finding that LPL Financial LLC has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against the Respondent LPL Financial LLC.

IX. NO DISQUALIFICATION

The Order hereby waives any disqualification under the laws of the Commonwealth and all rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that LPL Financial LLC or its affiliates may be subject to. The Order is not intended to subject LPL Financial LLC 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 exemptions or safe harbor provisions. In addition, the Order is not intended to form the basis for any such disqualifications.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By:
Bryan J. Lantagne
Director
Massachusetts Securities Division
One Ashburton Place, Room 1701
Boston, MA 02108

February 6, 2013