

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
LPL FINANCIAL LLC,)	Docket No. E-2016-0039
)	
Respondent.)	
)	

CONSENT ORDER

I. INTRODUCTION.

This Consent Order (“Order”) is entered into by the Massachusetts Securities Division (“Division”) and Respondent LPL Financial LLC (“Respondent” or “LPL”) with respect to the administrative complaint (“Complaint”) filed by the Enforcement Section of the Division against Respondent on December 1, 2016 that alleged violations of the Massachusetts Uniform Securities Act (“Act”), MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

On January 27, 2017, Respondent submitted an Offer of Settlement (“Offer”) to the Division. Respondent admits the Statement of Facts set forth in Section VI below and neither admits nor denies the Violations of Law set forth in Section VII below, 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 Complaint with prejudice.

II. JURISDICTION AND AUTHORITY.

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to Chapter 110A of Massachusetts General Laws.

2. The Offer was made in accordance with MASS. GEN. LAWS ch. 110A. Specifically, the acts and practices investigated took place in Massachusetts.

III. RELEVANT TIME PERIOD.

3. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2013 to December 1, 2016 (the "Relevant Time Period").

IV. RESPONDENT.

4. LPL Financial LLC ("LPL") is a broker-dealer and investment adviser with headquarters in Massachusetts. LPL has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 6413. LPL has been registered with Massachusetts as a broker-dealer since 1981 and notice filed as a federally registered investment adviser since 1994.

V. RELATED PARTY.

5. Roger S. Zullo ("Zullo") was a broker-dealer agent and investment adviser representative of LPL with a FINRA CRD number of 1882087. Zullo has been registered as a broker-dealer agent in Massachusetts since 1988 and as an investment adviser representative in Massachusetts since 2006. Zullo was registered as a broker-dealer agent of LPL between 2004 and December 2, 2016 and as an investment adviser representative of LPL between 2006 and December 2, 2016. Zullo is a resident of the Commonwealth of Massachusetts.

VI. STATEMENT OF FACTS.

B. Background.

i. Variable Annuity Suitability.

6. In general, variable annuities are long-term investments, specifically contracts with insurance companies, providing for periodic income payments made by the insurance company to a contract holder. Although a customer can generally access the funds invested in a variable annuity through account withdrawals or living benefit riders at any time prior to annuitization, the liquidity of this product is limited to free withdrawal provisions of the contract and living benefit provisions and otherwise subject to applicable surrender charges which decline each year the contract is held. Variable annuities can have a variety of associated fees and features, including administrative fees, mortality and expense fees, underlying fund expenses, sales charges, death benefits, and living benefit “rider” features. The sales of variable annuities by LPL registered representatives (“advisors”) require suitability analysis and compliance review by LPL.

7. A client’s assets and age are among the customer-specific information that LPL supervisors must consider when reviewing proposed annuity sales to that client.

ii. Variable Annuity Commissions.

8. A broker-dealer or investment adviser firm and its advisor stand to receive commission typically between 3% and 7%, usually up front, of the premium paid by a client on a given variable annuity sale. In other words, a larger variable annuity sale equates to a greater financial benefit to a firm and its advisor.

9. During the Relevant Time Period, the American International Group Polaris Platinum III (B Shares) annuity (hereinafter, “Polaris Platinum” annuity), which carries a 7% commission, constituted the vast majority of Zullo’s annuity sales.

10. For each sale of a Polaris Platinum annuity, Zullo and LPL received commission equaling 7% of the premium paid by the client, up front. Zullo retained 90% of that commission, while

LPL retained 10%. On a \$1,000,000 annuity sale, for example, Zullo would receive \$63,000 in commission, while LPL would receive \$7,000.¹

11. In 2014, Zullo sold at least or approximately 36 variable annuities to his clients.
12. In 2015, Zullo sold at least or approximately 32 variable annuities to his clients.
13. Many of the Polaris Platinum annuities sold by Zullo carried an optional type of living benefit known as a guaranteed lifetime withdrawal benefit (“GLWB”) rider, which Zullo cited in annuity suitability documentation and correspondence with supervisors as a reason or justification for the sale.² The brand name used by AIG for the Polaris Platinum GLWB rider is “Polaris Income,” and the rider was also described by Zullo as an “income rider.”
14. Zullo and LPL received in excess of \$1,250,000 in sales commissions from variable annuities alone in 2014 and 2015, in addition to any fees received from Zullo’s brokerage and investment advisory services.
15. From May 16, 2013 to April 6, 2016, Zullo and LPL received approximately \$1,825,371.25 in variable annuity commissions; of this amount, approximately \$1,791,124.23, or 98%, represented commissions from the sale of the Polaris Platinum annuity.
16. As a result of these sales, Zullo was a “Top Producer” for LPL and was recognized by LPL as a member of its “Chairman’s Club.”
17. Zullo was also the second highest earning representative out of approximately 61 advisors under his supervisor’s supervision during the Relevant Time Period.

¹ All dollar figures in this Order are approximate and do not necessarily form the basis for an accounting of client losses or Respondents’ unjust profits.

² In general, a GLWB rider is a variable annuity product feature that provides the contract holder with the right to make guaranteed withdrawals during their lifetime based upon a contractually defined benefit base, which is generally based upon but distinct from the principal amount invested in the annuity. In general, these withdrawals are taken from and result in a dollar-for-dollar depletion of the underlying annuity assets. The benefit provided by riders such as GLWBs is that they provide downside protection by ensuring the continuation of an income stream should the contract holder’s withdrawals deplete the underlying annuity assets.

iii. LPL's Annuity Suitability Review Process.

18. From the beginning of the Relevant Time Period until August 2014, Zullo's annuity sales were reviewed by Zullo's direct supervisor.
19. From August 2014 forward, Zullo's annuity sales were reviewed by various individuals working at the LPL Central Supervision Unit of LPL Governance, Risk & Compliance. Beginning on September 30, 2014, all annuity replacements were reviewed by that unit.
20. LPL's process for reviewing and approving advisor annuity sales relied on the advisor to submit information about the client to LPL for each annuity sale, currently through the Annuity Order Entry ("AOE") system.
21. LPL's process for reviewing and approving advisor annuity sales includes, under LPL policies, a supervisor's review of a client's suitability information, such as a client's assets held at LPL, time horizon, and investment objective. The policies also require the consideration of existing assets as well as any current or pending annuity holdings.
22. LPL's process for reviewing and approving variable annuity sales does not require supervisors to identify or examine with specificity prior or concurrent annuity sales to the same client and only requires generally that supervisors consider various factors including prior investments.
23. LPL relies on the advisor and client to disclose the existence of other annuities for suitability review: either by the client voluntarily networking the annuity to LPL or by the advisor voluntarily listing the annuity on the order rep01i form in the AOE system.
24. LPL also relies on the advisor and the client to provide suitability information about the client, including liquid net worth and age, for each annuity sale.

B. Zullo's Clients.

25. The clients discussed below represent only a segment of Zullo's client base.
26. The clients discussed below include a number of retired and active nurses and healthcare workers, as well as administrators in lower and higher education, and other similar or similarly compensated professions.

i. Client 1.

27. Client 1, a retired healthcare worker, has known and been a client of Zullo for more than twenty years. The Division found that according to Client 1's sister, Client 1 had been "experiencing medical issues" during the Relevant Time Period, Client 1 was "concerned about several health issues that made her living on her own questionable. Most significantly, [Client 1]'s cognitive ability seemed compromised."
28. As of November 19, 2015, Client 1 held approximately \$183,116 in investment assets, consisting of two LPL Optimum Market Portfolios ("OMP") accounts and a Polaris Platinum annuity at the following approximate values:
- Polaris Platinum annuity – \$104,170
 - OMP Account – \$ 41,225
 - OMP Account – \$ 37,722
29. In 2008, Zullo sold Client 1 a Nationwide Achiever Annuity at an approximate premium of \$110,000, the majority of her assets at LPL.
30. In January or February 2015, Zullo sold Client 1 a Polaris Platinum annuity, replacing the Nationwide Achiever Annuity he had sold her in 2008 while it was still in its surrender period, incurring a surrender charge to Client 1 of \$1,391.03.
31. The Polaris Platinum annuity was sold with the GLWB which allowed the investor to withdraw a specified amount of principal immediately.
32. Zullo and LPL received a commission of \$7,933.30 on this annuity switch.

33. As a deferred annuity, the Polaris Platinum annuity did not provide for potential annuitization until Client 1 entered into the “income phase,” which, under the annuity contract, could only take place at least two years after issuance of the contract³. The Polaris Platinum annuity provided for withdrawals upon contract issuance with the GLWB.
34. In connection with the Polaris Platinum annuity switch, Zullo submitted false suitability information to LPL, representing Client 1 to be younger and wealthier than she actually was.
35. Specifically, in January 2015, Zullo submitted an annuity application and corresponding account application signed by the client to LPL, indicating that Client 1 was born in 1944, while knowing that she was actually born in October 1934 (making her 80⁴ years old at that time).
36. Yet Zullo had filled out all of Client 1’s prior account applications from 2004, 2008, and 2010, and all reflect a birth date of October 27, 1934.
37. LPL possessed these account applications during the Relevant Time Period, and LPL supervisors had access to them through their supervisory review tools.
38. LPL also had access to Client 1’s driver’s license, which is required as a form of identification upon account opening.
39. Only when Zullo sold Client 1 a Polaris Platinum annuity in 2015 did Zullo submit the client-signed annuity and account applications reflecting a birthdate of 1944, making Client 1 appear to be 70, rather than 80, years old.

³ According to the Polaris Platinum annuity prospectus: “When does the Income Phase begin? Generally, you can annuitize your contract any time after your second contract anniversary (‘Annuity Date’) and on or before the Latest Annuity Date, defined below, by completing and mailing the Annuity Option Selection Form to our Annuity Service Center.”

⁴ The maximum age set by AIG for issuance of a Polaris Platinum annuity with a living benefit such as an income rider was 80.

40. In general, LPL specifically considers a senior citizen's age in reviewing and approving its advisors' annuity sales for suitability, typically requiring a detailed rationale for annuity sales to especially senior citizens.
41. Client 1 emailed Zullo on March 19, 2015 when she noticed the error in her birth year, stating:
- Thank you for your letter of March 5th with attachments for two signatures for Polaris Application and Receipt Delivery. I looked over the application form and found an error on the year of my birth. It should be 08.27.1934, NOT 1944.
- I tried phoning you but could not get through, so I decided to email you instead. How do you want me to handle this? Do you want me to cross the wrong date and write in the correct birth day, or will you send me a new application with the correct date of birth for me to sign?
42. Zullo replied to this email, writing, "Please just sign and return to me and I will tell the company about the wrong date. Thank you."
43. But there is no record of Zullo informing LPL about the wrong date prior to LPL's review and approval.
44. With respect to the 2015 Polaris Platinum annuity sale, LPL relied on the incorrect age information submitted by Zullo in approving the annuity switch. Specifically, the CSU analyst reviewing this switch stated in approving the sale, "Client is 70 yrs old & plans to start taking withdrawals in 10+yrs."
45. A discrepancy in age should have been flagged by LPL's electronic supervisory review tools, since LPL's account information on file for Client 1 should have indicated Client 1's correct birth year, in the course of the CSU analyst's review of the annuity sale.
46. The CSU analyst either failed to notice, or LPL failed to flag, that the age information submitted in connection with the annuity sale was inconsistent with age information already on file for the client for other account applications.

47. In addition to falsely reporting Client 1's age, Zullo also falsely reported Client 1's liquid net worth, which is another factor in variable annuity suitability analysis.
48. Zullo submitted a variable annuity application to LPL reflecting that Client 1 possessed approximately \$1,500,000 in liquid assets. The Division found that Client 1 did not possess and has never possessed these assets.
49. Zullo nevertheless in 2015 recommended that Client 1 liquidate the Nationwide Achiever Annuity in full, pay a surrender charge of \$1,391.03, and purchase a Polaris Platinum annuity at approximately the same value, with an GLWB rider, with a fresh seven-year surrender schedule, receiving, with LPL, a commission of \$7,933.30 on this annuity sale.
50. LPL approved the annuity switch based on Zullo's representation that Client 1 intended to take withdrawals in 10 or more years, even though the Division found that Zullo knew that Client 1 depended upon the income payments she was currently receiving from the Nationwide Achiever annuity.
51. During the course of its review of the 2015 Polaris Platinum annuity switch, LPL relied on the false age, liquid net worth, and income need information contained in the annuity application and corresponding account application. The CSU analyst responsible for reviewing the 2015 sale stated the following in reviewing and approving the transaction, in pertinent part:

Transaction is 7% of client's stated 1.5 mil LNW; total exposure 34% with 1 other VA. Subacct in line with 'growth with income' IO [investment objective] & 'moderate' RT [risk tolerance]. Lg term time horizon so B share selected. Client is 70 yrs old & plans to start taking withdrawals in 10+yrs.

(Emphasis added.)

52. The CSU analyst did not take any steps to verify or inquire regarding the fifteen-fold increase in Client 1's liquid net worth or the change in her listed age, including checking prior documentation on file with LPL.

53. Zullo received a complaint letter sent by Client 1's sister on Client's behalf in approximately December 2015.
54. Zullo did not respond to this complaint letter.
55. LPL policies and procedures require LPL advisors to immediately forward all customer complaints to LPL's compliance department.
56. Zullo did not forward this complaint letter to LPL's compliance department.
57. Prior to December 1, 2016, Zullo had not been investigated or formally questioned by LPL as to why he did not submit the customer complaint letter to LPL compliance.
58. Client 1's sister also courtesy copied FINRA's "Securities Helpline for Seniors" on the complaint letter by email.
59. In addition, FINRA's senior helpline received a call from Client 1's sister on or about December 15, 2015. FINRA forwarded notes from the call to LPL indicating, in pertinent part:
- [Client 1's sister] explains that her sister, [Client 1], in April 2015, purchased \$100,000 AIG Polaris variable annuity at the direction of Roger Zullo (CRD No. 1882087). [Client 1's sister] explains that her sister has problems processing information as a result of a health problem that she will be undergoing surgery for in the near future and will be moving into an assisted living facility soon thereafter. [Client 1's sister] is concerned that at 80 years of age, [Client 1] may not have been appropriate for an illiquid product such as a variable annuity.
60. A member of LPL's ERISA/Retirement and Senior Investors Compliance team forwarded these notes to Zullo's supervisor on December 21, 2015, stating, "Below was a customer complaint to FINRA regarding Roger Zullo (1NXB) selling a VA to an 80 year old client and the complaint was questioning the transaction's suitability (and a few other things). Since you are his OSJ, I wanted to see if you were aware of this issue. Please let me know whenever you get a chance."

61. On the same day, Zullo's supervisor forwarded this email to CSU, writing, "I got this email just now. I wanted to make sure you saw this." On the same day, the CSU analyst responded:

I show that this client is 71 yrs old, not 80. I'm not sure if the DOB was entered incorrectly. Based on my notes, client couldn't add LB to existing VA so she wanted to move to VA to add a LB rider for income down the line. Only 34% of 1.2 LNW in annuities (2 total). There was a clear benefit to the client based on the info provided.

62. The next day, Zullo's supervisor forwarded this email exchange to her direct manager, stating, "Please see below. I didn't know about this. I wanted to keep you in the loop."

63. As such, Zullo's supervisor, her manager, and a CSU analyst were put on notice of Zullo's potential misrepresentation or misreporting of Client 1's age in December 2015.

64. Yet none of these individuals ever took any steps to rectify this discrepancy.

65. Prior to September 2016, LPL did not contact Client 1 or her sister in order to resolve the complaint or address the problems and conflicting factual accounts identified therein.

66. Prior to September 2016, LPL did not review three of the four account applications on file for Client 1, any communications on LPL's email server between Zullo, Client 1, and Client 1's sister, or any client notes taken by Zullo.

67. LPL adopted Zullo's justification for the annuity switch in its entirety, and denied Client 1's claim on March 1, 2016.

68. LPL's letter denying Client 1's complaint specifically noted that "[Client 1's sister] on or around December 15, 2015 expressed to the Financial Industry Regulatory Authority her concern that the above-referenced annuity may not have been a suitable investment given your *age and life circumstances*," and that "our findings have determined that Mr. Zullo conducted an appropriate review of your financial situation, liquid net worth, investment time horizon, investment objectives and need to access these funds." (Emphasis added).

69. Had LPL contacted either Client 1's sister or Client 1, reviewed the various account opening documents or driver's license in its own possession, reviewed any relevant emails on its own server, investigated the assertions in the Client 1 complaint about age and liquid net worth, or conducted a substantive internal inquiry, it would have been reminded of Client 1's actual age and liquid net worth, and therefore been alerted again that Zullo may have submitted false information to LPL.

ii. Client 2.

70. Client 2, also a retired nurse, and her husband, a retired postal worker, have been clients of Zullo for approximately or at least ten years.⁵

71. As of August 2016, Client 2 and her husband owned an AIG Polaris Platinum annuity sold to them by Zullo, and an LPL OMP account (\$31,715.91) and OMP Roth IRA (\$23,673.04) managed by Zullo.

72. The Division found that Client 2 and her husband have never hired another financial adviser since engaging Zullo, and do not have investment assets elsewhere, other than inherited blue-chip stock worth about \$45,000.

73. Zullo sold Client 2 a Polaris Platinum annuity with an GLWB rider in October 2013, at an estimated premium of \$750,000 (ultimately Client 2 paid \$782,763.72 in premiums). The source of funds for this annuity was a rollover from 403(b) retirement plans.⁶

74. Zullo and LPL received \$56,750.37 in commission from this annuity sale up front.

⁵ For purposes of liquid net worth, liquidity needs, access to emergency funds, and similar concerns, this Order considers the assets of married couples together.

⁶ 403(b) plans are tax-sheltered investment plans available to cooperative hospital service organizations and public service organizations, among others.

75. The Division found that at this time, Client 2 and her husband's only other material liquid assets were the LPL OMP account (\$60,299.33), an LPL Roth IRA account (\$21,816.99), and inherited public company stock worth about \$45,000.

76. In the course of approving the October 2013 Polaris Platinum annuity sale, Zullo's supervisor asked Zullo to break down the client's liquid net worth, and Zullo responded as follows:

Client needs income from this account today and needs it to last over 10 years. Will be using combination of Vanguard brokerage account and wants guaranteed income from one source which is this annuity contract. [...] Liquid net worth: [...] Cash Balance account \$510,000, Fidelity 403(b) account \$100,000, TIAA CREF \$150,000, Bank of American [sic] Savings Account \$250,000, Vanguard Brokergae [sic] Account \$1,500,000.

77. However, the Division found that there was no "Vanguard Brokerage Account," or any other account, that contained \$1,500,000 in liquid assets.

78. Polaris Platinum annuities are deferred annuities, and while they offer the ability to withdraw funds upon issuance, the contract-holder cannot begin the annuitization phase until two years after the contract date, which should have been known to LPL.

79. Zullo's supervisor nonetheless approved the annuity sale, stating:

Rep states that client's LNW is \$2,500,000. Client has one account at LPL and it currently has no assets. The time horizon on this account is 10+ years with client needing income now and for the next 10 years. This is consistent with a B shares purchase. Rep states that the client is retiring and needs income so the annuity includes a Guaranteed Withdrawal [sic] Benefit, Income Plus Single Life Dynamic Option which guarantees annual withdrawals for the life of the owner, which is in line with her need for income during retirement.

80. As discussed in greater detail below, LPL's account applications only require that a client indicate a "range" of liquid net worth. Clients whose account applications indicate more than \$1,000,000 in liquid net worth do not require or provide for a specific figure.

81. In March 2014, Client 2 emailed Zullo, stating in pertinent part:

I'm writing to you because our local savings account is now down to \$5,000. We have had a number of unexpected expenses this year, including \$2,000 for car repairs for [redacted] car, \$6,000 for my cataract surgery, and larger than usual heating bills. I know you didn't want us to access my retirement until this summer, but our savings account won't last until then. *Should I take money fi'om our LPL savings account or start taking money fi'om my retirement?* I'm not sure how to access the LPL account, and I didn't want to wait until the last minute to address this issue. Thanks for your help. Have a great weekend.

(Emphasis added.)

82. In August 2015, Client 2 emailed Zullo, stating, in pertinent part:

Our money situation has become difficult as our water and trash rates have increased as well as our utilities, in part, due to the fact that my daughter and her two children live with us. We also try to help our grandchildren by contributing to camp, dance, et cetera. I find that between this and some ongoing medical bills we are short of money every month. Our savings account is down to less than \$500. We are also going to have to replace [redacted] car as it is 13 years old and having more mechanical issues. We usually buy cars at the end of the season to get a better price and we will be down-sizing his car to save money. We will have to increase the monthly amount of my pension from \$2,700 to \$3,400 to meet our expenses. This amount will have to increase when we buy the car, unless we pay cash. This was the reason that I discussed paying off the mortgage with you so we could build up our savings and cut back on the amount of money I take each month from my pension. Let me know what you think. I will also need \$2,000 from our savings account. Thanks for your help. Take care.

(Emphasis added.)

83. The Division found that currently, Client 2 and her husband's remaining liquid assets are collectively worth approximately \$100,000.

iii. Client 3.

84. Client 3 is a retired school administrator. Client 3 hired Zullo in 2015 in order to invest approximately \$700,000 that she received from the sale of real estate.

85. Client 3 opened two accounts with Zullo in September 2015, an OMP account and an account containing an AIG Polaris Platinum annuity. The OMP account contains approximately \$185,080.40 in liquid assets as of July 2016, and the Polaris Annuity is valued at approximately \$678,786.02 as of February 2016.

86. The Division found that Client 3 also manages a self-directed brokerage account with another broker, worth approximately \$60,000, and owns two other annuities not sold by Zullo, collectively worth approximately \$40,000.

87. The Division found that Client 3 has no other investments.

88. Zullo recommended Client 3 purchase a Polaris Platinum annuity in September 2015 at a premium of \$700,000.

89. Zullo and LPL received a commission of \$49,000 up front on this annuity sale.
90. Client 3 emailed Zullo on November 4, 2015, noting that Zullo had incorrectly indicated on the annuity application that Client 3 owned no other annuities:

I received the Polaris Annuity application. Before I sign it, I have a question. On page 5, there is a statement checked "No" that states that I do not have any existing annuity contracts. I do have an annuity contract with Met Life. How should I proceed? On page 7 there is a statement checked "No" which you have to sign that states you do not have reason to believe that I as the applicant have any annuity contracts. I just want to remind you that I do have an annuity contract.

91. Zullo responded by email on November 5, 2015, stating: "I will change that yes you do have an annuity with other company. Thank you. My best."
92. But Zullo, as with Client 1, did not tell LPL or AIG about the change.
93. Client 3's actual liquid net worth at this time was approximately \$1,000,000.
94. Zullo reported to LPL that Client 3's liquid net worth at the time of the annuity purchase was \$7,000,000.
95. LPL relied on the \$7,000,000 liquid net worth figure in approving the Polaris Platinum annuity sale as suitable. Specifically, Zullo's CSU analyst for this purchase wrote, in approving the transaction, "Single VA represents 10% of stated 7mil LNW."

iv. Client 4.

96. Client 4 is a retired college administrator, and her husband is a retired software developer. Client 4 and her husband have been clients of Zullo since at least 2004, opening multiple accounts since that time.
97. As clients, Client 4 and her husband have always been dependent on Zullo for financial advice. Client 4 described their relationship with Zullo as follows: "we sign the papers, and he moves the money."

98. As of July 2016, Client 4 and her husband also had Strategic Asset Management (“SAM”) (\$395,412.69) and individual OMP advisory accounts (\$158,348.56) (\$216,832.73) with Zullo at LPL, totaling \$770,593.98.
99. The Division found that Client 4 and her husband do not hold other investment assets outside of LPL.
100. Zullo recommended Client 4 and her husband replace their LPL-invested assets with Polaris Platinum annuities, on four separate occasions, beginning in 2013 – first surrendering fixed annuities outside of their surrender periods, then liquidating liquid assets, and finally replacing existing annuities not yet out of surrender (incurring surrender charges), in order to fund the Polaris Platinum annuity purchases.
101. In March 2013, Zullo sold Client 4 and her husband a Polaris Platinum annuity at a premium of \$765,000.00, funded by the surrender of multiple fixed annuities.
102. LPL and Zullo received a commission of approximately \$57,354.36 on this annuity sale.
103. Under the “other annuities”⁷ section in the AOE system for this purchase, upon which LPL supervisors rely to conduct suitability review, Zullo listed a Best of America annuity at an investment amount of \$335,000.
104. This purchase did not include an GLWB rider because, according to Zullo’s response in the AOE system, the client had fixed income already and wanted greater income in ten or more years.
105. At this time, Zullo provided documentation to LPL reflecting a liquid net worth of \$2,500,000 for Client 4 and her husband.

⁷ Section 15a.

106. LPL relied on the \$2,500,000 liquid net worth figure in approving the March 2013 Polaris Platinum annuity sale as suitable. Specifically, Zullo's supervisor for this purchase wrote, "The client has 30% of his liquid net worth in annuities so has excellent other resources," in approving the transaction.

107. The next year, in July 2014, Zullo sold another Polaris Platinum annuity, this time with an GLWB rider, to Client 4 and her husband, at a premium of \$925,000. To make this purchase, Zullo liquidated substantially all of the assets in a SAM account (which should have reduced Client 4 and her husband's liquid net worth by \$925,000).

108. Zullo and LPL received a commission of \$67,062.50 up front on this annuity sale.

109. Under the "other annuities" section on the order summary report in AOE system for this purchase, upon which LPL supervisors rely for suitability review, Zullo listed two Best of America annuities at investment amounts of \$340,000 and \$160,000. Zullo failed to list the \$765,000 Polaris Platinum annuity that he sold to Client 4 and her husband in the previous year. LPL did not notice this missing annuity.

110. For this purchase, Zullo submitted a figure of \$10,000,000 as Client 4 and her husband's liquid net worth. This figure was false.

111. LPL relied on the \$10,000,000 liquid net worth figure in approving this annuity sale as suitable. Specifically, Zullo's supervisor for this purchase wrote as follows in approving the transaction:

Client is purchasing \$925,000 of Polaris Platinum III B share. Source of funds is a SAM account. Client is looking for a guaranteed withdrawal benefit and a guaranteed income benefit. Subaccount allocation is consistent with the client investment objective. Time horizon on this account is 10+ years which is consistent with a B share annuity. *Client liquid net worth is \$10,000,000. This annuity is approximately 10% of the client liquid net worth.* This order is approved.

(Emphasis added.)

112. Zullo's supervisor did not ask Zullo to break down the clients' liquid net worth.

113. LPL did not question that Client 4 and her husband's liquid net worth appeared to have increased from \$2,500,000 to \$10,000,000 since they were sold a Polaris Platinum annuity in the prior year.
114. Also in July 2014, Zullo sold another Polaris Platinum annuity, with an GLWB rider, to Client 4, at an estimated premium of \$550,000 (ultimately \$542,464.56 in paid premiums). The source of funds for this annuity sale was the surrender of two existing annuities, incurring a surrender charge of \$2,800, despite the facts that the annuities would both be out of surrender as of November 2014 and that Zullo had already sold Client 4 and her husband two Polaris Platinum annuities.
115. For this purchase, Zullo again submitted the false figure of \$10,000,000 as Client 4 and her husband's liquid net worth.
116. Zullo and LPL received a commission up front of \$39,328.68 on this annuity sale.
117. LPL relied on the \$10,000,000 liquid net worth figure in approving this Polaris Platinum annuity sale as suitable. Specifically, Zullo's supervisor, wrote as follows in approving the transaction:

Client is purchasing \$550,000 of American General Polaris Platinum III B share. Source of funds is the liquidation of a Nationwide Polaris Platinum for \$376,000. There is a surrender charge of \$2,800. The annuity will be free of surrender on November 2, 2014. Rep states that the client feels that the surrender charge can be made up by increases in market value or the step up in income base. The other source of funds is the liquidation of a Nationwide Achiever Annuity for \$174,000 which has no surrender charge. The client is purchasing a rider that cannot be added to the existing annuities. Client is looking for income and a higher risk/reward profile for this money. Subaccount allocation is consistent with client investment objective. Time horizon is 10+ years which is consistent with a B share annuity. *Liquid Net Worth is \$10,000,000. This order is approved.*

(Emphasis added.)

118. Under the "other annuities" section on the order summary report in the AOE system for this purchase, upon which LPL supervisors rely for suitability review, Zullo listed only the two Nationwide annuities being surrendered to fund the purchase. Zullo did not list the

\$765,000 Polaris Platinum annuity sold to Client 4's husband in 2013 or the \$925,000 Polaris Platinum annuity he sold to Client 4 earlier in the month. Zullo's supervisor and LPL failed to notice this discrepancy.

119. In August and September 2015, Zullo sold another Polaris Platinum annuity to Client 4's husband, this time at an estimated premium of \$158,000 (ultimately \$152,511.50). As another annuity switch, the source of funds for this sale was the liquidation of an existing Nationwide Achiever Annuity, which resulted in a 2% surrender charge of \$2,581.12.

120. Zullo justified this annuity sale by explaining that the client "does not need costly income rider," and the annuity had to be switched because the income rider could not be dropped.

121. Zullo's supervisor for this transaction did not question this justification, despite the fact that Client 4 and her husband had in July 2014 been sold the same exact annuity *with* an GLWB rider.

122. In this instance, Zullo actually submitted two different liquid net worth figures to LPL *for the same transaction*, and LPL and its supervisors did not notice. Zullo first submitted a figure of \$8,000,000 to LPL via LPL's AOE system, without submitting the Form F439 and Form F439-F1 ("Important Information Regarding your Variable Annuity Purchase"), which is required to be signed by clients. These forms reflected a liquid net worth figure of \$1,600,000 and were signed by Client 4 and her husband. The \$8,000,000 figure that Zullo submitted was inconsistent with prior figures of either \$2,500,000 or \$10,000,000, and the concurrently submitted figure of \$1,600,000.

123. LPL relied on the \$8,000,000 liquid net worth figure, rather than the \$1,600,000 figure ostensibly signed off on by the client, in approving this Polaris Platinum annuity switch as suitable. Specifically, Zullo's supervisor for this purchase wrote as follows in approving the

transaction: "Age 66, source of funds - exchange, LNW - 8m, total annuity LNW % - 2% [sic] (non-qualified)." Yet LPL did not note the \$1,600,000 liquid net worth figure ostensibly signed off on by the client, or the inconsistency with prior figures.

124. Zullo falsely indicated in Section 15 of the Order Summary Report Form that Client 4 and her husband had *no* other existing annuities. LPL failed to question this false suitability information, despite the multiple Polaris Platinum annuity sales reviewed by LPL in immediately prior years.

125. The Division found that currently, at least or approximately 75% of Client 4 and her husband's investment assets are held in Polaris Platinum annuities for which Zullo and LPL received a 7% commission.

v. Client 5.

126. Client 5, a retired nurse, has been a client of Zullo since June 2005. Client 5 is single and shares a condominium apartment with her sister.

127. Client 5 worked for 49 years to earn her retirement. Client 5 owns an LPL OMP account (\$406,020.51) and multiple annuities sold to her by Zullo.

128. The Division found that Client 5 does not hold any investment assets outside of LPL.

129. Zullo replaced most of Client 5's investment assets with Polaris Platinum annuities during the Relevant Time Period.

130. Specifically, Zullo sold Client 5 three Polaris Platinum annuities from November 2013 to present, first liquidating an investment account to fund the annuity sales, then surrendering existing annuities that were not yet out of their respective surrender periods.

131. Zullo first sold Client 5 a Polaris Platinum annuity in November 2013 at an estimated premium of approximately \$900,000 (ultimately \$861,784.77). The source of funds for the

annuity sale was the liquidation of an entire LPL OMP investment account, which she had held since 2008.

132. Zullo and LPL received a commission of approximately \$62,479.40 on this annuity sale up front.

133. For this sale, Zullo submitted a liquid net worth figure of \$3,500,000, and described Client 5's liquid net worth as follows: "Liquid Net Worth: LPL NQ \$95,000, LPL Q \$880,000, BOA Annuity \$134,000, BOA Annuity \$52,000, Vanguard Managed Account \$2,200,000, Checking Account \$50,000."

134. But the Division found that Client 5 did not hold a "Vanguard Managed Account," or any other account, with \$2,200,000 in liquid assets.

135. Zullo's supervisor for this purchase approved this order on the basis that the client was "looking for guaranteres [*sic*] and an income stream."

136. LPL relied on the \$3,500,000 liquid net worth figure in approving this Polaris Platinum annuity sale as suitable. Specifically, Zullo's supervisor wrote as follows in approving the transaction: "Total combined annuities is 31% of the client's liquid net worth of \$3,500,000. Subaccount allocation is consistent with the investment objectiver [*sic*]. This order is approved."

137. Zullo sold Client 5 another Polaris Platinum annuity in February 2014 at an estimated premium of \$55,000 (ultimately \$54,852.17). The source of funds for this annuity sale was the surrender of an existing Nationwide Insurance Achiever Annuity, for which Client 5 paid a \$1,541.19 surrender charge.

138. Zullo and LPL received a commission of approximately \$3,976.78 on this annuity switch, up front.

139. For this switch, Zullo submitted inaccurate suitability information through the AOE system, indicating on Section 15a of the Order Summary Report Form that Client 5's only other annuity was a \$750,000 SunAmerica annuity. In reality, Client 5 held other annuities apart from the SunAmerica annuity, and the Sun America annuity appears to be intended to reference the \$900,000 Polaris Platinum annuity discussed above.⁸ Zullo's supervisor and LPL did not notice this discrepancy.
140. For this sale, Zullo submitted a liquid net worth figure of \$3,500,000. This liquid net worth figure was unchanged from the previous figure of \$3,500,000, despite the fact that \$900,000 of those funds had been used to purchase an annuity with limited liquidity.
141. Zullo justified this annuity switch (with a surrender charge) on the grounds that "[m]ost of the clients monies are subject to the market and has very little monies guaranteed [*sic*] to ensure a steady source of income. Does not want to leave herself unprotected if market crash that cannot have a reliable source of monies."
142. This justification was false and inconsistent with the explanation provided to LPL of the November 2013 purchase. Specifically, LPL and Zullo's supervisor had only months earlier reviewed and approved a transaction wherein Client 5 had liquidated liquid securities "subject to the market" in order to purchase a much larger \$900,000 annuity. As such, most of the client's "monies" at that time were "guaranteed" (*sic*) to provide protection against market fluctuation.
143. Prior to approving the transaction, Zullo's supervisor emailed Zullo questioning why an annuity switch was necessary, yet did not note or question the existence of the \$900,000 Polaris Platinum annuity with a GLWB rider:

⁸ "SunAmerica" was a name for AIG at this time.

I am reviewing this order and the answer you provided to my question about the advantages of moving to the new product. You stated that the client wanted a reliable source of monies is [sic] there is a market crash. Wouldn't she have a reliable source of monies in the existing annuity? It looks like she is switching from a Nationwide Achiever Annuity to a Polaris Platinum III B share. Wouldn't there be similar annuity guarantees from one annuity to the new annuity? I am not understanding why she has to switch to obtain downside protection. Isn't that feature available with the existing annuity?

144. Zullo responded by stating only that "I cannot add the income rider on the existing contract. The existing contract only offers death benefit protection which does not help on the income side." Zullo's response failed to mention, and his supervisor failed to observe, the existing \$900,000 Polaris Platinum annuity already sold to Client 5 that November.
145. LPL and Zullo's supervisor adopted Zullo's contradictory justification for the annuity switch (with a surrender charge) wholesale, and relied on the \$3,500,000 liquid net worth figure in approving the switch as suitable. Specifically, Zullo's supervisor wrote as follows in approving the switch: "Client liquid net worth is \$3,500,000. Total annuity holdings are 23% of the client liquid net worth."
146. Another Polaris Platinum annuity was represented on the Order Summary Report Form at Section 15a, at a value of \$750,000. Zullo's supervisor would or should have seen this annuity as part of her review, and therefore should have known that Zullo's justification for the purchase ("most of the clients [sic] monies" being "subject to the market") was contradictory.
147. Zullo sold Client 5 another Polaris Platinum annuity at an estimated premium of \$130,000 (ultimately \$138,301.77) in October 2014. The source of funds for this annuity switch was the surrender of a Jackson National annuity, which incurred a \$1,305.21 surrender fee.
148. For this switch, Zullo again entered inaccurate information into the AOE system indicating that Client 5 only possessed one Polaris Platinum annuity prior to the purchase. In

reality, Zullo had sold two Polaris Platinum annuities to Client 5 in recent years. LPL did not make note of this inconsistency.

149. For this annuity sale, Zullo submitted a liquid net worth figure of \$2,500,000. LPL relied on this liquid net worth figure in approving the annuity transaction. Specifically, Zullo's supervisor for this transaction, wrote as follows in approving the transaction: "This purchase will represent 5.20% of client's stated LNW of \$2,500k, and overall, known annuity exposure will be 48.00%."

150. The supervisor did not acknowledge that Client 5's liquid net worth had fluctuated from the previously reported figure of \$3,500,000 in February 2014, when Zullo sold Client 5 a \$55,000 Polaris Platinum annuity.

vi. Client 6.

151. Client 6 has been a client of Zullo since at least August 2008, when Zullo sold her a Nationwide Achiever Variable Annuity.

152. On June 26, 2014, Client 6 emailed Zullo as follows:

I wanted to check with you about something regarding the money that I have invested through you. Long story short is that I lost my job back in October 2013. I was receiving [...] unemployment checks, but those ended in May 2014. Unfortunately, since getting laid off, I have been very sick. I was actually sick during most of 2013 but went undiagnosed till spring of 2014. I have [...] [a] disease, and because it went undiagnosed for so long, it is going to take a while to get back to "normal." I have filed for Social Security Disability since the expectation is that I won't be able to return to work for at least the next 12 months. Between having significant medical expenses coupled with no income coming in, I may have to access the money I have with you. I have enough in savings to get me through the summer, and if my health improves to the point where I can actually get back to work, then I won't have a problem. However, my recovery is going slower than I would like, so no guarantees on when I will be able to start looking for another job.

Can you let me know your thoughts and what kind of penalty I would face if I pulled out some of that money?

153. Client 6 stated in this email that she had "no income coming in" at this time and "significant medical expenses," and that she therefore "may have to access the money I have with [Zullo]."

154. Client 6 inquired about the kind of penalty she would face if she pulled out some of the money invested with Zullo because Zullo had already invested her assets into a Nationwide Achiever Variable Annuity.
155. Client 6 did not have investments with LPL apart from the Nationwide annuity.
156. Zullo responded to Client 6 by email, saying, in pertinent part: "I am very sorry to hear about your medical condition. I need to meet with you as we need to make some changes in your account and then we can address the below issues."
157. The Division found that the changes that Zullo made in Client 6's account were unsuitable given Client 6's stated needs.
158. After meeting with Client 6 for the purpose of discussing her medical expenses and liquidity needs, Zullo recommended that Client 6 surrender the Nationwide Achiever Variable Annuity (at a surrender charge of \$1,366.00), and roll over the *entire value* into a Polaris Platinum annuity with a fresh surrender schedule.
159. Specifically, Zullo sold Client 6 a Polaris Platinum annuity with an estimated premium of \$97,000 (ultimately \$94,640.21) in July 2014. For this transaction, Zullo submitted a liquid net worth figure of \$1,500,000 to LPL.
160. Zullo and LPL earned a commission of \$6,861.42 on this annuity switch.
161. Zullo listed Client 6's liquid net worth as \$1,500,000 on the annuity replacement and application forms for this transaction in July 2014, despite receiving this email from Client 6 less than a month prior, and meeting with Client 6 even more recently.
162. LPL approved the annuity switch, relying on Zullo's justification and the liquid net worth figure of \$1,500,000. Specifically, Zullo's supervisor stated:

Client is surrendering policy prior to the surrender period ending. The rep discussed this with the client and she believes she can do better with the new contract, guaranteed income. Client is purchasing a GWLB and will need income from this contract in 10+ years. Subaccount allocation is

consistent with the client investment objective. B share annuity is appropriate for a 10+ time horizon. Client liquid net worth is \$1,500,000. This annuity is 6% of the client liquid net worth. This order is approved.

163. Client 6 later sent the following emails to Zullo (at both his personal and LPL email address), in pertinent part:

October 18, 2014:

I was just catching up on some paperwork and wanted to ask about my ending balance on my last/final quarterly statement from Nationwide (\$96,282.20) for period July 1 - Sept 30, 2014 and my first quarterly statement with Polaris Platinum III (starting contribution of \$94,640.21) for the same time period. Why isn't the Polaris starting amount matching the ending balance from Nationwide Statement. Polaris is starting with \$1,641.99 less than I would have expected.

I am still waiting to hear on SS Disability Appeal. I had a recent set back that required having to spend several days in ICU at [redacted]. Recovery is still slow but my lawyer has updated them with my most recent issue so I am hoping that it may be enough for them to approve me. My case is definitely being reviewed so maybe I will hear their decision no later than November. Once I know my financial situation, I will circle back with you on next steps.

October 26, 2014:

I had dinner with family members today and both my Mom and my sister have loaned me money to help me through the coming months. They didn't want me dipping into any of my retirement funds - they were so generous I can't believe it. So I am going to hold off on the 7% payout option you mentioned but would ask for you to look into the issue of the discrepancy between ending balance at Nationwide and beginning balance with new account. I thought they would have been the same amount but the statements I received did not reflect that.

November 7, 2016:

Wanted to see if you've looked into the ending/starting balance I had inquired about.

164. Zullo ultimately responded by email indicating that “[t]he difference in the balances relate [*sic*] to the surrender charges of the old plan.”
165. Accordingly, Zullo’s solution to Client 6’s expense and liquidity issues was to place the entire value of Client 6’s investments with Zullo into another variable annuity, and subject Client 6’s investments to surrender charges for several more years, despite Client 6’s express need for liquidity in light of her termination from employment and medical condition.
166. Following the Polaris Platinum annuity switch, Client 6 continued to experience financial and liquidity difficulty, emailing Zullo as follows:

October 10, 2015:

I just received my Q3-2015 Statement and once again I have lost money. This time it was almost 5K in a 3 month period. In light of my financial situation, is there a less risky place to put my remaining balance. I would prefer to make little to no money than to forfeit thousands each quarter.

Please advise.

August 8, 2015:

Difficult to watch it go down every quarter but I'll hang tight for awhile and see how it goes. Was hoping to break \$100k when we moved the monies to a less risky portfolio but it has dropped almost every quarter since then. I think this quarter was one of the biggest drops I've seen....depressing to say the least, especially in my circumstance.

vii. Client 7.

167. Client 7 is a retired healthcare worker. Client 7 has been a client of Zullo since 2004.
168. Client 7 holds four annuities sold by Zullo, including a Polaris Platinum annuity worth approximately \$1,090,000.
169. The Division found that Client 7 holds no other investment assets.
170. Zullo liquidated all \$1,200,000 of Client 7's SAM account in order to fund the purchase of a Polaris Platinum annuity with a GLWB rider at a premium of \$1,239,544.75.
171. For this annuity sale, Zullo submitted a false liquid net worth figure of \$4,000,000 to LPL.
172. LPL relied on the \$4,000,000 liquid net worth figure in reviewing and approving the sale for suitability.
173. Zullo's written justification for this sale was that "client looking to guarantee income with income rider," which was substantially the same justification for many of Zullo's annuity sales in 2014 and 2015.
174. In reviewing this transaction for suitability, Zullo's supervisor noted that the client's liquid net worth did not match the liquid net worth indicated on previous account documentation, and requested the reason why Client 7 was using *all* of her liquid SAM account to purchase an annuity, writing as follows:

Please provide the following information: 1. Please provide a breakdown of the client's liquid net worth and the location of these assets. 2. Client's SAM account is being liquidated 6946-6354. *Please discuss the reason that the client is using all of these assets for the annuity.* The LNW on this account is \$750-\$999,999. Please either update this account or provide an explanation of the discrepancy between the \$4,000,000 outlined in this order vs. the LNW on the account. 3. Please provide a discussion of the net investment advantage for the client to move all of the assets from a SAM account to a Variable Annuity. What is the disadvantage in going from SAM to an annuity and have you discussed this with the client.

(Emphasis added.)

175. Zullo responded by referencing accounts held outside of as he did with Client 2's account, and providing information about the client's liquid net worth,² and communications with the client:

60K Jackson National Annuity, 20K Nationwide Annuity, 160K Citizens Bank MM account, 1,200,000 in 2 LPL accounts, 2,400,000 Vanguard Account, 2) Using money to guaranty [sic] income stream for client in retirement, LNW to be updated, 3) Advantage to client is to get guaranteed income for client and not worry about income production for life. Client does not want to touch Vanguard as low expenses for growth versus SAM higher expenses. Disadvantage is higher expenses in annuity versus SAM account but gets guaranteed income.

(Emphasis added.)

Zullo's supervisor did not question Zullo further on the appearance of at least \$3,000,000 in liquid net worth that Zullo stated was held outside of LPL, nor did she question whether the figure may have been improperly recorded to begin with, or question Zullo further about the increase.

176. Instead, Zullo's supervisor requested and accepted that the liquid net worth information be "updated," then approved the transaction on the basis that "[t]his annuity will be 30% of the client liquid net worth of \$4,00,000 [sic]. Client has sufficient liquid assets for emergency funds. Rep has provided a discussion of the net investment advantage to the client in his notes."

177. Zullo and LPL received a commission of approximately \$89,866.99 on this sale up front.

viii. Client 8.

⁹ The "20 K Nationwide Annuity" mentioned here was not disclosed via Section 15a of the Order Summary Report in the AOE system, which Zullo's supervisor did not notice.

178. Client 8, a nurse, has been a client of Zullo since approximately 2009, when she was referred to Zullo by a co-worker.

179. Client 8 owns two Polaris Platinum annuities, an OMP IRA (\$16,164.64 as of August 2016), and an OMP investment account (\$214,325.83 as of August 2016) with LPL and Zullo. Client 8 also has two pensions worth approximately \$300,000. Client 8 estimates that her total investments and retirement plans amount to approximately \$500,000.

180. In August and September 2015, Zullo recommended that Client 8 surrender two existing Nationwide annuities in order to sell her two Polaris Platinum annuities, at a total premium of \$69,444.69. Client 8 incurred surrender charges of 2% on both surrenders.

181. According to Zullo, the reason for the switch of one annuity was that:

Clients [*sic*] investment portfolio has grown very well over the last 5 years so she feels secure in not needing this feature with the associated cost. There is a cost savings that will offset part of the surrender charge and will free up the asset allocation which will hopefully yield greater returns which we spoke about through telephone conversation.

182. According to Zullo, the reason for other switch was that:

Clients [*sic*] husband is firefighter with pension income and other assets have grown with market conditions over the last 6 years. With exchange she saves on expenses on feature which she does not need and frees up portfolio flexibility to improve performance. 3) Performance is under 7% while market has grown by more. Performance for new product based on American Funds which she already owns for many years and is happy with performance. She is expecting around 60% of market gains in the future.

183. Zullo falsely reported to LPL through the AOE system and on annuity purchase documentation for these transactions that Client 8's liquid net worth was \$1,600,000.

184. LPL relied on the \$1,600,000 liquid net worth figure in approving the transactions as suitable for Client 8. Specifically Zullo's supervisor stated, "Transaction is 3% of 1.6mil LNW. Total exposure 4% with 1 other VA," and "Transaction is 1% of 1.6mil LNW. Total exposure 4% with 1 other VA."

ix. Client 9.

185. Client 9, a semi-retired adjunct professor, has been a client of Zullo since June 2007.
186. Zullo sold Client 9 a Polaris Platinum annuity with a premium of \$450,000 in February 2014. Zullo liquidated funds from Client 9's SAM account in order to fund the annuity purchase. Zullo falsely reported to LPL on annuity purchase documentation that Client 9's liquid net worth was \$1,800,000.
187. The Division found that Client 9 has never held \$1,800,000 in liquid net worth.
188. Client 9 does not have another broker or any other investment assets.
189. Zullo and LPL received a commission of \$32,625.00 on this annuity sale up front.
190. LPL relied on the \$1,800,000 liquid net worth figure in approving the transaction as suitable for Client 9. Specifically, Zullo's supervisor stated in approving the transaction, "Client liquid net worth if [sic] \$1,800,000. This annuity is 25% of the client's liquid net worth. This order is approved."

x. Client 10.

191. Client 10 and his wife, a scientist and human resources professional respectively, have been clients of Zullo since at least 2007, and opened accounts with Zullo in 2007, 2010, 2014, and 2015.
192. Currently, Client 10 and his wife have two investment retirement accounts and two Polaris Platinum annuities with Zullo and LPL.
193. The total current value of Client 10 and his wife's investments with LPL is under \$400,000.
194. The Division found that Client 10 and his wife do not have another broker or any other investment assets besides what is held at LPL.

195. Zullo sold Client 10's wife a Polaris Platinum annuity at an estimated premium of \$107,000 (ultimately \$110,464.84) in October 2014. The source of funds for this sale was the surrender of a Nationwide Achiever annuity, resulting in a surrender charge of \$974.52. For this switch, Zullo reported to LPL on annuity purchase documentation that Client 10 and his wife's liquid net worth was \$1,500,000.
196. LPL relied on the \$1,500,000 liquid net worth figure in approving the switch as suitable for Client 10 and his wife. Specifically, Zullo's supervisor for this transaction, stated in approving the sale, "This purchase will represent 7.13% of client's stated LNW of 1,500k, and overall, known annuity exposure will be 11.76%."
197. Zullo sold Client 10 and his wife another Polaris Platinum annuity with an estimated premium of \$115,000 (ultimately \$215,217.07) in May 2015. The source of funds for this switch was the surrender of a Nationwide Achiever annuity, resulting in a surrender charge of \$2,236. For this transaction, Zullo submitted a liquid net worth figure of \$2,200,000 to LPL.
198. Zullo and LPL received commission of \$15,603.24 on this annuity switch up front.
199. LPL relied on the \$2,200,000 liquid net worth figure in approving the transaction as suitable for Client 10 and his wife. Specifically, Zullo's CSU analyst for this transaction, stated in approving the sale, "As per Rep, client has riskier investments with another advisor and wants added protection of LB with income guarantee for this portion of his assets. No change in VA exposure. Transaction is 5% of client's stated 2.2mil LNW; 10% total exposure."
200. As noted, the Division found that Client 10 and his wife had no "riskier investments with another advisor."

201. The CSU analyst did not address the differing liquid net worth figures from the two Polaris Platinum annuity purchases, or the previous purchases for Client 10 and his wife.

xi. **Client 11.**

202. Client 11, a retired Boston hospital coordinator, and her husband have been clients of Zullo since June 2010.

203. Client 11's current investments with Zullo comprise a \$100,000 annuity, as of 2014, and a SAM account (\$66,351.09 as of August 2016). Client 11's husband also owns a \$574,000 annuity, as of 2010, and a SAM IRA (\$871,296.28 as of July 2016).

204. Client 11 and her husband do not have another broker or other investment assets.

205. Zullo sold Client 11 a Polaris Platinum annuity at a premium of \$100,000 in May 2014. Zullo rolled over Client 11's 403(b) retirement plan in order to fund the annuity purchase. Zullo reported to LPL that Client 11's liquid net worth was \$4,000,000.

206. Zullo and LPL received a commission of \$7,082.02 on this annuity sale.

207. LPL relied on the \$4,000,000 liquid net worth figure in approving the transaction as suitable for Client 11. Specifically, Zullo's supervisor stated, "Liquid net worth is \$4,000,000. This annuity is 2.5% of the client liquid net worth. This order is approved."

208. Client 11's liquid net worth has never been \$4,000,000.

C. LPL's Policies and Procedures Failed to Prevent, Detect, Deter, or Mitigate Zullo's Fraud.

209. Broadly speaking, LPL relies on information entered by an advisor into the AOE system or submitted manually by the advisor on physical applications in order to determine whether an annuity sale is suitable for a client.

210. Although clients sign new account documentation and annuity application paperwork containing liquid net worth information, clients do not have the ability to review the liquid

net worth information entered by the advisor into the AOE system, which LPL used to review annuity sales during the Relevant Time Period.

211. During the Relevant Time Period, once a purchase was entered into the AOE system by Zullo, it was reviewed by an LPL supervisory principal or analyst for suitability. However, the review was limited to and relied on the information presented through the AOE system (not confirmed by the client) by Zullo, or, alternatively, by Zullo on physical paperwork (signed by the client), for each separate transaction, together with information “on file” for the client in the review tool. Prior to March 2014, reviewers were not required to verify the accuracy of information so presented by Zullo.
212. As described above, Zullo repeatedly submitted false suitability information to LPL, which LPL accepted at face value, even when internally inconsistent with other documentation on file from account openings and prior transactions.
213. As noted, LPL account opening documentation, which LPL supervisors used to review transaction suitability with their review tools, does not require a client’s liquid net worth to be listed as a dollar amount. This information is instead recorded as a letter representing a dollar range. The liquid net worth of clients reported to be holding anything more than \$1 million (for example, all of Zullo’s clients described above and all of Zullo’s annuity clients in 2015) in liquid net worth is designated as the letter “H.”
214. This means that, for almost all of Zullo’s clients, LPL supervisors were unable to compare the client’s liquid net worth submitted with an annuity application with specific liquid net worth information previously on file for the client.

215. The information relied upon by LPL supervisors during the Relevant Time Period was the information entered by the advisor through the AOE system, which the client does not review.
216. As such, LPL did not have checks in place to prevent an advisor from submitting whatever liquid net worth information was required to sell an unsuitably large and inappropriate annuity to a client.
217. LPL failed to notice various red flags and discrepancies also because it reviewed and approved each annuity transaction in isolation. LPL CSU supervisors and analysts consistently failed to notice patterns in Zullo's annuity sales when such patterns were observable to the individual supervisor.¹⁰ More specifically, LPL supervisors and analysts failed to notice the various discrepancies in information presented by Zullo's annuity sales, such as a client's net worth fluctuating without explanation.
218. As an example of this problem: since each annuity transaction was considered in isolation by LPL supervisors, LPL supervisors failed to raise any questions or notice any red flags even when the same supervisor reviewed two annuity sales for the same client with contradictory suitability justifications just three months apart.¹¹
219. For example and as noted, LPL did not detect when paperwork actually signed by Zullo's client listed a liquid net worth figure of \$1,600,000, yet the information entered by the advisor into the AOE system in connection with the same purchase listed a significantly larger liquid net worth figure of \$8,000,000.

D. LPL Failed to Notice Other Red Flags.

¹⁰ Zullo's direct supervisor attempted to elevate her concerns regarding certain patterns to her manager and a CSU manager. The results of this escalation attempt are discussed below.

¹¹ Client 7.

220. LPL supervisors ignored or failed to notice a variety of other red flags with respect to Zullo's annuity purchases.
221. For example, it is unclear whether any supervisor or individual at LPL compliance read or cross-referenced information actually entered by Zullo into the AOE system that should have raised red flags for LPL compliance.
222. For example, in one instance Zullo indicated in the AOE system, in connection with their fourth consecutive Polaris Platinum annuity purchase during the Relevant Time Period, that Client 4 and her husband held no other annuities.
223. Even when Zullo submitted this false information regarding the clients' other annuity holdings, no one at LPL questioned the information so entered by the advisor into the AOE system, even though LPL had approved the prior annuity sales.
224. In addition, LPL did not take note of or question the fact that all of Zullo's annuity sales in the year 2015 were made to clients with a listed liquid net worth, at the time of the sale, in excess of \$1,000,000; specifically, that every client of Zullo that was sold an annuity in the year 2015 had a listed liquid net worth of over one million dollars on their annuity applications, ranging from one to several million dollars.
225. One CSU analyst reviewed the majority of the 2015 annuity sales, and repeatedly noted, in the process of approving each transaction, that the annuity represented a small fraction of the client's liquid net worth, *e.g.*, "Transaction is 18% of client's stated 2 mil LNW," "Single VA is 30% of 2.4mil LNW," and, "Transaction is 10% of client's stated 2 mil LNW."
226. Zullo's supervisor emailed the analyst on March 30, 2015, stating:

I will be visiting this rep in two weeks. He does a lot of annuity business and it appears that he does the same thing for every client. He purchased AIG and most of his orders also include a surrender charge for the client.

Is there anyone in your department I can speak to about Roger and his patterns?

227. Yet the analyst, and other CSU team members at LPL, apparently failed to question that every annuity sale in the year 2015 was made to a client with a liquid net worth that easily accommodated whatever annuity sale Zullo sought to make.

228. LPL did not take note of or question that most of the clients to whom Zullo sold an annuity are retired from or currently working in professions unlikely to result in seven figures of liquid net worth and savings (especially after accounting for previous sales of illiquid annuities that Zullo made to those clients).

229. In addition, Zullo has sold substantially the same product to large numbers of his clients with substantially the same justifications, and LPL never required Zullo to change or effectively addressed this practice.

230. For example, LPL either ignored or failed to take action with respect to the fact that Zullo sold the same annuity product, the Polaris Platinum III (B Shares) annuity, often with a GLWB rider, to the vast majority of his annuity clients during the Relevant Time Period.

231. Moreover, Zullo provided substantially similar justifications for almost all of the clients to whom he sold a Polaris Platinum annuity during the Relevant Time Period. Zullo stated that his clients replaced or purchased annuities either because the client was looking for higher risk/reward potential or the client was looking for guaranteed income and wished to add an "income" rider.

E. Zullo's History of Discipline and Patterns of Annuity Sales were Known to LPL.

232. LPL has known or been on notice of compliance and ethics problems with Zullo for at least eight years.

233. For example, in September 2008, LPL assessed Zullo a \$100 fine for failure to submit an attestation form.

234. In October 2009, LPL issued a letter of caution to Zullo regarding possible violations of LPL's variable annuity policy, and imposed a fine of \$250.00.

235. In 2010, LPL conducted a branch examination of Zullo's offices and noted that Zullo was using a personal email address to conduct business.

236. In October 2011, LPL issued a reminder letter to Zullo regarding his use of unapproved marketing materials.

237. In 2013, a customer complained to LPL, specifically regarding Zullo's unsuitable transfer of the client's assets from a Guardian annuity to a Nationwide annuity.¹²

238. On April 15, 2015, Zullo's supervisor conducted a supervisory visit of Zullo's office. Zullo's supervisor emailed Zullo a "closeout letter" for the supervisory office visit on July 28, 2015, indicating that:

Some items of significance were as follows:

- Your product choice of almost exclusively AIG annuities, switching and incurring surrender charges for your clients. Updated product choices with income riders to guarantee income.
- Senior Issues

...

239. Zullo's supervisor's closeout letter did not instruct Zullo to make any changes to his annuity sales practices, and indicated that the only item that required Zullo's "attention" was "terminating your involvement in selling disability insurance as an outside business activities [sic]."

240. On April 22, 2015, one week after Zullo's supervisor's supervisory office visit, an LPL examiner conducted an examination of Zullo's office.

¹² This customer complaint was not reported by LPL on Zullo's Form U-4.

241. The branch examination revealed “serious” violations, specifically of LPL’s document signature policy, the use of an unapproved email address to conduct business, and other operational deficiencies.
242. During the examination, the LPL examiner noticed that Zullo obtained and maintained a blank form signed by a client.
243. The LPL examiner also noticed that Zullo accepted a post-dated check, an undated check, and a “starter” check.
244. LPL imposed a fine of \$500.00 for these violations.
245. The LPL examiner noted that Zullo was not maintaining annuity purchase and replacement forms for certain clients to whom he had sold an annuity.
246. The LPL examiner also noticed that Zullo conducted business with clients over a personal email address.
247. The letter of caution issued following the 2015 branch examination stated that “LPL Financial takes these oversights very seriously and we are confident that with this letter, the importance of adherence to LPL Financial policy and all regulatory rules will be of primary concern for you.”
248. Yet the importance of adherence to LPL Financial policy and all regulatory rules was not of “primary concern” to Zullo, as Zullo continued to sell certain annuities without following LPL’s suitability policies and procedures and continued to submit false suitability information.
249. Further, as noted, LPL was aware that Zullo failed to report a customer complaint from December 2015, and did not take any disciplinary action until December 2016.

250. Most pertinently, Zullo was placed on LPL's third quarter supervisory surveillance log as an LPL "Top Producer" on December 30, 2014, for switching clients from Nationwide to AIG annuities, frequently causing surrender charges.

251. At that time, a member of Governance, Risk & Compliance reached out to a manager of LPL's CSU, about Zullo's patterns in switching annuities.

252. However, no one at LPL appeared to have reached out to Zullo regarding these switches at that time.

253. Zullo's supervisor noted concerns with Zullo's suitability sales in an email to Zullo on April 4, 2014, stating:

I noticed that you always use the Polaris Platinum III B share for your clients. Is this product suitable for all of your clients? Do you ever choose a product from a different annuity product [issuuer]. I am concerned that there is no diversity in your product choices. Please advise.

254. Zullo responded to this concern by stating only the following:

Prior to 2013 I used Nationwide and Jackson National as they had the best income riders in the market. Starting in 2013 Sun America has the best income riders so I use them. I diversify their holdings by other products they own with me and outside and within Sun America there are varying investment portfolios to use.

255. On March 18, 2015, Zullo's supervisor raised the issue of Zullo's annuity sales patterns with a manager at LPL Governance, Risk, and Compliance, stating:

I've got a rep, Roger Zullo, INXB, who sells a lot of AIG annuities. Many times there is a surrender charge on the old contracts as he seems to sell annuities to his clients and then flip them right before the surrender period is done. Is this something you can look into?

256. In response, the manager wrote:

It appears that Roger did appear on our Top Producer in the Q3 2014 review period and that you were contacted about his use of AIG annuities on 12/30/2014 by [redacted]. I think another group you might also want to look into is Centralized Supervision Unit (CSU); [redacted] spoke with CSU manager [redacted] about the concentrated pattern as well. Also considering this pattern appears to be a concern to you, have you ever brought this up to your Manager? If you don't feel comfortable with the pattern I would strongly suggest that you talk with him.

257. On the same day, Zullo's supervisor again raised the same issue of her concerns with patterns in Zullo's product choices with a manager at LPL's CSU, by forwarding her exchange with the manager.

258. On the same day, Zullo's supervisor emailed her direct manager, stating:

I have scheduled a visit to see Roger Zullo, INXB. Roger sells a lot of annuities, all AIG, to existing clients. There is usually a CDSC [contingent deferred sales charge]. He also has sold the original annuity and it looks like he waits just about until the surrender period is over and moves them into a new annuities.

I have concerns about his business. I have emailed CSU manager [redacted] and his analyst [redacted] and have forwarded you the response I got from the manager. I think this issue needs to be escalated.

Please advise.

259. The March 18, 2015 email also included attachments indicating that Zullo's annuity business was ten times greater than the average LPL representative's.

260. Zullo's supervisor and her direct manager exchanged additional emails on March 18, 2016, as follows:

MANAGER:

Has anyone discussed the concerns with the advisor why he does all of the switches?

ZULLO'S SUPERVISOR:

That's a good question. I spoke to him early last year about why he sells the same annuity to all of his clients. He said he likes to use the best product on the market and he thinks the AIG annuity is the best product.

Now I am prepping for my SOV [*supervisory office visit*] and looking for information on him so that I can discuss this issue with him during the visit. I have sent an email to his relationship manager, [redacted], and am waiting to see his response.

MANAGER:

There were several attachments, etc. and I did not thoroughly read all of them, but is there a concern from the Annuity CSU Dep.?

ZULLO'S SUPERVISOR:

I talked to [redacted] in Surveillance and she said that Roger came up on a report last year in the third quarter. *This information was researched and it looked like no one reached out to him.* The summary of the report is an excel spreadsheet attached to one of the emails I forwarded to you.

It also appears that he has been passed around a little bit from analyst to analyst.

(Emphasis added.)

261. On July 21, 2015, the CSU analyst emailed Zullo's supervisor, asking, "Did you ever have a conversation with this Rep about his patterns?"

262. On July 23, 2015, Zullo's supervisor responded to the CSU analyst, stating:

I did speak to the rep regarding his use of AIG and incurring surrender charges. He said that he likes the income riders that AIG has available. He also stated that he likes Jackson for the same reason. He said he was surrendering contracts that had a CDSC on them because the market was good and he didn't want to wait for the surrender to end because of this. Roger is only series 6 licensed. His clients are very similar to one another in age and goals. It does seem that he is switching clients out of the current annuities that he sold them 6 or 7 years ago when the current riders were not available. It did very much seem to me that he had a pattern of switching everybody out of their annuities every 6 or 7 years and that he was getting commissions over and over again from the same clients.

I just visited Roger this spring in his office so my recollection of what we talked about is still pretty good.

I have included two screen shots from the BRM Call log. They document the concern with his annuity business throughout the years.

263. The screenshots included in Zullo's supervisor's response to the CSU analyst include call notes which highlight concerns of various supervisors and compliance personnel over the years with respect to Zullo. Specifically, the call notes indicate that Zullo's supervisor raised the issue of the frequency of AIG Polaris Platinum suitability and frequency with her manager as early as 2013, that another supervisor questioned Zullo on the increase in his variable annuity business in 2013, and that a third supervisor noticed that Zullo had previously switched out many of his clients from Guardian annuities to Nationwide annuities in 2010.

264. On July 24, 2015, a manager emailed Zullo's supervisor:

We recently did some proactive reporting (in anticipation of surveillance or potential FINRA audits) on top producing VA advisors where I was hoping to get as much background as possible for Roger. Would you have any time today (2:00 est or after) for a quick call together for me to get as much Supervision background as possible (any BPRs, surveillance history, transaction review history, any previous disciplinary actions, etc. and I can also give you more background on the data we looked at)?

265. On July 31, 2015, Zullo's supervisor emailed her manager:

I was contacted last week by...a manager in the annuity group CSU about having a meeting about

Roger Zullo. He is a big annuity guy and he has a very cookie cutter approach to his annuities. They are switches, they incur surrender and he was the original rep who sold the previous product. He uses only AIG because he likes the income riders and apparently he uses the same subaccount allocations.

We tried to set up a meeting for today but it fell through. I have forwarded some of the information I gathered for [redacted] and sent it to you. Currently, [redacted] and a few others in the annuity department, and [redacted], who is his relationship manager, and a few people from his side of the business are planning to set up a meeting for next week.

[Redacted]'s position is that they ran a report and Roger came up on it. This is a proactive meeting with Roger to discuss the parts of his business that may be a red flag for regulators, sort of an educational meeting.

[Redacted] and I did speak about ABC later on down the road, if Roger does not make some changes to his business.

266. On August 5, 2015, a call was ultimately held between a manager, Zullo, and Zullo's relationship manager, to discuss Zullo's:

VA business and share [the] Central Supervision perspective to help identify any specific areas we may help with in terms of client situations/specific information, documentation through the AOE system & pre-approval requirements, regulatory environments, product considerations, other LPL VA sales populations, etc.

267. The manager emailed Zullo's relationship manager following the call:

I wanted to follow up and see if you had any questions or feedback after our call with Roger today? Hopefully the call was a positive one all around and please let me know if you feel any additional focus areas could be included or omitted for future reference. Or if you feel this type of pro-active review and collaboration call would be helpful for some of our other larger VA producers or internal teams please do not hesitate to reach out to me.

268. According to the relationship manager's reply email, "the call went really well and it seems Roger thought it was productive. I think this proactive approach would be very helpful for other large VA producers."

269. Zullo did not make any changes to his business practices as a result of the conference call, and continued purchasing only the Polaris Platinum annuity for all of his clients (except a single client to whom he sold a Jackson National annuity, also carrying a 7% commission, in January 2016).

270. The same CSU analyst continued to review and approve all of these transactions without further inquiry.

271. LPL did not take any other steps to discipline Zullo, address this lack of diversity in product choice, or investigate Zullo's annuity sales for potential advisor misconduct until the Complaint was filed on December 1, 2016.

VII. VIOLATIONS OF LAW.

A. LPL's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

272. Section 204(a)(2)(J) of the Act provides:

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.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

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

VIII. ORDER.

IT IS HEREBY ORDERED:

A. LPL shall permanently cease and desist from violating Section 204(a)(2)(J) of the Act.

B. LPL is censured by the Division.

C. LPL shall provide an accounting of losses attributable to the alleged wrongdoing and provide restitution to fairly compensate investors for those losses and harm attributable to the alleged wrongdoing, including, but not limited to:

a. Making written offers to pay all surrender charges associated with all current annuities, including, but not limited to, Polaris Platinum annuities, held by former clients and

clients of Zullo as of December 1, 2016 and sold by Zullo during the Relevant Time Period.

- b. Returning to all former clients and clients of Zullo as of December 1, 2016 all surrender charges incurred during the Relevant Time Period on annuity surrenders, including, but not limited to, surrenders of annuities used to fund the purchase of Polaris Platinum annuities.
- c. For all annuity purchases made during the Relevant Time Period, returning to all former and current clients of Zullo who elect to accept an offer of rescission, the difference between the total annuity premiums paid in and the current value(s) (or value when cashed out, if applicable), if less than premiums paid in, of the annuity/annuities, less any withdrawals and income payments made and paid out.
- d. Prior to making any offer or returning any funds pursuant to this Section, and within thirty (30) days¹³ of entry of this Order, LPL shall provide to the Division an accounting in a spreadsheet ("Accounting No. 1") of: (1) surrender charges associated with current annuities to be subject to offers to pay, per Section VIII(C)(a); (2) surrender charges to be returned per Section VIII(C)(b); and (3) value differences to be returned per Section VIII(C)(c). Accounting No. 1 shall include the names and addresses of all recipients of restitution, as well as the amount owed by LPL under the accounting (including offers to pay). Accounting No. 1 shall not be unacceptable to the Enforcement Section.
- e. The proposed written offer to pay all surrender charges per Section VIII(C)(a) and the proposed cover letter accompanying any return of funds per Sections VIII(C)(b)-(c) (or a consolidated letter and payment, where appropriate) shall not be unacceptable to the

¹³ For purposes of this Order, the last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the next following business day.

Enforcement Section, and shall be provided to the Enforcement Section together with Accounting No. 1.

- f. Within ten (10) days of the Enforcement Section's written or electronic notice that Accounting No. 1, together with the written offer and cover letter, are not unacceptable, LPL shall make written offers to pay existing surrender charges, per Section VIII(C)(a), and shall return funds as detailed in the accounting, per Section VIII(C)(b)-(c).
 - g. LPL shall provide the Enforcement Section with copies of all written offers, cover letters, and evidence of payment.
- D. LPL shall complete, within ninety (90) days of entry of this Order, and with assistance of counsel, a comprehensive internal investigation of Zullo's brokerage and advisory activities and LPL's related policies and procedures during the Relevant Time Period, including, but not limited to, trading in securities, providing investment advice, and any instances of dishonest or unethical conduct in the securities, commodities, or insurance business effected through LPL (the "Investigation") in a manner that shall not be unacceptable to the Division. LPL and its counsel shall submit a written plan of investigation to the Division for approval within five (5) business days of entry of this Order. LPL and its counsel shall, in connection with the Investigation:
- a. Within one hundred twenty (120) days of the entry of this Order, submit a report to the Division and to LPL containing the findings of the Investigation (the "Report") with respect to Zullo's misconduct and LPL's supervisory processes. The Report shall identify the specific and particular steps that LPL has taken or will commit to taking to address the specific and particular problems identified in the Report concerning LPL's

supervisory and compliance weaknesses. The Report shall not be unacceptable to the Enforcement Section.

- b. Together with the Report, LPL shall submit an accounting in a spreadsheet of investor losses and harm attributable to the misconduct of Zullo ("Accounting No. 2"), together with a proposed cover letter to be sent to harmed clients. Accounting No. 2 and the proposed cover letter shall not be unacceptable to the Enforcement Section.
 - c. Accounting No. 2 shall identify by name and address all investors harmed by Zullo's brokerage and advisory misconduct, the particular misconduct at issue, and the amount owed by LPL under the accounting to each client.
 - d. Within ten (10) days of receiving written or electronic notice that Accounting No. 2, together with the proposed cover letter, is not unacceptable to the Enforcement Section, LPL shall return funds to Zullo's current and former clients as detailed in Accounting No. 2.
 - e. LPL shall provide the Enforcement Section with copies of all such cover letters and evidence of payment.
- E. Within one hundred eighty (180) days of the entry of this Order, LPL shall provide a final accounting in a spreadsheet ("Final Accounting") of all restitution made pursuant to this offer. The Final Accounting will include a certification of compliance with the terms and details of restitution in the Order, and, at a minimum: 1) each payee's name and address, amount paid to each payee, date of each payment, applicable accounting (*i.e.*, either Accounting No. 1 or No. 2), and type of misconduct (if under Accounting No. 2).
- F. Within ten (10) business days of the entry of this Order, LPL shall disgorge to the Division all commissions retained by LPL on Zullo's variable annuity sales during the Relevant Time

Period. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (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 that LPL is making the payment and the docket number of the proceedings. Additionally, LPL shall provide the Division with notice twenty-four (24) hours prior to the payment.


- G. Within five (5) business days of the entry of this Order, LPL shall pay a fine in the amount of \$975,000 to the Commonwealth of Massachusetts. Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire transfer; (2) made payable to the Commonwealth of Massachusetts; and (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 that LPL is making the payment and the docket number of the proceedings. LPL shall provide the Division with notice twenty-four (24) hours prior to the payment.
- H. For good cause shown, the Enforcement Section may agree to extend any of the procedural deadlines set forth above. Any agreement to extend any of the procedural deadlines set forth above shall be made in writing.
- I. LPL shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amount that LPL shall pay pursuant to the Order.
- J. LPL shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to any payments made pursuant to an insurance policy, with regard to any amount that LPL shall pay pursuant to the Order.

K. Upon the issuance of this Order, if LPL fails to comply with any of the terms set forth in the Order, the Enforcement Section may institute an action to have this agreement **declared null** and void. Upon issuance of an appropriate order and after a fair hearing, the Enforcement Section may re-institute an action against LPL.

IX. DISQUALIFICATION.

This Order waives any disqualification in the Massachusetts laws, or rules or regulations hereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions to which LPL or any of its affiliates may be subject. This Order is not intended to form the basis of any disqualifications under Section 3(a)(39) of the Securities Exchange Act of 1934 or Rule 506 of the Regulation D under the Securities Act of 1933. This Order is not intended to form the basis of disqualification under the FINRA rules prohibiting continuance in membership absent the filing of a MC-400A application or disqualification under the SRO rules prohibiting continuance in membership. This Order is not intended to form a basis of a disqualification under Section 204(a)(2) of the Uniform Securities Act of 1956 or Section 412(d) of the Uniform Securities Act of 2002.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

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

Dated: January 27th, 2017.