

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2014043539001**

TO: Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

RE: LPL Financial, LLC, Respondent
CRD No. 6413

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, LPL Financial, LLC (“LPL,” the “Firm” or “Respondent”), submits this Letter of Acceptance, Waiver and Consent (“AWC”) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

LPL has been a member of FINRA since 1973. The Firm is headquartered in Boston, Massachusetts and conducts a general securities business. The Firm has approximately 18,106 registered representatives. The Firm maintains approximately 10,548 registered branch office locations.

RELEVANT DISCIPLINARY HISTORY

In May 2015, LPL executed a Letter of Acceptance, Waiver and Consent (No. 2013035109701) in which it consented to a censure, a fine of \$10 million, restitution of \$1,664,592.05 and findings that, beginning in 2007, it suffered from multiple supervisory failings and other deficiencies, including books and records issues that resulted in violations of Section 17(a) of the Securities Exchange Act of 1934 (the “Exchange Act”), Rule 17a-3 thereunder, NASD Rule 3110, and FINRA Rule 4511.

In June 2014, LPL entered into a settlement with the Illinois Securities Department (File No. 1200385) in which it consented to a censure, a fine of \$2 million, various undertakings, and to findings that, from 2009 to 2013, it failed to enforce its supervisory system and procedures

concerning the documentation of certain variable annuity transactions, and failed adequately to maintain related books and records.

In May 2013, LPL executed a Letter of Acceptance, Waiver and Consent (No. 2012032218001) in which it consented to a censure, a fine of \$7.5 million, various undertakings, and to findings that, from 2007 to 2013, it failed to retain and review hundreds of millions of emails, including approximately 28 million “doing business as” emails, in violation of Section 17(a) of the Exchange Act, Rule 17a-4 thereunder and NASD Rule 3110. LPL’s email review and retention systems repeatedly failed and, as a result, LPL was unable to meet its supervisory obligations and to respond fully to regulatory requests.

OVERVIEW

From December 23, 2010 to November 17, 2015, the Firm failed to maintain over 18.3 million electronic communications in non-erasable and no-rewritable format, known as WORM format, as required by Section 17(a) of the Exchange Act, Rule 17a-4(f) thereunder, NASD Rule 3110 and FINRA Rule 4511. WORM stands for “write once, read many,” and is intended to prevent the alteration or destruction of broker-dealer records maintained on electronic storage media. Additionally, from January 1, 2010 to June 24, 2016, the Firm failed to retain in WORM format approximately 231 check registers. Finally, LPL’s written supervisory procedures failed to have an adequate supervisory process concerning WORM compliance, in violation of NASD Rule 3010 and FINRA Rule 3110.

FACTS AND VIOLATIVE CONDUCT

Over the past decade, the volume of sensitive financial data stored electronically by broker-dealers has risen exponentially. These broker-dealer electronic records must be complete and accurate, not only to assist FINRA and other regulators in their efforts to protect investors through periodic examinations, but also to ensure member firms can carry out their audit functions. Recent years also have seen increasingly aggressive attempts to hack into electronic data repositories, enhancing the need for firms to keep these records in WORM format.

Section 17(a) of the Exchange Act and Rule 17a-3 thereunder require broker-dealers to make certain records relating to its business, including trade blotters, asset and liability ledgers, order tickets, trade confirmations and other records. Rule 17a-4 specifies the manner and length of time that those records must be maintained. When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to “[p]reserve the records exclusively in a non-rewritable, non-erasable” or WORM format.

NASD Rule 3110(a) provides, in part, that each member “shall make and preserve books, accounts, records, memoranda, and correspondence in conformity with all applicable laws, rules, regulations, and statements of policy promulgated thereunder and...[t]he record keeping format, medium and retention period shall comply with” Rule 17a-4.”¹

¹ NASD Rule 3110 was replaced by FINRA Rule 4511, effective December 5, 2011.

FINRA Rule 4511 provides, in part, that each member “shall make and preserve books and records as required under the FINRA rules, the Exchange Act and the applicable Exchange Act rules” ... and all “books and records required to be made pursuant to the FINRA rules shall be preserved in a format and media that complies with” Rule 17a-4.

These requirements are an essential part of the investor protection function because preservation of these records is the “primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.”²

1. The Firm Failed to Retain Electronic Records in WORM Format

When broker-dealers use electronic storage media to retain records, Rule 17a-4(f)(2)(ii) requires the firms to “[p]reserve the records exclusively in a non-rewritable, non-erasable” or WORM format. From December 23, 2010 through November 17, 2015, LPL failed to retain certain electronic communications, known as BranchNet notifications, in WORM format. The Firm’s BranchNet system is an internal, online tool designed to facilitate workflow. BranchNet generates alerts to financial advisers about administrative and compliance matters that require action by the adviser. For example, BranchNet will notify an adviser when he or she must sign and submit an outside business activity form or must scan customer new account documents into LPL’s account opening system. The Firm failed to retain in WORM format over 18.3 million BranchNet notifications generated during the relevant period.

Beginning in April 2009, the Firm began to transition from one email storage system to another. As part of this project, on December 23, 2010, the Firm began to route live BranchNet notifications into the new storage system but, due to a systems glitch, this project failed. In early 2013, the Firm identified archiving and search functionality issues with the new system, and later identified WORM issues with the new system. The Firm formally notified FINRA of this WORM deficiency in November 2014, but did not complete remediation of the issue until November 2015. Additionally, as part of LPL’s internal review of its archiving deficiency, the Firm discovered that it failed to retrieve and produce BranchNet notifications in response to inquiries in other regulatory matters, including eight FINRA matters.

The Firm experienced a second WORM deficiency with respect to certain electronic financial records generated by an outside vendor. From January 1, 2010 to June 24, 2016, the Firm failed to retain in WORM format 77 accounts payable check registers and 154 commission check registers, for a total of 231 non-compliant records.

Based on the foregoing, LPL violated Exchange Act Rule 17a-4(f)(2)(ii), NASD Rule 3110 and FINRA Rules 4511 and 2010.

² Commission Guidance to Broker Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a-4(f), SEC Interpretation Release No. 34-44238, 17 C.F.R. Part 241, at p. 3 of 15 (May 1, 2001).

2. The Firm's Supervisory System was not Reasonably Designed

NASD Rule 3010(b) and FINRA Rule 3110(b) require member firms to establish, maintain and enforce written procedures to supervise the types of business in which it engages that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.³ During the relevant period, LPL failed to establish, maintain and enforce written supervisory procedures reasonably designed to achieve compliance with Rule 17a-4(f) WORM requirements. The Firm's written supervisory procedures in effect during the Relevant Period failed to have supervisory processes concerning the retention of electronic records in WORM format.

Based on the foregoing, LPL violated NASD Rule 3010(b) and FINRA Rules 3110(b) and 2010.

B. LPL also consents to the imposition of the following sanctions:

1. Censure; and
2. Fine in the amount of \$750,000.

LPL agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

LPL specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

³ FINRA Rule 3110 replaced NASD Rule 3010, effective December 1, 2014.

- D. To appeal any such decision to the National Adjudicatory Council (“NAC”) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person’s or body’s participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person’s or body’s participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which

FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

12/09/2016
Date (mm/dd/yyyy)

Respondent, LPL Financial, LLC

By: Emily P. Gordy

Emily P. Gordy
Executive Vice President &
Deputy General Counsel
LPL Financial, LLC
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Boston, MA 02109
Phone: 617-897-4306

Accepted by FINRA:

12/2/16
Date

Signed on behalf of the
Director of ODA, by delegated authority

James E. Day
Vice President & Chief Counsel
FINRA Department of Enforcement
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