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8 BEFORE THE DEPARTMENT OF BUSINESS OVERSIGHT
9 OF THE STATE OF CALIFORNIA

10 In the Matter of:) BD LICENSE NO.: 6413
11)
12 THE COMMISSIONER OF BUSINESS)
OVERSIGHT,) CONSENT ORDER
13)
Complainant,)
14 v.)
15)
LPL FINANCIAL LLC,)
16)
Respondent.)
17)
18)

19 A. WHEREAS, LPL Financial LLC (LPL) is a broker-dealer with a principal place of
20 business at 75 State Street, 22nd Floor, Boston, MA 02109, that is registered in the State of
21 California.

22 B. WHEREAS, a coordinated investigation into LPL’s failure to establish and maintain
23 reasonable policies and procedures to prevent the sale of unqualified, non-exempt securities by
24 LPL to its customers, including LPL’s retention, use, and subsequent cancellation of certain third-
25 party services integral to LPL’s compliance with state securities qualification requirements (a/k/a
26 Blue Sky laws); and certain other deficiencies within LPL’s compliance structure related to
27 LPL’s controls, monitoring and reporting tools, and escalation protocols in relation to LPL’s
28 response to significant compliance issues resulting from such failure during the period of

1 approximately October 1, 2006 through May 1, 2018 (Investigation) has been conducted by a
2 multistate task force, coordinated among members of the North American Securities Administrators
3 Association (NASAA), with Massachusetts and Alabama serving as the Lead States.

4 C. WHEREAS, LPL has agreed to resolve the Investigation, upon the terms specified in
5 the Settlement Term Sheet executed as of May 1, 2018 between LPL and the Lead States on behalf
6 of participating NASAA jurisdictions, with all participating states and territories identified in
7 Appendix A to the Settlement Term Sheet (each, a Jurisdiction and collectively, the Jurisdictions).

8 D. WHEREAS, LPL agrees to comply in all material respects with the undertakings
9 specified herein.

10 E. WHEREAS, LPL elects to permanently waive any right to a hearing and appeal
11 under the Corporate Securities Law of 1968 (Corporations Code section 25000 et seq.), including
12 Corporations Code section 25251, Administrative Procedure Act, the California Code of Civil
13 Procedure or any other provision of the law with respect to this Consent Order (Consent Order);

14 NOW, THEREFORE, the Commissioner of Business Oversight, as administrator of the
15 Corporate Securities Law of 1968, hereby enters this Consent Order:

16 1. LPL admits the jurisdiction of Commissioner of Business Oversight, neither admits
17 nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order, and
18 consents to the entry of this Consent Order by the Commissioner of Business Oversight.

19 **I.**

20 **Findings of Fact**

21 **A. Background and Contract with Blue Sky Data Corporation**

22 2. Every broker-dealer is required to have a supervisory system that is reasonably
23 designed to ensure that the broker-dealer complies with all state and federal laws, rules and
24 regulations, including laws that prohibit the offer or sale of unqualified, non-exempt securities.
25 Securities issued by companies listed on major national exchanges (*e.g.*, NYSE, AMEX, NASDAQ) and
26 securities issued by registered investment companies (*e.g.*, mutual funds) are in most instances exempt
27 from the Blue Sky requirements at issue here.

28 3. A reasonably designed system at a minimum includes written policies and procedures

1 governing the offer and sale of securities by registered persons, training for all associated persons,
2 and supervisory procedures and designated supervisors responsible for ensuring compliance.

3 4. In January 2000, LPL entered into an agreement with Blue Sky Data Corporation
4 (BSDC), by which BSDC was obligated to supply LPL with data for LPL's use in compliance and
5 supervisory efforts related to Blue Sky laws, rules, and regulations (Subscription Agreement).
6 The Subscription Agreement was amended in 2006.

7 5. As executed in January 2000 and amended in mid-2006, the Subscription
8 Agreement included data for equity securities, but not for fixed income securities.

9 6. From at least January 2000 forward, the Subscription Agreement provided for a
10 data feed that, if properly utilized, would allow for the review of trades to ensure that equity
11 securities were properly qualified, or registered, in the customer's state. The subscription also
12 provided online access for authorized personnel to query a specific CUSIP to determine its
13 registration status in each U.S. state and territory. As described in more detail below, although
14 the contract would enable such review, LPL failed to ensure during the relevant period that the
15 data was comprehensively utilized and that its systems were properly configured to effectively make
16 use of the data.

17 **B. Blue Sky Compliance Efforts**

18 7. LPL has represented that for a number of years, through at least October 2006,
19 LPL's Surveillance Department conducted a manual review of certain solicited equities trades to
20 confirm Blue Sky compliance. This involved the use of various reports and reference to
21 registration and exemption data from BSDC, as a result of the state securities registration
22 subscription described above, and resulted in LPL identifying certain violations and taking certain
23 remedial actions.

24 8. At some point after October 2006 the manual Blue Sky Review process described
25 above lapsed. Records reflect that LPL thereafter failed to meet Blue Sky compliance obligations
26 and failed to address registration and exemption requirements in the states.

27 9. Records reflect that in 2006, LPL supplemented its subscription with BSDC to,
28 among other things, include automated checks (a/k/a edits) to review orders against data from

1 BSDC. Records reflect that the Subscription Agreement was amended based on an assumption by
2 certain LPL personnel that, with this supplemental data feed feature, a front-end order entry block
3 (*i.e.*, an automated mechanism that would prevent the execution of trades of unregistered, non-
4 exempt securities) could be implemented with a fair degree of ease.

5 10. Lacking necessary training, supervision and process implementation of various order
6 entry systems, including the role of both proprietary systems and vended, third-party systems,
7 LPL personnel failed to accomplish the additional steps that would be required to implement a front-
8 end order entry hard block. While it appears from LPL records that the implementation difficulties
9 were recognized by certain personnel and some efforts to resolve the technological obstacles were
10 undertaken over a period of time, these efforts were not successful as the efforts were not given
11 the appropriate stature within LPL, necessary training, or appropriate and adequate supervision.

12 11. As reflected in various records, poor intradepartmental and interdepartmental
13 communications and a lack of integrated supervision and governance over vendor agreements, order
14 entry systems controls, and Blue Sky compliance contributed to the failure of certain personnel in
15 both Trading and Compliance to recognize at various points in time that Blue Sky hard blocks had
16 not been implemented into LPL's order entry systems.

17 12. Records reflect that, during the relevant period, other personnel appeared to place
18 reliance on other surveillance reviews that were designed for purposes of complying with certain
19 LPL internal policies (for example, surveillance reviews pertaining to compliance with LPL's
20 internal prohibition of solicited trades of low-priced and certain unlisted securities) as a means of
21 capturing Blue Sky violations. LPL failed to ensure there was a review specifically designed to
22 address state securities registration requirements.

23 13. The groups and functions that are required for ensuring Blue Sky compliance
24 were not integrated and were fragmented across the organization, particularly in a period during
25 which LPL was experiencing significant growth. Moreover, LPL lacked and failed to provide
26 institutional Blue Sky expertise or experience in the form of an individual or individuals with
27 particularized knowledge of industry-wide standards, policies, procedures and processes. This
28 resulted in a failure by LPL to comprehensively address Blue Sky compliance needs and to develop

1 and fund what should have been a centralized set of Blue Sky compliance controls.

2 **C. Cancellation and Reinstatement of Blue Sky Data Corporation Data Feed**

3 14. In or around January 2014, LPL’s Procurement Department (Procurement)
4 undertook a review of various vendor contracts. Procurement identified the Subscription Agreement,
5 at a cost of \$31,200 per year, and inquired whether LPL had a need for the service and who within
6 LPL used the subscription. The purpose of this inquiry was to determine whether Procurement
7 could cancel or not renew the BSDC subscription.

8 15. Procurement was directed to LPL’s Governance, Risk & Compliance Department
9 (Compliance), specifically a vice president in Compliance (VPCompliance).

10 16. Without adequate controls in place to ensure that the inquiry was conducted properly, VP
11 Compliance and an assistant vice president in Compliance sent a series of separate emails to various
12 personnel within LPL’s Registrations, Trading, Compliance, and Operations departments to
13 determine whether LPL had a continued need for the BSDC subscription or whether the contract
14 could be cancelled.

15 17. None of the personnel consulted indicated that the BSDC subscription was critical to
16 compliance with Blue Sky state registration requirements.

17 18. Following these inquiries, in February 2014, VP Compliance wrote to Procurement that
18 it was “ok to discontinue” LPL’s subscription to the Subscription Agreement.

19 19. In March 2014, Procurement provided written notice to BSDC to terminate the
20 Subscription Agreement and LPL paid the final April 2014 invoice.

21 20. Email records reflect that on October 23, 2014, a trader on LPL’s Equity Trading
22 desk (Equity Trading) reviewed a screen that contained information showing a particular security to
23 be restricted as a result of not being registered for sale or exempt from registration in the particular
24 jurisdiction (which information appears to have been populated to the system before the BSDC
25 contract was terminated). The trader shared the screen with a Manager in Equity Trading who in
26 turn contacted BSDC in an effort to determine whether the particular restriction was valid.
27 Through this outreach to BSDC, that Manager learned that LPL’s subscription to the state
28 securities registration data had been cancelled months earlier.

1 21. On October 24, 2014, Equity Trading requested by email that the subscription be
2 immediately reinstated. In that email, Equity Trading explained that it relied on the data to determine
3 if over-the-counter securities are Blue Sky-compliant in the U.S. and territories, stating: “[w]e
4 would like to request to have this subscription renewed as quickly as possible as this is a critical part
5 of our day to day business.”

6 22. In December 2014, LPL and BSDC reinstated the Subscription Agreement and in
7 February 2015, LPL was again receiving up-to-date data into its equity trading system from BSDC.

8 23. Both before and after the contract cancellation, alerts relating to potential Blue Sky
9 registration violations for equity securities were visible only to the trading desk and not to financial
10 advisors who placed trades directly and, as noted above, notwithstanding that LPL had access to
11 BSDC data for equity securities, LPL’s systems did not operate to prevent a trade that was not Blue
12 Sky-compliant (*i.e.*, a front-end block).

13 24. While the reinstated Subscription Agreement obligated BSDC to provide LPL with
14 data for both equity and fixed income securities, at no point prior to December 2014 did the
15 Subscription Agreement include data for fixed income securities.

16 **D. Post-Reinstatement Review and Remedial Measures**

17 25. Following the reinstatement of the BSDC contract, LPL conducted a review of
18 certain equities and fixed income trades and identified certain Blue Sky violations requiring
19 remediation. LPL attempted repurchase or damages offers to affected investors identified through
20 this limited review. In connection with the making of these offers, LPL contacted securities
21 regulators in certain jurisdictions about the offers.

22 26. As reflected in various records, poor intradepartmental and interdepartmental
23 communications and a lack of integrated supervision and governance resulted in LPL’s failure
24 at that time to conduct a sufficient analysis to determine the root cause of the identified violations
25 and compliance and supervisory shortcomings.

26 27. LPL has represented that following the reestablishment of the BSDC contract, LPL
27 implemented several Blue Sky controls.

28 28. LPL has engaged several consultants to conduct a comprehensive review of its current

1 Blue Sky compliance program and to assist LPL with implementation of recommendations, which is
2 ongoing.

3 29. LPL has represented that it has designed and began implementing Blue Sky training
4 for Compliance, Trading, Operations and Legal personnel and hired a senior-level Blue Sky
5 compliance expert as a full-time employee, who has responsibilities for establishing and
6 implementing the enhanced Blue Sky compliance program as guided by the independent consultants.

7 **II.**

8 **Conclusions of Law**

9 1. The Commissioner of Business Oversight has jurisdiction over this matter pursuant to
10 Corporations Code section 25210 et seq.

11 2. LPL offered and sold unqualified, non-exempt securities in California, in violation
12 of Corporations Code section 25130.

13 3. LPL failed to invest sufficient and appropriate resources in personnel, expertise,
14 systems, and operations to adequately comply with Blue Sky laws, rules, and regulations, in
15 violation of Corporations Code section 25218 and California Code of Regulations, title 10, section
16 260.218.4.

17 4. LPL failed to reasonably supervise the flow of information to ensure full and proper
18 compliance with state securities qualification requirements, in violation of Corporations Code
19 section 25218 and California Code of Regulations, title 10, section 260.218.4.

20 5. LPL failed to maintain adequate systems to reasonably supervise agents, staff, and
21 employees to prevent the sale of unqualified, non-exempt securities, in violation of Corporations
22 Code section 25218 and California Code of Regulations, title 10, section 260.218.4.

23 6. LPL failed to supervise agents, staff, and employees in the performance of
24 duties with respect to systems operation, process, and checks and balances to ensure compliance
25 with Blue Sky laws, rules, and regulations, in violation of Corporations Code section 25218 and
26 California Code of Regulations, title 10, section 260.218.4.

27 7. LPL acted negligently in canceling certain third-party services critical for
28 compliance with Blue Sky laws, rules, and regulations, in violation of Corporations Code section

1 25218 and California Code of Regulations, title 10, section 260.218.4.

2 8. LPL failed to maintain books and records necessary to ensure full and proper
3 compliance with Blue Sky laws, rules, and regulations, in violation of Corporations Code section
4 25241.

5 9. LPL failed to conduct appropriate and necessary due diligence regarding the
6 retention, use, and subsequent cancellation of certain third-party services critical for compliance
7 with Blue Sky laws, rules, and regulations, in violation of Corporations Code sections 25241 and
8 25218, and California Code of Regulations, title 10, section 260.218.4.

9 10. The following relief is appropriate and in the public interest.

10 **III.**

11 **Order**

12 On the basis of the Findings of Fact, Conclusions of Law, and LPL’s consent to the entry of this
13 Consent Order,

14 **IT IS HEREBY ORDERED:**

15 1. This Consent Order concludes the Investigation and any other action that the
16 Commissioner of Business Oversight could commence under applicable California law on behalf of
17 California as it relates to the substance of the Findings of Fact and Conclusions of Law herein,
18 provided however, that excluded from and not covered by this paragraph 1 are any claims by the
19 Commissioner of Business Oversight arising from or relating to LPL’s failure to comply with the
20 undertakings contained herein.

21 2. This Consent Order is entered into solely for the purpose of resolving the referenced
22 multistate investigation, and is not intended to be used for any other purpose.

23 3. LPL shall discontinue from violating Corporations Code sections 25130, 25241 and
24 25218, and California Code of Regulations, title 10, section 260.218.4 and will comply with
25 Corporations Code section 25130, 25241 and 25218, and California Code of Regulations, title 10,
26 section 260.218.4.

27 **A. Penalty**

28 4. LPL, or its direct or indirect subsidiaries, shall, within 30 business days of the

1 mailing of the Consent Order by the Commissioner of Business Oversight, pay the sum of
2 \$499,000.00, payable to the “Department of Business Oversight.” The payment shall be sent to Alex
3 M. Calero, Senior Counsel, Enforcement Divisions at the Department of Business Oversight’s San
4 Diego Office at 1350 Front Street, Room 2034, San Diego, CA 92101.

5 **B. Customer Remediation**

6 5. No later than July 2, 2018, LPL shall commence a comprehensive review of all
7 customer transactions effected in California to assess compliance with all applicable state
8 securities qualification requirements (Historical Trade Review).

9 6. The Historical Trade Review shall include all executed, solicited purchase orders of
10 equity and fixed income securities effected in California between October 1, 2006 (insofar as LPL
11 and/or any third party, vendor, supplier or service has necessary records) and May 1, 2018
12 (Historical Trade Review Period), as well as all executed, unsolicited purchase orders of equity and
13 fixed income securities effected in California during the portion of the Historical Trade Review
14 Period for which California did not have an exemption from qualification for unsolicited
15 transactions.

16 7. For the purposes of the Historical Trade Review, a transaction shall be deemed to
17 have been effected in California if the customer’s address of record (or the address of record
18 for the beneficial owner of any account, as applicable) at the time of the transaction was within
19 California.

20 8. The Historical Trade Review shall be conducted by an unaffiliated third party that
21 is not unacceptable to the Lead States (Independent Reviewer). The Independent Reviewer shall not
22 be a person or entity who has provided LPL with any products or services related to Blue Sky
23 compliance prior to July 1, 2017.

24 a. In conducting the Historical Trade Review, the Independent Reviewer may
25 rely on historical research, data, and other services provided by a third-party service provider other
26 than the Independent Reviewer. The Independent Reviewer may further rely on any determination
27 by such a third-party service provider that a particular trade complied with state qualification
28 requirements.

1 b. Upon request, LPL shall provide the Commissioner of Business Oversight
2 with copies of all final contracts and directives related to the engagement of the Independent
3 Reviewer and any other third-party service provider involved in the Historical Trade Review and the
4 related remediation. LPL shall promptly respond to any additional requests for information by the
5 Commissioner of Business Oversight relating to such engagement.

6 c. LPL shall neither be in nor have an attorney-client relationship with the
7 Independent Reviewer, and shall not seek to invoke the attorney-client privilege or any other
8 doctrine or privilege to prevent the Independent Reviewer from transmitting any information,
9 reports, or documents as set forth in this Consent Order to the Commissioner of Business Oversight
10 or to LPL’s Board of Directors.

11 d. LPL may request confidential treatment be afforded to any material provided
12 by LPL and/or the Independent Reviewer to the Commissioner of Business Oversight, and the
13 Commissioner of Business Oversight shall provide such treatment and seek to prevent public
14 disclosure of those materials to the full extent possible under its laws.

15 e. LPL shall not have the authority to terminate the Independent Reviewer or any
16 third-party service provider engaged in connection with the Historical Trade Review and related
17 remediation, without prior written approval from the Lead States.

18 9. LPL shall offer to repurchase the securities where the securities are still held in
19 an LPL Account (subject to a standardized repurchase formula) or to pay damages where the
20 position has been sold (subject to a standardized damages formula) for each trade involving an
21 unqualified, non-exempt equity or fixed income security. Each offer shall include interest at a rate
22 of three (3) percent simple interest per annum. Interest shall be calculated from the trade date of the
23 purchase to the earlier of May 1, 2018 or the date on which the customer sold the security, if
24 applicable.

25 10. For customers with affected securities who have transferred their accounts away from
26 LPL, LPL will attempt to contact the customer to determine whether the customer either (1) sold
27 the position after transferring it away from LPL or (2) still holds the position at a broker-dealer
28 other than LPL. If the customer still holds the position, LPL will also need to determine whether it

1 is feasible for the securities to be transferred back to LPL for purposes of LPL’s offering to
2 repurchase the securities. If the customer fails to timely provide information necessary for LPL to
3 make a repurchase or damages offer using the formula described in Section III(B)(9) above or if it is
4 not feasible to transfer the securities back to LPL for repurchase, then LPL will make a damages
5 offer to the customer based on a revised formula. The damages shall be calculated by deducting
6 the lowest reasonably identifiable value of the security on the date of transfer from the amount paid
7 and applicable interest.

8 11. LPL shall memorialize each offer in a letter (each, an Offer Letter), pursuant to
9 the following terms:

10 a. LPL and the Lead States will work to design a template Offer Letter
11 (providing recommended format and the categories of information to be included with every
12 offer). The Lead States will distribute the final template Offer Letter to the Jurisdictions.

13 b. If the Commissioner of Business Oversight requires modification of the final
14 template Offer Letter, the Commissioner of Business Oversight must communicate that
15 requirement, or advise LPL when the Commissioner of Business Oversight will communicate the
16 details of that requirement, to counsel for LPL within ten (10) business days of receipt of the final
17 template Offer Letter. LPL shall work in good faith to address any questions or concerns raised by
18 the Commissioner of Business Oversight and to comply with any statutory or regulatory
19 requirement in California related to the form or content of such Offer Letters. Absent contact from
20 the Commissioner of Business Oversight within ten (10) business days, LPL may presume that the
21 Commissioner of Business Oversight has approved the template Offer Letter, inclusive of any
22 waiver or release language, for distribution to offerees in California.

23 c. Each Offer Letter shall be delivered to the offeree’s last known mailing
24 address as maintained in LPL’s records in a manner that enables confirmation of delivery (*e.g.*,
25 certified U.S. Post Mail or Federal Express). For offerees that have elected, in writing, to receive
26 correspondence electronically, Offer Letters may be sent electronically, so long as electronic
27 delivery includes a mechanism to confirm that the Offer Letter was delivered (*e.g.*, request for read
28 receipt).

1 d. Each Offer Letter shall clearly state the terms of the offer, and shall provide
2 in bold underlined font: (1) the steps required to accept the offer, (2) the deadline for
3 acceptance, and (3) the contact information at LPL whereby the offeree can obtain additional
4 information.

5 e. LPL may include within its Offer Letters a waiver or release relative to the
6 transactions it is offering to remediate. Notwithstanding any such waiver or release, neither the
7 Historical Trade Review nor the Repurchase Program (defined below) shall operate to extinguish
8 or preclude any individual claim or private right of action based on sales practice violations (*e.g.*,
9 material misrepresentation or omission, or suitability) that is otherwise available to any offeree,
10 except to the extent that such claim or right of action is based primarily on the unqualified, non-
11 exempt status of the security or transaction which LPL is offering to remediate. In any event, the
12 form and content of any such waiver or release shall not be unacceptable to the Commissioner
13 of Business Oversight.

14 12. The Offer Letter shall remain open for a period of sixty (60) days from the date it is
15 sent to the offeree.

16 a. Within sixty (60) days of the date that Offer Letters are sent, LPL shall
17 provide the Commissioner of Business Oversight a list of offerees in California for whom Offer
18 Letters were returned as undeliverable so that the Jurisdiction may attempt to locate those offerees.

19 i. If the Commissioner of Business Oversight elects to try to locate
20 current addresses for this population of offerees, then it shall inform LPL or its representative.
21 The Commissioner of Business Oversight will then have ninety (90) days to provide LPL with a
22 new address for use in re-sending each Offer Letter previously returned as undeliverable (Location
23 Period). The Commissioner of Business Oversight may determine it necessary to extend the
24 Location Period in which case it will notify LPL as to the minimum period of time necessary to
25 complete its search. The Location Period shall not extend beyond one hundred eighty (180) days.

26 ii. If the Commissioner of Business Oversight locates an individual
27 after the Location Period has elapsed, LPL shall accommodate any reasonable request from the
28 Commissioner of Business Oversight to re-send an Offer Letter to a newly-identified mailing

1 address, so long as LPL is still actively engaged in mailing Offer Letters in any Jurisdiction.

2 iii. Any Offer Letter that is re-sent will carry with it a revised deadline for
3 acceptance that is sixty (60) days from the date the Offer Letter is re-sent.

4 iv. Separate from the efforts undertaken by the Commissioner of Business
5 Oversight to locate a current mailing address for undeliverable Offer Letters, LPL or its
6 representative(s) shall conduct an electronic query (*i.e.*, a public records search via a service such as
7 Thomson Reuters or LexisNexis) for each undeliverable offeree and shall re-send an Offer Letter in
8 a manner not materially different from LPL’s initial mailing to offerees for whom it identifies an
9 address that appears to be the offeree’s current mailing address. The Commissioner of Business
10 Oversight and LPL shall coordinate to resolve any discrepancies between the address identified by
11 the Commissioner of Business Oversight and the address identified by LPL.

12 v. If both the Commissioner of Business Oversight and LPL are unable
13 to locate the address for any individual within the population of offerees addressed in this Section
14 III(B)(12)(a), LPL shall re-send an Offer Letter to all such individuals who come forward to
15 either LPL or the Jurisdiction within six (6) months after completion of the Historical Trade Review
16 and Repurchase Program (as described and defined in Section III(B)(13), below).

17 13. The Historical Trade Review shall be completed, all offers shall be made, and all
18 payments remitted (collectively the Repurchase Program) in California no later than November 1,
19 2019.

20 14. No later than December 31, 2019, LPL shall prepare and submit to the
21 Commissioner of Business Oversight a report including the following information:

- 22 a. For each offer made:
- 23 i. the trade date(s) and corresponding product(s) covered by the offer;
 - 24 ii. The name and address of the offeree(s);
 - 25 iii. Whether the offer was either accepted, affirmatively rejected, or
26 deemed rejected due to a failure to timely accept;
 - 27 iv. The date(s) and amount(s) remitted for each offer; and
 - 28 v. Any special circumstances relevant to that offer (*e.g.*, if the original

1 customer is now deceased and the payment was remitted to the customer’s heirs or estate).

2 b. The total amount paid to all residents of the Jurisdiction in connection
3 with the Repurchase Program; and

4 c. The number of executed and settled purchase orders reviewed in California
5 that were determined by a third-party service provider other than the Independent Reviewer to have
6 complied with state qualification requirements, and that were therefore not reviewed by the
7 Independent Reviewer. LPL will identify all such trades upon request by the Commissioner of
8 Business Oversight.

9 15. No later than December 31, 2019, LPL shall require the Independent Reviewer to
10 certify to LPL that the Independent Reviewer’s determinations as to which transactions contravened
11 state qualification requirements are true, accurate, and based on all available information and a good
12 faith interpretation of applicable law. Prior to the Independent Reviewer’s certification, LPL shall
13 direct that any third-party who provided services in furtherance of the Independent Reviewer’s
14 determinations provide a written representation to the Independent Reviewer that all services
15 rendered in furtherance of the Historical Trade Review were fully completed in accordance with
16 both the third-party’s statement of work and all directives provided to the third-party by the
17 Independent Reviewer.

18 16. No later than December 31, 2019, LPL or its designee(s) shall certify to the
19 Commissioner of Business Oversight that LPL has fully complied in all material respects with the
20 undertakings set forth in Section III(B) of this Consent Order in connection with transactions
21 effected in California, including to the best of LPL’s knowledge, the truth, accuracy, and good faith
22 basis of all determinations by the Independent Reviewer and any other third-party service provider
23 as to whether any transaction complied with state qualification requirements. LPL shall provide as
24 an exhibit to this certification copies of the Independent Reviewer’s certification and any other
25 third-party representations that LPL is relying upon in making this certification to the Commissioner
26 of Business Oversight. In its certification, LPL shall affirm that if an error is subsequently
27 identified within the Historical Trade Review and Repurchase Program (whether a failure to identify
28 a violative transaction or an error in calculating the value of an offer), LPL will retain responsibility

1 for ensuring the error is remediated so that LPL has made all offers anticipated by this Consent
2 Order. The identification of a good-faith error within the Historical Trade Review and
3 Repurchase Program shall not result in a finding by the Commissioner of Business Oversight that
4 LPL is in default of this Consent Order.

5 17. The costs and expenses of the Historical Trade Review and the related Repurchase
6 Program shall be borne exclusively by LPL Financial Holdings Inc. or its direct or indirect
7 subsidiaries, and shall not reduce or otherwise affect the amount of any penalty or fine imposed in
8 this Consent Order.

9 18. At LPL's request, the Lead States for all Jurisdictions where necessary and/or the
10 Commissioner of Business Oversight for its own part may extend, for good cause shown, any of the
11 procedural dates set forth in this Section III(B). If the Lead States extend a date or deadline, the
12 Lead States shall extend all related subsequent deadlines that are dependent on the extended date
13 or deadline by a corresponding amount of time. Any extension granted by the Lead States shall
14 apply to all dates in California pursuant to this Consent Order. If the Commissioner of Business
15 Oversight extends a date or deadline (*see, e.g., supra* Section III(B)(12)(a)(i)), then the
16 Commissioner of Business Oversight shall extend all related subsequent deadlines applicable to the
17 completion of undertakings in California by a corresponding amount of time. Any extension by the
18 Commissioner of Business Oversight shall apply only to California and shall not have any effect on
19 any dates or deadlines related to the Historical Trade Review and Repurchase Program in any other
20 Jurisdiction.

21 **C. Comprehensive Review of Blue Sky Operations, Policies, Procedures, and Practices.**

22 19. If it has not already done so, no later than July 2, 2018, LPL shall commence a
23 comprehensive review of its operations, policies, procedures, and practices relating to compliance
24 with and supervision of blue sky state securities qualification requirements in all Jurisdictions, to
25 assess whether the foregoing (i) are adequate to reasonably ensure compliance with applicable state
26 laws, rules, and regulations, (ii) are consistent with industry practice, and (iii) are being implemented
27 fully, properly, and effectively (Operational Review) so as to avoid violative transactions like those
28 identified in the Historical Trade Review.

- 1 20. The Operational Review shall include the following areas:
 - 2 a. Compliance and supervisory controls and related policies, procedures and
3 process relating to:
 - 4 i. Identification and escalation protocols by supervisory and compliance
5 personnel involving significant matters relating to compliance with state securities laws, rules and
6 regulations.
 - 7 ii. Communication and information sharing between departments and
8 business units (*e.g.*, procurement, technology, trading, and retail brokerage) relative to state
9 securities qualification requirements and operations processes for ensuring intra- and inter-
10 departmental coordination on matters relating to state securities qualification requirements; and
 - 11 iii. Training and education of staff, including associated persons of the
12 broker- dealer whether employees or independent contractors, relative to state securities
13 qualification requirements.
 - 14 b. A complete, top-to-bottom review of the onboarding of new securities
15 products for purposes of assessing LPL’s ability to comply with all state securities qualification
16 requirements, and all operations and procedures in connection with state qualification requirements,
17 that apply to the offer and sale of that product.
 - 18 c. A complete top-to-bottom review of vendor service protocols to ensure
19 processes are in place for identification and management of critical services used to ensure
20 compliance with state securities laws. This will include an assessment of the impact of such
21 products and services on LPL’s ability to review transactions for Blue Sky compliance.
 - 22 d. Personnel and staffing relative to those functions that relate to compliance
23 with and supervision of state securities qualification requirements. Insofar as LPL has represented
24 that it has undertaken to assess and upgrade its talent as it impacts compliance with state securities
25 qualification requirements, including the recruitment of an experienced blue sky professional and
26 expert on state securities qualification compliance matters, the Operational Review shall assess the
27 experience, responsibilities, and resources available to all personnel hired or reassigned within
28 LPL in connection with ensuring compliance with state securities qualification requirements.

1 21. The Operational Review shall be conducted by an unaffiliated third party that is not
2 unacceptable to the Lead States (Consultant). The Consultant shall not be a person or entity who
3 has been engaged or retained by LPL between January 1, 2012 and July 1, 2017 for the purpose of
4 conducting any review of similar scope and substance.

5 a. Upon request, LPL shall provide the Commissioner of Business Oversight
6 with copies of all final contracts related to the engagement of the Consultant and any other third-
7 party service provider involved in the Operational Review and the related remediation. LPL
8 shall promptly respond to any additional requests for information by the Commissioner of Business
9 Oversight relating to such engagement.

10 b. LPL shall neither be in nor have an attorney-client relationship with the
11 Consultant, and shall not seek to invoke the attorney-client privilege or any other doctrine or
12 privilege to prevent the Consultant from transmitting any information, reports, or documents as set
13 forth in this Consent Order to the Commissioner of Business Oversight or to LPL’s Board of
14 Directors.

15 c. LPL shall not have the authority to terminate the Consultant or any third-party
16 service provider engaged in connection with the Operational Review, without prior written
17 approval from the Lead States.

18 22. The Operational Review shall be completed no later than May 1, 2019.

19 23. LPL may request confidential treatment be afforded to any material provided by LPL
20 and/or the Consultant to the Commissioner of Business Oversight, and the Commissioner of
21 Business Oversight shall provide such treatment and seek to prevent public disclosure of those
22 materials to the full extent possible under its laws.

23 24. No later than July 1, 2019, LPL shall require that the Consultant submit a report to
24 LPL detailing the results and findings of the Operational Review, including a list of all deficiencies
25 identified and recommendations for addressing such deficiencies.

26 25. LPL shall cure all deficiencies identified in the Consultant’s report (Operational
27 Remediation) no later than June 30, 2020.

28 a. If LPL declines to adopt or implement any recommendation(s) by the

1 Consultant for addressing deficiencies identified during the Operational Review, LPL shall identify
2 the recommendations not adopted or implemented and explain why they were not adopted or
3 implemented.

4 26. No later than August 31, 2020, LPL or its designee(s) shall certify to the Lead
5 States that LPL has fully complied in all material respects with the undertakings set forth in
6 Section III(C) of this Consent Order.

7 27. The costs and expenses of the Operational Review and Operational Remediation
8 shall be borne exclusively by LPL Financial Holdings Inc. or its direct or indirect subsidiaries, and
9 shall not reduce or otherwise affect the amount of any penalty or fine imposed as part of the
10 Settlement.

11 28. At LPL's request, the Lead States may extend, for good cause shown, any of the
12 procedural dates set forth in this Section III(C). If the Lead States extend a date or deadline, the
13 Lead States shall extend all related subsequent deadlines that are dependent on the extended date or
14 deadline by a corresponding amount of time. Each Jurisdiction shall reflect in their Consent Order
15 that any extension granted by the Lead States shall apply in the Jurisdiction. Any extension granted
16 by the Lead States shall apply to all dates in California pursuant to this Consent Order.

17 **D. Audits and Inspections**

18 29. The Commissioner of Business Oversight shall have the right to conduct on-site
19 audits, inspections, or examinations of LPL to ensure full compliance with the undertakings herein.
20 The cost of any such audit, inspection, or examination shall be borne exclusively by LPL Financial
21 Holdings Inc. or its direct or indirect subsidiaries. The Commissioner of Business Oversight will
22 not initiate any such audit, inspection or examination to assess LPL's compliance with the
23 undertakings herein until after LPL has provided the certifications described in Sections III(B)(15),
24 III(B)(16), and III(C)(26) above.

25 **E. Construction and Default**

26 30. This Consent Order is not intended to form the basis for any disqualification from
27 registration as a broker-dealer, investment adviser, or issuer under the laws, rules, and regulations of
28 California, and waives any disqualification from relying upon the securities qualification exemptions

1 or safe harbor provisions to which LPL or any of its affiliates may be subject under the laws, rules,
2 and regulations of California.

3 31. Nothing in this Consent Order is intended to form the basis for any disqualification
4 under the laws of any state, the District of Columbia, Puerto Rico, or the U.S. Virgin Islands; under
5 the rules or regulations of any securities or commodities regulator or self-regulatory organizations;
6 or under the federal securities laws, including but not limited to, Section 3(a)(39) of the
7 Securities Exchange Act of 1934 and Regulation A and Rules 504 and 506 of Regulation D under
8 the Securities Act of 1933. Furthermore, nothing in this Consent Order is intended to form the basis
9 for disqualification under the FINRA rules prohibiting continuance in membership or
10 disqualification under other SRO rules prohibiting continuance in membership. This Consent Order
11 is not intended to be a final order based upon violations of any California statute, rule, or
12 regulation that prohibits fraudulent, manipulative or deceptive conduct.

13 32. Except in an action by the Commissioner of Business Oversight to enforce the
14 obligations in this Consent Order, this Consent Order is not intended to be deemed or used as
15 (a) an admission of, or evidence of, the validity of any alleged wrongdoing, liability, or lack of
16 any wrongdoing or liability; or (b) an admission of, or evidence of, any such alleged fault or
17 omission of LPL in any civil, criminal, arbitration, or administrative proceeding in any court,
18 administrative agency, or other tribunal.

19 33. If payment is not made by LPL or if LPL defaults in any of its obligations set forth
20 in this Consent Order, the Commissioner of Business Oversight may institute an action to have this
21 agreement declared null and void. Upon issuance of an appropriate order, after a fair hearing, the
22 Commissioner of Business Oversight may reinstitute the action or investigation related to the
23 substance of the Findings of Fact and Conclusions of Law herein.

24 34. This Consent Order and any dispute related thereto shall be construed and
25 enforced in accordance with, and governed by, the laws of California without regard to any choice
26 of law principles.

27 35. This Consent Order is not intended to state or imply willful, reckless, or fraudulent
28 conduct by LPL, or its affiliates, directors, officers, employees, associated persons, or agents.

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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY LPL

LPL hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

LPL admits the jurisdiction of the Commissioner of Business Oversight, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the Commissioner of Business Oversight as settlement of the issues contained in this Consent Order.

LPL 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 administrative monetary penalty that LPL shall pay pursuant to this Consent Order. LPL understands and acknowledges that these provisions are not intended to imply that Commissioner of Business Oversight would agree that any other amounts LPL shall pay pursuant to this Consent Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

LPL states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Dean M. Jeske represents that **[he/she]** is SVP/Assoc. General Counsel of LPL and that, as such, has been authorized by LPL to enter into this Consent Order for and on behalf of LPL.

Dated this 14th day of November, 2018.

LPL

By: _____

Title: SVP/Associate General Counsel