

securities; and 3) those individuals and entities transacting business as investment advisers within the Commonwealth.

2. The Division instituted this action pursuant to the enforcement authority conferred upon it by § 407A of the Act and MASS. GEN. LAWS ch. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all Regulations and rules promulgated thereunder.
3. The proceeding was brought in accordance with §§ 204 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations occurred within the Commonwealth of Massachusetts.

III. RELEVANT TIME PERIOD

4. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2005 to the present (the “Relevant Time Period”).

IV. RESPONDENT

5. Lincoln Financial Advisors Corporation (“Lincoln”) is an entity currently registered as a broker-dealer firm in Massachusetts. Lincoln maintains Central Registration Depository (“CRD”) number 3978. Lincoln’s principal place of business is located at 1300 South Clinton Street, Suite 150, Fort Wayne, Indiana, 46802.

V. STATEMENTS OF FACT

A. Introduction

6. Pursuant to the Enforcement Section's investigation, the Enforcement Section reviewed 71 Massachusetts-related transactions¹ with a total of \$3,015,428.00² invested by Massachusetts residents.
7. The Enforcement Section focused on four (4) non-traded REIT products approved for sale by Lincoln including, Inland Retail Real Estate Trust, Inc. ("Inland Retail"), Inland Western Retail Real Estate Trust, Inc. ("Inland Western"), Inland American Real Estate Trust, Inc. ("Inland American"), and Inland Diversified Real Estate Trust, Inc. ("Inland Diversified") (collectively the "Inland Products").
8. In total Lincoln registered representatives (collectively "Lincoln Representatives") sold Inland Products in violation of prospectus requirements in at least eight (8) transactions resulting in at least \$503,940.00 of improper sales.

B. Lincoln Has Maintained a Non-Traded REIT Platform

9. The Enforcement Section subpoenaed documents specific to Lincoln's compliance structure and the Inland Products, beginning on January 3, 2013.
10. In response to a subpoena issued by the Enforcement Section, Lincoln produced a document titled Alternative Investments Investment Limit Procedures, outlining Lincoln's procedure for maintaining alternative investment concentration limits for sale by Lincoln Representatives—including non-traded REITs.

¹ Out of 72 transactions produced by Lincoln, 62 transactions consisted of Massachusetts residents at the time of sale, nine (9) transactions included individuals who currently live in Massachusetts but purchased non-traded REITs elsewhere, and one (1) transaction was determined not to have a Massachusetts resident account holder.

² The one (1) transaction determined not to have a Massachusetts resident account holder invested \$80,000.00 in one (1) non-traded REIT product and is not included in this figure.

11. In relevant part, Lincoln's Alternative Investments Investment Limit Procedures document provides, "Alternative investment products such as . . . REIT[s] . . . should represent only a portion of the client's net worth . . . the **client must meet the stringent suitability requirements for both the product (requirements vary by product) and Lincoln Financial Advisors.**" (Emphasis added).
12. According to the Alternative Investments Investment Limit Procedures document, "alternative investments should represent no more than 10-20 percent of the client's net worth due to higher risk levels and a lack of liquidity associated with these products."
13. According to Lincoln's additional Product Suitability – Alternative Investments document, "LFA policy only allows for clients to purchase up to 30% of their net worth in alternative investments, and only 10% of their net worth in one alternative investment product . . . [p]lease review the specific guidance by product."

C. Lincoln's Compliance Requirements for the Sale of Non-Traded REITs

a. Lincoln Compliance Manual and Lincoln Written Supervisory Procedures

14. Lincoln maintained compliance manuals (collectively the "Compliance Manuals") throughout the Relevant Time Period.
15. The Compliance Manuals provide specific requirements regarding the sale of alternative investment products to investors—including non-traded REITs.
16. Starting in December 2009, Lincoln's Compliance Manuals provided suitability guidelines regarding REITs: "LFA has established minimum standards for non-traded REITs. When investing in a non-traded REIT offering, investors must meet the higher of: The individual state's suitability standards, or Investors must have

either: (1) a net worth of \$70,000 and an annual gross income of \$70,000 or (2) net worth of \$250,000.”

17. Lincoln’s Compliance Manuals further provided: “In addition, the following guidelines apply to these investments: No more than 10% of an individual’s net worth may be invested in any one program. No more than 20% of an individual’s net worth may be investing in any one asset sector. No more than 30% of an individual’s net worth may be invested in illiquid investments.”
18. Lincoln’s Supervisory Procedures for the Relevant Time Period also contain suitability requirements regarding non-traded REITs.
19. Starting in July 2005, Lincoln’s Supervisory Procedures provided, “LFA Principals will utilize the most current written suitability guidelines in effect to assist in performing the suitability of all applications.”
20. As part of the supervisory process, Lincoln maintained suitability review checklists, which as early as September 2004, stated, “Red Flags! Does the client’s profile match the requirements on the alternative investment product fact sheet?”
21. Starting in 2006, Lincoln’s supervisory checklist added the following requirement: “Does client’s State of residency have more stringent requirements?”

b. Lincoln’s Alternative Investment Form

22. According to Lincoln’s Compliance Manuals, “[t]he following documents must be submitted to the Principal for review and approval of a non-traded REIT: Completed and signed New account form dated within twelve months of purchase. Verification of client identity (for new accounts). Completed and signed Application or subscription Documents. Prospectus/offering statement receipt if not incorporated

into other documents. Check/application investments must include payment (checks made payable to sponsor). Secondary market Disclosure Agreement, if applicable[.] Direct Investment Approval Worksheet[.] [and] Any other document or requirement imposed by the clearing firm, LFA or the issuer.”

23. Among other information, Lincoln’s Direct Business Application and Alternative Investment Worksheet (collectively “Alternative Investment Forms”) required listing Liquid Net Worth.
24. The Alternative Investment Worksheet additionally provided, “[c]lients must meet the higher of the State’s suitability standards as outlined in the product prospectus, or the broker-dealer standards”

D. The Enforcement Section’s Investigation into Inland Products

a. Inland Retail

25. The Inland Group, Inc. (“Inland”) created Inland Retail, a non-traded REIT in February 1999.
26. Lincoln produced a statement on January 24, 2013, in response to a subpoena indicating that Lincoln approved Inland Retail on May 3, 2001.
27. Lincoln contracted with Inland for sale of Inland Retail shares through a Soliciting Dealers Agreement (“Inland Agreement One”) entered into on May 3, 2001.
28. Lincoln again contracted with Inland for sale of Inland Retail shares through a Soliciting Dealers Agreement (“Inland Agreement Two”) entered into on July 26, 2002.
29. Inland Agreement One and Inland Agreement Two included the following restriction:

Massachusetts . . . investor must have either: (i) a minimum net worth (excluding home, home furnishings and automobiles) of \$225,000; or

(ii) a minimum annual gross income of \$60,000 and a minimum net worth (exclusive of home, home furnishings and automobiles) of \$60,000.

30. Inland Retail prospectuses contained heightened Massachusetts specific suitability standards.
31. All Inland Retail prospectuses stated that Massachusetts residents must have a minimum net worth of at least \$225,000; or both a minimum annual gross income of at least \$60,000 and a minimum net worth of at least \$60,000.
32. The Enforcement Section subpoenaed documents and interrogatory responses detailing all sales of the investment product Inland Retail to all Massachusetts residents, including sales from January 1, 2005 to January 3, 2013.
33. Lincoln identified ten (10) Massachusetts-related transactions involving Inland Retail from August 13, 2002 to May 22, 2003.³
34. In total, the investors invested approximately \$700,528.00 in Inland Retail.

b. Inland Western

35. Inland created Inland Western, a non-traded REIT on March 5, 2003.
36. Lincoln produced a statement on January 24, 2013, in response to a subpoena indicating that Lincoln approved Inland Western on September 24, 2003.
37. Lincoln contracted with Inland for sale of Inland Western shares through a Soliciting Dealers Agreement (“Inland Agreement Three”) entered into on September 24, 2003.
38. Inland Agreement Three included the following restriction:

Massachusetts . . . investor must have either: (i) a minimum net worth (excluding home, home furnishings and automobiles) of \$225,000; or (ii) a minimum annual gross income of \$60,000 and a minimum net

³ Four of the ten investors were not Massachusetts residents at the time of the investments, but later became Massachusetts residents.

worth (exclusive of home, home furnishings and automobiles) of \$60,000.).

39. Inland Western prospectuses contained heightened Massachusetts specific suitability standards.
40. All Inland Western prospectuses stated that Massachusetts residents must have a minimum net worth of at least \$225,000; or both a minimum annual gross income of at least \$60,000 and a minimum net worth of at least \$60,000.
41. The Enforcement Section subpoenaed documents and interrogatory responses detailing all sales of the investment product Inland Western to all Massachusetts residents, including sales from January 1, 2005 to January 3, 2013.
42. Lincoln identified 22 Massachusetts-related transactions involving Inland Western from October 21, 2003 to June 22, 2005.⁴
43. In total, Massachusetts investors invested approximately \$588,150.00 in Inland Western.

c. Inland American

44. Inland created Inland American, a non-traded REIT on October 4, 2004.
45. Lincoln produced a statement on January 24, 2013 in response to a subpoena indicating that Lincoln approved Inland American on October 13, 2005.
46. Lincoln contracted with Inland for sale of Inland American shares through a Soliciting Dealers Agreement (“Inland Agreement Four”) entered into on October 13, 2005.

⁴ One of the twenty-two investors was not a Massachusetts resident at the time of the investment, but later became a Massachusetts resident.

47. Lincoln again contracted with Inland for sale of Inland American shares through a Soliciting Dealers Agreement (“Inland Agreement Five”) entered into on August 10, 2007.
48. Inland Agreement Five included the following restriction:
- [I]f the investor is a resident of . . . Massachusetts. . . the investor’s investment in the **Shares may not exceed ten percent (10%) of the investor’s liquid net worth**, which may be defined as the remaining balance of cash and other assets easily converted to cash, after subtracting the investor’s total liabilities from its total assets.
- (Emphasis added).
49. Inland American prospectuses contained heightened Massachusetts specific suitability standards.
50. All Inland American prospectuses stated that Massachusetts residents must have a minimum net worth of at least \$250,000; or both a minimum annual gross income of at least \$70,000 and a minimum net worth of at least \$70,000.
51. Starting with the August 31, 2005 prospectus and including the December 8, 2006 prospectus, Inland American prospectuses further provided, “[i]n addition to meeting the applicable minimum suitability standards . . . **your investment may not exceed ten percent (10.0%) of your liquid net worth.**” (Emphasis added).
52. The August 1, 2007 and January 7, 2009 Inland American prospectuses also provided, that with respect to Massachusetts residents, “**your investment may not exceed 10% of your liquid net worth . . .**” (Emphasis added).
53. The Enforcement Section subpoenaed documents and interrogatory responses detailing all sales of the investment product Inland American to all Massachusetts residents, including sales from January 1, 2005 to January 3, 2013.

54. Lincoln identified 34 Massachusetts-related transactions involving Inland American from March 3, 2006 to March 15, 2010.⁵
55. In total, Massachusetts investors invested approximately \$1,494,750.00 in Inland American.

d. Inland Diversified

56. Inland created Inland Diversified, a non-traded REIT in June 2008.
57. Lincoln produced a statement on January 24, 2013, in response to a subpoena indicating that Lincoln approved Inland Diversified on November 24, 2009.
58. Lincoln contracted with Inland for sale of Inland Diversified shares through a Soliciting Dealers Agreement (“Inland Agreement Six”) entered into on November 24, 2009.
59. Inland Agreement Six included the following restriction: “Massachusetts . . . investor’s investment in the **Shares may not exceed ten percent (10%) of investor’s liquid net worth. . . .**” (Emphasis added).
60. Inland Diversified prospectuses contained heightened Massachusetts specific suitability standards.
61. All Inland Diversified prospectuses stated that Massachusetts residents must have a minimum net worth of at least \$250,000; or both a minimum annual gross income of at least \$70,000 and a minimum net worth of at least \$70,000.
62. Starting with the August 24, 2009 prospectus, all Inland Diversified prospectuses further provided, “[i]n addition to meeting the applicable minimum suitability

⁵ Four of the thirty-four investors were not Massachusetts residents at the time of the investments, but later became Massachusetts residents.

standards . . . **your investment may not exceed ten percent (10%) of your liquid net worth.**” (Emphasis added).

63. The Enforcement Section subpoenaed documents and interrogatory responses detailing all sales of the investment product Inland Diversified to all Massachusetts residents, including sales from January 1, 2005 to January 3, 2013.
64. Lincoln identified five (5) Massachusetts-related transactions involving Inland Diversified from May 17, 2012 to August 23, 2012.
65. In total, Massachusetts investors invested approximately \$232,000.00 in Inland Diversified.

E. Lincoln’s Approval of Massachusetts Resident Transactions

66. Pursuant to the Enforcement Section’s investigation, Lincoln identified 71 Massachusetts-related transactions in four (4) non-traded REIT products with a total of \$3,015,428.00 invested.

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

67. Lincoln Representatives sold non-traded REITs in excess of Massachusetts maximum concentration limits imposed by non-traded REIT prospectuses in eight (8) Massachusetts-related transactions.⁶
68. Lincoln Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in six (6) Inland American Massachusetts-related transactions.

⁶ Out of the 8 transactions, in one transaction Lincoln failed to obtain liquid net worth data necessary to determine an investor’s conformity with the Massachusetts heightened prospectus requirements.

69. The six (6) identified Inland American Massachusetts-related transactions, which violated heightened prospectus requirements, totaled \$471,940.00.
70. Lincoln Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in two (2) Inland Diversified Massachusetts-related transactions.
71. The two (2) identified Inland Diversified Massachusetts-related transactions, which violated heightened prospectus requirements, totaled \$32,000.00.
72. In summation, Lincoln Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in six (6) Inland American Massachusetts-related transactions for a total of \$471,940.00 and two (2) Inland Diversified Massachusetts-related transactions for a total of \$32,000.00.

VI. VIOLATIONS OF SECURITIES LAWS

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

73. Section 204(a)(2)(G) of the Act provides in pertinent part:
 - (a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:—
.....
(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business[.]
74. 950 CODE MASS. REGS. §12.204 (1)(a)(28) provides in pertinent part:
 - (1) Dishonest and unethical practices in the securities business.
 - (a) Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of

trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:

....

28. Failure to comply with any applicable provision of FINRA member conduct rules or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

75. The applicable FINRA rules provide in pertinent part:

2010. Standards of Commercial Honor and Principles of Trade

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

76. The conduct of Lincoln, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

b. Count II - Violations of § 204(a)(2)(J) by Lincoln

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

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

....

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

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

VII. ORDER

Lincoln consents to the entry of this Order,

IT IS HEREBY ORDERED:

Respondent in full settlement of these matters admits to the Statements of Facts as set forth in Section V, and neither admits nor denies the Violations of Law set out in Section VI herein, makes the following representations, and agrees to the undertakings herein as part of the Order:

- A. Respondent agrees to permanently cease and desist from conduct in violation of the Act and Regulations in the Commonwealth;
- B. Respondent agrees to be censured by the Division;
- C. Respondent agrees to offer restitution⁷ to all Lincoln customers who were Massachusetts residents at the time they purchased a non-traded REIT in their Lincoln account (regardless of whether the shares of the non-traded REIT are presently held in a Lincoln account or the individual or entity no longer resides in Massachusetts) between January 1, 2005 and the present (as identified on Appendix 1⁸ hereto) in violation of any of the following:
 - a. Those transactions made in violation of the Massachusetts maximum ten percent (10%) concentration limitation imposed by certain non-traded REIT prospectuses, including all transactions which singularly exceed the ten percent

⁷ Restitution as used in this Offer means the offer by Respondent to purchase from customers, as further defined herein, their presently held non-traded REIT shares at the purchase price as reflected in the corresponding non-traded REIT offering document, less the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts residents previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, Respondent shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

⁸ Appendix 1 shall include all Inland Product transactions identified within Section VII, Subsection C, subparts (a)-(c).

- (10%) concentration limitation, and all transactions which, when combined with other purchases by the same investor in the same non-traded REIT, exceed the ten percent (10%) concentration limitation;
- b. Those transactions made in violation of non-traded REIT prospectus prescribed net worth and annual income suitability standards; or
 - c. Those transactions made in violation of Respondent's Compliance Manual and Written Supervisory Procedures prescribed alternative investment suitability requirements.
- D. Respondent agrees that the offer of restitution shall be sent to Massachusetts investors identified in Section VII, subsection C, in a letter ("Offer Letter One") sent to the address of record for such investors, a draft of which shall be provided to the Division within thirty (30) days of entry of the Order, and a finalized version not unacceptable to the Division, which shall be mailed to Massachusetts investors identified in Section VII, subsection C within fifteen (15) days of the Division's approval of such letter. Offer Letter One will remain open for ninety (90) days. Within forty-five (45) days of entry of the Order, Respondent shall provide the Division with a list of the names and addresses of all Massachusetts residents listed on Appendix 1. Within thirty (30) days of the mailing of Offer Letter One, Respondent shall provide the Division with a list of all Massachusetts residents for whom Respondent receives an offer as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different mailing address information for Undeliverable Massachusetts Residents, Respondent agrees to mail a second Offer Letter One to Massachusetts residents within 30 days of the Division providing such different address.

Massachusetts residents who choose to accept the offer of restitution shall be required to sign a release in a form not unacceptable to the Division, agreeing to waive any further claims against Respondent or its agents relating to any violation identified in Section VII, subsection C, subpart a through c, giving rise to the offer of restitution, and agreeing to offset any additional claims relating to identified transactions by the amount received by this offer of settlement. In addition, eligible customers who choose to accept the offer of restitution must agree to tender their existing shares in the non-traded REIT giving rise to the offer of restitution to Respondent or its designee, as a precondition to receipt of the payment of restitution by Respondent.⁹ Any payment of restitution shall be in the form of a check unless requested otherwise by the Massachusetts resident. Respondent shall be permitted to reduce its offer of restitution to each client listed on Appendix 1 by the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts resident listed on Appendix 1 previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, Respondent shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

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

i. Identification of all accepted and verified offers;

⁹ As pertaining to any investor who may have a physical certificate(s) of the identified non-traded REITs, Respondent will provide these Massachusetts residents additional time to locate all physical certificate(s) not unacceptable to the Division.

- ii. Dates, amounts, and methods of the transfer of funds for all payments of restitution;
- iii. Identification and detailed descriptions of any objections received by Respondent.

F. Respondent further agrees to undertake the identification of all Lincoln customers who were Massachusetts residents at the time they purchased a non-traded REIT in their Lincoln account (regardless of whether the shares of the non-traded REIT are presently held in a Lincoln account or the individual or entity no longer resides in Massachusetts) between January 1, 2005 and the present. This identification process will be completed within ninety (90) days of the entry of the Order. Respondent agrees to offer restitution to those further Lincoln clients identified on Appendix 2¹⁰ as a result of the above-referenced identification process, if the identified transaction(s) was made in violation of any of the following:

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

¹⁰ Appendix 2 shall include all non-Inland Product transactions identified within Section VII, Subsection F, subparts (a) – (c).

- c. Those transactions made in violation of Respondent's Compliance Manual and Written Supervisory Procedures prescribed alternative investment suitability requirements.
- G. Respondent agrees that the offer of restitution shall be sent to Massachusetts investors identified in Section VII, subsection F, in a letter ("Offer Letter Two") sent to the address of record for such investors, a draft of which shall be provided to the Division within thirty (30) days of the completion of the above referenced identification process, and a finalized version not unacceptable to the Division, which shall be mailed to Massachusetts investors identified in Section VII, subsection F within fifteen (15) days of the Division's approval of such letter. Offer Letter Two will remain open for ninety (90) days. Within ninety (90) days of entry of the Order, Respondent shall provide the Division with a list of the names and addresses of all Massachusetts residents listed on Appendix 2. Within thirty (30) days of the mailing of Offer Letter Two, Respondent shall provide the Division with a list of all Massachusetts residents for whom Respondent receives an offer as returned to sender ("Undeliverable Massachusetts Residents"). To the extent the Division has access to different mailing address information for Undeliverable Massachusetts residents, Respondent agrees to mail a second Offer Letter Two to Massachusetts residents within thirty (30) days of the Division providing such different address. Massachusetts residents who choose to accept the offer of restitution shall be required to sign a release in a form not unacceptable to the Division, agreeing to waive any further claims against Respondent or its agents relating to any violation identified in Section VII, subsection F, subpart a through c, giving rise to the offer of restitution,

and agreeing to offset any additional claims relating to identified transactions by the amount received by this offer of settlement. In addition, eligible customers who choose to accept the offer of restitution must agree to tender their existing shares in the non-traded REIT giving rise to the offer of restitution to Respondent or its designee, as a precondition to receipt of the payment of restitution by Respondent.¹¹ Any payment of restitution shall be in the form of a check unless requested otherwise by the Massachusetts resident. Respondent shall be permitted to reduce its offer of restitution to each client listed on Appendix 1 by the number of previously redeemed shares (if any) by the REIT company at issue. In all instances where any Massachusetts resident identified in the above referenced identification process previously redeemed shares at a discount or incurred any fees or charges directly related to the previous redemption of shares, Respondent shall compensate the Massachusetts resident for any difference in redemption price and for said fees and charges.

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

- i. Identification of all accepted and verified offers;
- ii. Dates, amounts, and methods of the transfer of funds for all payments of restitution;
- iii. Identification and detailed descriptions of any objections received by Respondent.

¹¹ As pertaining to any investor who may have physical certificates of the identified non-traded REITs, Respondent will provide these Massachusetts residents additional time to locate all physical certificate(s) not unacceptable to the Division.

- I. Respondent agrees to pay an administrative fine within twenty (20) calendar days following the date the Order executed pursuant to this Offer is entered into the docket in the amount of \$100,000.00 (USD). Payment shall be: (1) made by United States postal money order, certified check, bank cashier's check, bank money order, or wire; (2) made payable to the Commonwealth of Massachusetts; (3) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, Massachusetts 02108, or wired per Division instructions; and (4) submitted under cover letter or other documentation that identifies payment by Respondent and the docket number of the proceeding;
- J. To the extent the following actions have not already been completed, the President of Respondent shall certify in writing to the Division within sixty (60) days of the date of entry of this Order the following in a written report to the Division ("Report"):
 - a. That Respondent has conducted a comprehensive review of (1) Respondent's policies and procedures for the sale of all alternative investments to Massachusetts residents, including, but not limited to all non-traded REITs and (2) Respondent's policies and procedures for review and approval for the sale of all complex products to Massachusetts residents, including, but not limited to all non-traded REITs;
 - b. At a minimum, Respondent shall enhance its policies and procedures applicable to Massachusetts residents to:
 - (1) Develop and implement mandatory complex products training, including, but not limited to non-traded REITs, for all registered representatives before the registered representatives may sell non-

traded REITs and for registered principals before the registered principals may approve the sale of non-traded REITs;

(2) Enhance its existing supervisory structure for the review and approval for the sale of all complex products. The supervisory structure shall include designated supervisory staff with appropriate expertise and training for the review and approval of the sale of complex products;

(3) Develop enhancements to Respondent's surveillance of the purchase of complex products, including, but not limited to, non-traded REITs, and;

(4) Alter Respondent's Alternative Investment Form to include a plain language statement providing a reminder that prospectuses may contain different suitability requirements and methodologies for calculating liquid net worth and net worth and that in all instances, prospectus limitations and directives supersede Respondent's guidelines and methodologies. In addition, Respondent shall change the Alternative Investment Forms to include a line item reflecting the client's liquid net worth calculated in accordance with prospectus methodology.

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

d. That Respondent has adopted all required remediation as set forth in paragraph J(b) above, as well as such other and further recommendations for changes in practices, policies, and procedures; provided, however, that in the case of any recommendations not yet adopted, an undertaking as to when such recommendations will be made effective.

K. One year after the termination of the process set forth above in Section VII, subsection J(a-d), Respondent shall undergo, at its own expense, a review by its Internal Audit Department to confirm the implementation of the recommendations set forth in the Report and to assess the efficacy of such changes to Respondent's practices, policies, and procedures. At the conclusion of this review, which in no case shall take more than sixty (60) days, Respondent's Internal Audit Department shall issue a report of its findings and recommendations concerning Respondent's adherence to and the efficacy of the Report's recommendations. The report shall be promptly delivered to the Division within ten (10) days of its completion. No later than thirty (30) days after receipt of the report, Respondent shall provide a detailed, written response to any and all findings and recommendations in the Internal Audit Department report to the Division, including, but not limited to, the reason(s) for any deficiencies identified, and a process and procedure to address said deficiencies, recommendations, or other issues identified in the report.

i. Respondent shall retain copies of any and all report(s) as set forth in paragraphs J(a-d) and K above in an easily accessible place for a period of five (5) years from the date of the reports.

- L. At the request of the Respondent, the Division's staff may extend, for good cause shown, any of the procedural dates set forth above;
- M. Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, any payments made pursuant to any insurance policy, with regard to all amounts that Respondent shall pay pursuant to the Division's Order;
- N. Respondent and its designee agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Respondent shall pay pursuant to the Division's Order, unless otherwise required by law;
- O. Respondent agrees that, upon issuance of an Order by the Division consistent with this Offer, if Respondent fails to comply with any of the terms set forth in the Division's Order, the Enforcement Section may take appropriate action pursuant to Sections 204, 407A and 408 of the Act. Additionally, Respondent agrees that, after a fair hearing and the issuance of an appropriate order finding that Respondent has not complied with the Order, the Enforcement Section may move to have the Order declared null and void, in whole or in part, and re-institute the administrative proceeding and associated investigation that had been brought against Respondent.

X. NO DISQUALIFICATION

The Order hereby waives any disqualification under the laws of the Commonwealth and all rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that Respondent or its affiliates maybe subject to. The Order is not intended to subject Respondent to disqualification under federal

securities laws, rules or regulations thereunder, or the rules and regulations of any self-regulatory agency, nor the laws, rules or regulations of the various states and U.S. Territories, including, without limitation, any disqualification from relying upon the registration exemptions or safe harbor provisions. In addition, the Order is not intended to form the basis for any such disqualifications.

**WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH**

By: 

Bryan J. Lantagne

Director

Massachusetts Securities Division

One Ashburton Place, Room 1701

Boston, MA 02108

May 22, 2013

Director
Massachusetts Securities
Division One Ashburton Place,
Room 1701 Boston, MA 02108