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

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

I. PRELIMINARY STATEMENT

The Enforcement Section ("Enforcement Section") of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth ("Division") files this administrative complaint ("Complaint") in order to commence an adjudicatory proceeding against LPL Financial, LLC for violating MASS. GEN. LAWS ch. 110A, the Massachusetts Uniform Securities Act (the "Act"), and 950 CODE MASS. REGS. 10.00 *et seq.* (the "Regulations").

The Enforcement Section seeks an order (a) requiring LPL Financial, LLC to permanently cease and desist from committing any further violations of the Act and Regulations, (b) censuring LPL Financial, LLC, (c) requiring LPL Financial, LLC to make full restitution to Massachusetts investors who were sold non-traded REITs in violation of Massachusetts and prospectus requirements, (d) requiring LPL Financial, LLC to pay an administrative fine in an amount and upon such terms and conditions as a Hearing Officer may determine, and (e) taking any other appropriate actions against LPL Financial, LLC, which may be in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY

In response to the Division's public service announcement, the Enforcement Section received complaints from multiple Massachusetts investors, who invested in non-traded real estate investment trusts ("non-traded REITs"). A majority of these complaints were from retail investors who purchased non-traded REITs through their LPL Financial, LLC ("LPL") Registered Representatives and Investment Advisor Representatives ("LPL Representatives"). The Enforcement Section's subsequent investigation revealed numerous regulatory violations in connection with the sale of non-traded REITs. These violations include (1) sales made in violation of specific Massachusetts requirements, (2) sales made in violation of prospectus requirements and (3) sales made in violation of LPL compliance practices. While LPL received high commissions starting at 6%, LPL Representatives sold over four million dollars of non-traded REITs in violation of prospectus and Massachusetts requirements.

REITs are companies, which own and manage income-producing property (e.g. hotels, hospitals, & office buildings) or are involved in real estate financing. REITs are either publically traded, non-exchange traded, or privately traded. REITs provide investors with real estate exposure, but unlike other real estate investments, REITs are often entirely illiquid. REIT companies must distribute at least 90% of taxable income; however, in instances where income does not meet distribution demand, REITs often resort to paying distributions out of borrowed money. REIT offerings accounted for upwards of $500 billion in 2012. In light of these benefits, REITs have become a widely used and widely misunderstood investment vehicle.

Certain types of REITs hold additional risks for investors. Specifically, non-traded REITs are especially risky through limited redemption programs, high fees and commissions, and internal conflicts of interest. Unlike publically traded REITs, listed on national stock exchanges, market priced, and freely traded, non-traded REITs often have limited redemption programs and minimum reporting requirements. Until recently, non-traded REITs were valued only sporadically—often maintaining an artificially high dividend rate. Furthermore, non-traded REITs have high sales commissions and offering fees that typically range from 15-18%. At their core, Non-Traded REIT products operate through an immensely complex affiliated and subsidiary structure rife with conflict. Although Non-Traded REITs may diversify a portfolio and provide dividend income if utilized by a properly trained agent, comprehensive supervision and training by brokers is required.

The Enforcement Section commenced its investigation by focusing on LPL's compliance practices and LPL Representatives' sale of Inland American Real Estate Trust, Inc. ("Inland American") a non-traded REIT approved for sale on LPL's platform. The Enforcement Section's investigation revealed significant and widespread problems with LPL's adherence with product prospectus and Massachusetts requirements. Through LPL Representative testimony, the Enforcement Section uncovered similar issues with other non-traded REITs. In many ways, the Division's investigation unearthed a boat with many holes.

On paper, LPL set forth stringent requirements for the sale of non-traded REITs, especially through LPL's Compliance Manuals and Written Supervisory Procedures. In practice, LPL failed to review properly sales of non-traded REITs. While purporting to conduct a thorough review of offering documents, LPL overlooked prospectus requirements in numerous sales of non-traded REITs. In particular, LPL compliance documents state,

"LPL Financial cannot make exceptions to prospectus suitability requirements or the regulatory imposed limit of 10% of net worth in public managed futures." Despite this mandate, LPL Representatives frequently made transactions in violation of product prospectus and Massachusetts requirements.

Among the seven (7) non-traded REIT products reviewed by the Enforcement Section, five (5) non-traded REITs contained specific Massachusetts requirements. In particular, many non-traded REIT prospectuses contain a ten percent (10%) concentration limitation, designed to cap an individual investors' purchase to ten percent (10%) of liquid net worth or net worth. Although often calculated slightly differently, the purpose is to limit an investors' exposure to the high fees, potential illiquidity, and risky nature of non-traded REIT products. In addition, each non-traded REIT prospectus contained liquid net worth, net worth, and annual income limitations. Certain non-traded REITs contained even higher liquid net worth, net worth, and annual income requirements for Massachusetts residents. As with the concentration requirements, these requirements aim to protect against the very issues Massachusetts investors now face.

LPL's lack of adequate training and supervision only exacerbated problems resulting from LPL's oversight of non-traded REIT prospectus and Massachusetts state requirements. Both LPL employees responsible for the review and approval of non-traded REIT transactions and LPL Representatives facilitating sales were under-educated and under-supervised with respect to non-traded REIT transactions. LPL's supervision employees had only a cursory understanding of specific state requirements, including Massachusetts concentration requirements. For at least two years, one supervision employee at LPL was completely unaware of Massachusetts requirements concerning the sale of non-traded REITs.

LPL Representatives received limited training and supervision as well. One LPL Representative resorted to flying to non-traded REIT issuer headquarters—paying out of his own pocket—to learn about non-traded REIT products. Others relied solely on publically available and non-vetted internet sources. Still others were courted directly by non-traded REIT wholesalers. Even if properly trained, OSJ offices often located outside of the LPL Representatives office reviewed all non-OSJ transactions. All non-traded REIT transactions made by LPL Representatives designated as an OSJ, were reviewed by LPL designated principals, who, as discussed above, were also poorly trained regarding non-traded REIT products.

In total, the Enforcement Section reviewed five-hundred ninety seven (597) Massachusetts resident transactions in seven (7) non-traded REIT products with over twenty-eight million dollars ($28,000,000) invested. From 2006 through 2009, LPL received a gross commission of at least 1.8 million dollars on non-traded REIT sales. Out of the five-hundred ninety-seven (597) transactions the Enforcement Section reviewed, the Enforcement Section uncovered five-hundred sixty-nine (569) non-traded REIT transactions made in violation of prospectus requirements. Out of the five-hundred ninety-seven (597) transactions the Enforcement Section reviewed, the Enforcement Section uncovered at least seventy-seven (77) non-traded REIT transactions made solely in violation of Massachusetts concentration requirements. In total, at least ninety-five percent (95%) of all non-traded REIT transactions reviewed contained violations of prospectus and Massachusetts requirements. Based on its investigation the Enforcement Section believes issues relating to LPL's non-traded REIT sales extend beyond the scope of this administrative complaint to all non-traded REITs sold by LPL Representatives to Massachusetts residents.

III. JURISDICTION AND AUTHORITY

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

2. The Division brings 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. This proceeding is 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.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD

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

V. RESPONDENTS

6. LPL Financial, LLC ("LPL") is an entity currently registered as a broker-dealer firm in Massachusetts. LPL is also an investment adviser registered with the Securities and Exchange Commission and notice filed in Massachusetts. LPL is currently assigned Central Registration Depository ("CRD") number 6413. LPL's principal place of business is located at 9785 Towne Centre Drive, San Diego, California 92121.

VI. ALLEGATIONS OF FACT

A. Introduction

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

8. After receiving both oral and written complaints, the Enforcement Section subpoenaed documents, answers to interrogatories, and testimony from LPL Representatives and a senior member of LPL's supervision staff.

9. Pursuant to the Enforcement Section's investigation, the Enforcement Section reviewed a portion of LPL's non-traded REIT sales, capturing 597 Massachusetts resident transactions over a three-year period with a total of $28,301,582.77 invested by Massachusetts residents.

10. The Enforcement Section focused on seven non-traded REIT products approved for sale by LPL including, Inland American, Cole Credit Property Trust II, Inc. ("Cole Credit II"), Cole Credit Property Trust III, Inc. ("Cole Credit III"), Cole Credit Property 1031 Exchange ("Cole 1031"), Wells Real Estate Investment Trust II, Inc.

("Wells II"), W.P. Carey Corporate Property Associates 17 ("CPA 17"), and Dividend Capital Total Realty ("Dividend Capital").

11. Upon information and belief, from 2006 through 2009, LPL received a gross commission starting at six percent (6%) and received at least $1.8 million from the sale of non-traded REITs by LPL Representatives to Massachusetts residents.

12. In at least 569 transactions LPL Representatives sold non-traded REITs in violation of prospectus proscribed liquid net worth and net calculations—95% of all transactions.

13. In at least 77 transactions, LPL Representatives sold non-traded REITs in violation of Massachusetts heightened concentration requirements—for a total of $4,705,678.70.

14. On at least four occasions LPL sold non-traded REITs in excess of Massachusetts heightened prospectus net worth, annual income and liquid net worth requirements (two in Inland American & two in Cole Credit II) for a total of at least $36,000.

15. On at least two occasions LPL Representatives sold non-traded REIT products in excess of the age and percentage guidelines set forth in LPL's compliance manual.

16. In total LPL sold non-traded REIT products in violation of prospectus and LPL requirements in at least 569 transactions resulting in $26,691,082 of improper sales.

B. Real Estate Investment Trusts Are Complex Illiquid Investment Products

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

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

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

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

21. Non-traded REITs make only limited disclosures to the United States Securities and Exchange Commission.

22. According to Morningstar Inc., non-traded REITs include initial investment fees as high as eighteen percent (18%).

23. Upon information and belief, Broker-Dealers such as LPL receive higher commissions on non-traded REIT products than other more conventional products, including equities and many mutual funds.

24. According to Forbes.com, an internet service owned and operated by Forbes Media LLC, as of April 2012, there were 35 companies managing 69 non-traded REIT products, with an approximate market capitalization of $84,000,000,000.

C. Initial Investor Complaints to the Division

25. The Division began receiving complaints regarding LPL's sale of non-traded REITs in the fall of 2011.

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

27. Upon information and belief, LPL's Representative described non-traded REIT products as providing stable principal preservation and income generation.

28. Upon information and belief, LPL's Representative downplayed the illiquidity of non-traded REIT products.

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

30. Upon information and belief, LPL's Representative failed to provide a thorough and complete presentation of the risks involved with non-traded REITs.

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

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

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

34. Upon information and belief, both investors are unable to exit their non-traded REIT positions without selling at a tremendous discount.

D. LPL Financial, LLC Has Maintained an Extensive Non-Traded REIT Platform

35. Pursuant to initial Massachusetts investor complaints, the Enforcement Section subpoenaed documents specific to LPL's compliance structure and Inland American, beginning on May 14, 2012.

36. On July 10, 2012, in response to a subpoena issued by the Enforcement Section, LPL produced a document titled **LPL's Alternative Investment Due-Diligence Process**,

outlining LPL's process for initially approving alternative investments for sale by LPL Representatives—including non-traded REITs.

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

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

39. Upon information and belief, LPL approved all non-traded REITs through the same process described in **LPL's Alternative Investment Due-Diligence Process** document.

E. LPL Claimed to Follow Specific Compliance Requirements for the Sale of Non-Traded REITs

a. The LPL Compliance Manual and LPL Written Supervisory Procedures

40. LPL maintained a compliance manual entitled "Operating Independently" from 2006 through 2008 and a compliance manual entitled "Advisor Compliance Manual" (collectively the "Compliance Manuals") starting in 2009.

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

42. LPL's Compliance Manuals identify non-traded REITs as alternative investments.

43. In 2006, 2007, 2008, and 2009 LPL maintained policies in its Compliance Manuals specific to alternative investments including sales of non-traded REITs.

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

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

(Emphasis added).

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

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

47. In 2009, LPL reformatted its compliance manual, developing additional guidelines for the sale of alternative investments based on age and investment objective.

48. Similar to the 2006, 2007, 2008 manuals, LPL's 2009 Advisor Compliance Manual maintained the following: "**Note: Prospectus requirements supercede these guidelines where applicable.**" (Emphasis added).

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

50. As with the Compliance Manuals, the WSP provides, "**Please note: LPL Financial cannot make exceptions to prospectus suitability requirements or the regulatory**

imposed limit of 10% of net worth in public managed futures." (Emphasis in original).

b. LPL's AI-1 Form

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

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

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

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

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

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

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

57. LPL produced a statement on July 10, 2012, in response to a subpoena indicating that LPL approved Inland American in August 2005.

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

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

60. Inland Agreement Two included the following restriction:

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

(Emphasis added).

61. LPL received a gross commission of seven percent (7%) on all Inland American transactions effectuated by LPL Representatives.

62. On August 2, 2012, LPL produced a September 28, 2005 Due Diligence Report (September 28, 2005 Report") prepared by Snyder Kearney, LLC regarding Inland American.

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

64. On August 2, 2012, LPL also produced an August 7, 2007 Due Diligence Report ("August 7, 2008 Report") prepared by Snyder Kearney, LLC regarding a second offering made by Inland American.

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

66. Inland American prospectuses contained detailed heightened Massachusetts specific suitability standards.

67. 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.

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

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

70. 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**, 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 total assets." (Emphasis added).

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

72. In response to the Enforcement Section's subpoena, LPL produced a partial response identifying 317 Massachusetts resident transactions involving Inland American from January 1, 2006 to May 14, 2012.

73. LPL provided supplemental production identifying 101 additional Massachusetts resident transactions involving Inland American from January 1, 2006 to May 14, 2012.

74. In total, Massachusetts investors invested at least $20,134,677.20 in Inland American.

75. Upon information and belief, LPL received a gross commission of at least $1,403,477.40 from sale of Inland American.

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

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

77. Pursuant to testimony given by two LPL Representatives, LPL Registered Representatives identified six additional REITs also offered for sale to Massachusetts investors.

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

79. On November 2, 2012, LPL produced a response identifying 179 Massachusetts resident transactions involving Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital from March 1, 2006 to May 31, 2009.

80. Massachusetts investors invested at least $8,091,905.57 in Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital products.

81. Upon information and belief, LPL received a gross commission of at least $485,514.33 from the sale of Wells Real Estate Funds, Cole Capital Advisors, W.P. Carey, and Dividend Capital from March 1, 2006 to May 31, 2009.

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

a. Wells II

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

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

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

86. Starting on October 1, 2008, Wells II increased the heightened Massachusetts specific suitability standards to include a requirement that **Massachusetts investors have a liquid net worth of at least 10 times their investment** in addition to a net worth of

at least $250,000; or gross annual income of at least $70,000 and a net worth of at least $70,000. (Emphasis added).

87. LPL identified 42 Massachusetts resident transactions totaling $1,626,654.47 in Wells II from March 1, 2006 to May 31, 2009.

b. Cole Credit

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

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

90. Under the heading "**SUITABILITY STANDARDS**" the 2007 and 2008 Cole Credit II prospectuses provided, "[i]nvestors must have either (a) a minimum net worth of at least $250,000 or (b) an annual gross income of at least $70,000 and a net worth of at least $70,000."

91. The 2007 and 2008 Cole Credit II prospectuses further provided, "[t]he investor's maximum investment in the issuer and its affiliates **cannot exceed 10% of the Massachusetts . . . resident's net worth.**" (Emphasis added).

92. LPL identified 90 Massachusetts resident transactions totaling $3,815,451.10 in Cole Credit II from March 1, 2006 to May 31, 2009.

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

94. Under the heading "**SUITABILITY STANDARDS**" the 2008 and 2009 Cole Credit III prospectuses provided, "[t]hese suitability standards require that a purchaser of shares have, excluding the value of a purchaser's home, furnishings and automobiles,

either: a net worth of at least $250,000; or a gross annual income of at least $70,000 and a net worth of at least $70,000."

95. LPL identified 15 Massachusetts resident transactions totaling $643,500.00 in Cole Credit III from March 1, 2006 to May 31, 2009.

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

c. W.P. Carey Corporate Property Associates 17

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

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

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

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

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

d. Dividend Capital Total Realty

102. From March 1, 2006 to May 31, 2009 Dividend Capital prospectuses contained detailed suitability standards.

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

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

105. Under the heading "**SUITABILITY STANDARDS**" the 2008 and 2009 Dividend Capital prospectuses provided, "a purchaser of shares of our common stock have either: a net worth (excluding the value of an investor's home, furnishings and automobiles) of at least $250,000 or a gross annual income of at least $70,000 and a net worth (excluding the value of an investor's home, furnishings and automobiles) of at least $70,000."

106. The 2006, 2007, 2008, and 2009 Dividend Capital prospectuses further provided, "**investors must have a net worth of at least 10 times their investment** in us and any of our affiliates." (Emphasis added).

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

H. LPL's Approval of Massachusetts Resident Transactions Contain Multiple Systemic Issues in Violation of Regulatory Requirements

108. Pursuant to the Enforcement Section's investigation, LPL identified 597 Massachusetts resident transactions in seven non-traded REIT products with a total of $28,301,582.77 invested.

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

109. LPL Representatives sold non-traded REITs in excess of Massachusetts maximum concentration limits imposed by non-traded REIT prospectuses in at least 77 Massachusetts resident transactions.[1]

110. Out of the 77 identified Massachusetts resident transactions sold by LPL Representatives in violation of Massachusetts concentration limits, 44 Massachusetts resident transactions singularly exceeded Massachusetts concentration limits.

111. Out of the 77 Massachusetts resident transactions identified in violation of Massachusetts concentration limits, 33 Massachusetts resident transactions, when combined with other purchases by the same investor in the same non-traded REIT, exceeded Massachusetts concentration limits.

112. LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in at least 71 Inland American Massachusetts resident transactions.

113. The 71 identified Inland American Massachusetts resident transactions, which violated heightened prospectus requirements, totaled at least $4,173,678.70.

114. LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in at least four Cole Credit II Massachusetts resident transactions.

[1] For a discussion of REIT specific suitability guidelines see paragraphs 56 through 107.

115. The four identified Cole Credit II Massachusetts resident transactions violated specific prospectus requirements for a total of at least $312,000.

116. LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in at least two Wells II Massachusetts resident transactions.

117. The two identified Wells II Massachusetts resident transactions violated specific prospectus requirements for a total of at least $220,000 invested.

118. In summation, LPL Representatives sold non-traded REITs in excess of Massachusetts heightened concentration limits in 71 Inland American Massachusetts resident transactions for a total of at $4,173,678.70; four Cole Credit II Massachusetts resident transactions for a total of $389,000; and two Wells II Massachusetts resident transactions for a total of $220,000 invested.

b. LPL Representatives Sold Non-Traded REITs Through an Erroneous Liquid Net Worth Calculation

119. For each sale of Inland American, LPL mandated use of LPL's AI-1 Form.

120. LPL's AI-1 Form provides a liquid net worth calculation inapposite to the liquid net worth calculation provided in the Inland American prospectuses.

121. By failing to subtract liabilities in calculating concentration limits on LPL's AI-1 Form, LPL Representatives sold non-traded REITs in violation of prospectus liquid net worth calculation guidelines in at least 418 Inland American Massachusetts resident transactions.

122. For each sale of Cole Credit II, LPL mandated use of LPL's AI-1 Form.

123. LPL's AI-1 Form provides a liquid net worth calculation inapposite to the Massachusetts net worth calculation provided in the Cole II prospectuses.

124. LPL Representatives sold at least 90 Cole Credit II Massachusetts resident transactions in violation of Cole Credit II prospectus requirements.

125. For each sale of CPA 17, LPL mandated use of LPL's AI-1 Form.

126. LPL's AI-1 Form provides a liquid net worth calculation inapposite to the Massachusetts net worth calculation provided in the CPA 17 prospectuses.

127. LPL Representatives sold at least seven CPA 17 Massachusetts resident transactions in violation of CPA 17 prospectus requirements.

128. For each sale of Dividend Capital, LPL mandated use of LPL's AI-1 Form.

129. LPL's AI-1 Form provides a liquid net worth calculation inapposite to the Massachusetts net worth calculation provided in the Dividend Capital prospectuses.

130. LPL Representatives sold at least 23 Dividend Capital Massachusetts resident transactions in violation of Dividend Capital prospectus requirements.

131. For each sale of Wells II, LPL mandated use of LPL's AI-1 Form.

132. LPL's AI-1 Form provides a liquid net worth calculation inapposite to the Massachusetts liquid net worth calculation provided in the Wells II prospectuses.

133. LPL Representatives sold at least 31 Wells II Massachusetts resident transactions in violation of Wells II prospectus requirements.

134. In total LPL Representatives sold 569 Massachusetts resident transactions in violation of prospectus-proscribed liquid net worth and net worth calculations.

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

135. LPL Representatives additionally sold non-traded REITs in excess of Massachusetts heightened prospectus net worth, annual income and liquid net worth requirements in

at least four Massachusetts resident transactions (two in Inland American & two in Cole Credit II) totaling at least $36,000.

136. On at least two occasions LPL Representatives sold non-traded REIT products in excess of the age and percentage guidelines set forth in LPL's compliance manual.[2]

I. LPL's Training and Oversight Concerning Non-Traded REIT Sales Only Exacerbated Regulatory Violations Concerning Product Prospectus and Massachusetts Requirements

137. According to LPL's 2009 WSPs "[a]ll alternative investment purchases by customers must receive prior review by, and approval of, LPL Financial Alternative Investment Department."

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

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

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

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

[2] For a discussion of LPL age and percentage guidelines by year, see paragraphs 40 through 50.

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

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

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

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

> **Q.** [Designated Principal], if we could flip to . . . [the] . . . note in bold. 'LPL cannot make exceptions to prospectus suitability requirements or the regulatory proposed limit of 10 percent net worth in public managed futures.' Was this something that you were also looking at when you were reviewing the paperwork?
>
> **A.** Let's see. I don't believe that was a restriction that we would look at.

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

147. In July of 2012, LPL changed its policies and procedures creating a separate complex products team to review all alternative investments.

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

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

149. Aside from experience in "risk management," LPL only required a passing mark on the Series 24 securities examination for a designated principal designation.

150. LPL allowed individuals to approve transactions without specific product or issuer training.

151. A senior member of LPL's supervision staff, responsible for the review of numerous non-traded REIT purchases testified in relevant part:

> **Q.** Have you had any training in regards to non-traded or non-listed real estate investment trusts...?
>
> **A.** You know, we've had PowerPoint presentations on REITs. Management has gone over certain training aspects of it, so that's probably the extent of our training.

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

> **Q.** Did you receive any specified training as to specific REITs?
>
> **A.** No. Specific REITs?
>
> **Q.** Yes.
>
> **A.** No, just REITs in general.

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

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

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

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

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

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

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

> **Q.** Did you receive any training at all in addition to receiving the compliance manual that you discussed earlier?
>
> **A.** I just Googled non traded REITs and started reading articles, and becoming more familiar with what they were all about, and just gathering information.

158. Furthermore, when LPL Representatives were not responsible for reviewing their own non-traded REIT sales as an OSJ, branch offices often located elsewhere reviewed non-traded REIT sales.

159. Even with a supervisory framework in place, LPL infrequently audited LPL Representatives, based on a predetermined appointment, and at most for only a day.

160. One LPL Representative, with LPL since 2003, testified to having only four direct branch audits.

161. The same LPL Representative testified that LPL did not inform the LPL Representative of a compliant regarding the LPL Representatives' sale of non-traded REIT product until over a year after the complaint.

VII. VIOLATIONS OF SECURITIES LAWS

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

162. 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[.]

163. 950 CODE MASS. REGS. §12.204(1)(a) 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[.]

164. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

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

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

166. 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[.]

167. 950 CODE MASS. REGS. §12.204 (1)(a)(28) provides in pertinent part:

> (1) Dishonest and unethical practices in the securities business.
> (a) Broker-Dealers. Each broker-dealer shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Acts and practices, including, but not limited to the following, are considered contrary to such standards and constitute dishonest or unethical practices which are grounds for imposition of an administrative fine, censure, denial, suspension or revocation of a registration, or such other appropriate action:
>
> . . . .
>
> 28. Failure to comply with any applicable provision of the NASD rules of Fair Practice.

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

> **2010. Standards of Commercial Honor and Principles of Trade**
>
> A member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

169. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

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

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

171. 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[.]

172. 950 CODE MASS. REGS. §12.205(9)(a)(c) states in pertinent part:

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

173. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

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

d. Count IV – Violations of § 204(a)(2)(B) by LPL

175. Section 204(a)(2)(B) 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:–
>
> . . . .
>
> (B) has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor chapter or any rule or order under this chapter or a predecessor chapter[.]

176. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

177. The conduct of LPL Financial, LLC, as described above, constitutes violations of Mass. Gen. Laws ch. 110A, § 204(a)(2)(B).

e. Count V - Violations of § 204(a)(2)(J) by LPL

178. 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[.]

179. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

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

VIII. STATUTORY BASIS FOR RELIEF

Violations, Cease and Desist Orders and Costs

181. Section 407A(a) of the Act provides in pertinent part that:

> (a) If the secretary determines, after notice and opportunity for a hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take affirmative action, including the imposition of an administrative fine, the issuance of an order for accounting, disgorgement or rescission or any other relief as in his judgment may be necessary to carry out the purposes of [the Act].

182. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1 through 161 above.

183. LPL directly and indirectly engaged in the acts, practices, and courses of business as set forth in this Complaint above, and it is the Division's belief that Respondents will continue to engage in acts and practices similar in subject and purpose, which constitute violations if not ordered to cease and desist.

IX. PUBLIC INTEREST

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors to provide the relief requested in Section X below.

X. RELIEF REQUESTED

Wherefore, the Enforcement Section of the Division requests that Hearing Officer take the following action:

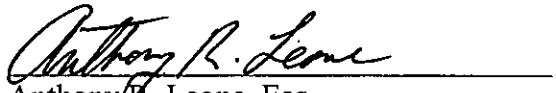
A. Find that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors;

B. Find as fact the allegations set forth in paragraphs 1 through 161 of the Complaint; and

C. Enter an order (a) requiring LPL Financial, LLC to permanently cease and desist from committing any further violations of the Act and Regulations, (b) censuring LPL Financial, LLC, (c) requiring LPL Financial, LLC to make full restitution to Massachusetts investors who were sold non-traded REITs in violation of Massachusetts state and prospectus requirements, (d) requiring LPL Financial, LLC to pay an administrative fine in an amount and upon such terms and conditions as a Hearing Officer may determine, and (e) taking any other appropriate actions against LPL Financial, LLC, which may be in the public interest and necessary for the protection of Massachusetts investors.

ENFORCEMENT SECTION
MASSACHUSETTS SECURITIES DIVISION

By and through its attorneys,



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Dated: December 12, 2012