FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2012032218001

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

RI: LPL Financial LLC, Respondent
    CRD No. 6413

Pursuant to FINRA Rule 9216 of FINRA’s Code of Procedure, LPL Financial LLC ("Respondent," "LPL," or the "firm") 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. From 2007 to 2012, LPL’s parent company, LPL Financial Holdings, Inc. expanded rapidly by acquiring numerous financial services firms, many of which were consolidated into its wholly owned subsidiary, LPL. In 2006, the firm had approximately 7,000 independent representatives supporting 2.4 million customer accounts. Today, the firm has approximately 13,300 independent registered representatives supporting 4.3 million customer accounts.

RELEVANT DISCIPLINARY HISTORY

Pursuant to Letter of Acceptance, Waiver and Consent No. 2009016570001 (January 20, 2011), FINRA censured and fined LPL $100,000 for failing to enforce its supervisory system and procedures that required the review of emails. FINRA found that for a year
and a half, approximately three million emails involving 150 financial advisors located in 769 Sovereign Bank branches were not subject to supervisory review.

OVERVIEW

From 2007 to 2013, LPL's email review and retention systems failed repeatedly, leaving the firm unable to meet its obligations to supervise its representatives and respond to regulatory requests. The firm was aware of these pervasive failures and the overwhelming complexity of its email system, but never took adequate remedial measures to address these shortcomings or simplify its email system. As a consequence, the firm suffered at least 35 significant failures that prevented it, at various points in time, from accessing hundreds of millions of emails and reviewing tens of millions of emails. Because of LPL's numerous deficiencies in retaining and surveilling emails, it failed to produce all requested email to certain regulators, and also likely failed to produce all emails to certain private litigants and customers in arbitration proceedings.

The firm had ample notice of, and many opportunities to correct, the numerous failings of its email system. In 2010, an internal audit of LPL's email supervision system had preliminarily discovered certain anomalies in the firm's surveillance of emails. This audit was stopped by a senior audit executive. If the audit had continued as scheduled, it would have likely uncovered one of LPL's significant supervision problems—its failure to supervise certain "doing business as" ("DBA") email addresses. In addition, senior LPL executives were informed about the firm's numerous email failings, including supervision of DBA email, at a September 2010 Risk Oversight Committee ("ROC") meeting. Shortly after this meeting, a project was approved to address some of LPL's email deficiencies. However, the firm never implemented this project.

In July 2011, the firm reported its failure to review DBA emails, which eventually was determined to affect over 28 million emails, to FINRA pursuant to Rule 4530(b). In response to a request from FINRA staff for more information about this significant email issue, LPL submitted a letter and chronology that inaccurately stated that the issue had been discovered in June 2011 even though certain LPL personnel had information that would have led to the discovery of the issue as early as 2008. Moreover, the letter stated that there were no red flags suggesting any issues with DBA email accounts. In fact, there were numerous red flags related to the supervision of DBA emails that were known to many LPL employees years prior to the firm's Rule 4530 report.

FACTS AND VIOLATIVE CONDUCT

LPL's Rapid Growth Resulted in a Complex, Patchwork Email System

LPL has expanded rapidly in the last six years. This rapid business expansion without a concomitant investment in compliance and technology resources led to an increasingly complex email system that was too unwieldy for LPL to manage and monitor effectively. Emails were
being captured from a wide variety of sources, including 23 financial institutions, one recent acquisition, and three separate outside email vendors that advisors used to set up their DBA email accounts. For the 23 financial institutions, some used their own emails systems, four of them sent their emails on CD for LPL to review, and one maintained and reviewed its own emails. As summarized by a manager in the firm’s Governance, Risk, and Compliance (“GRC”) Department: “There is a risk ensuring that we actually receive all the emails. If any of these links, journals, or tunnels breaks, there is no way to know.”

By 2010, many employees at the firm realized that its complex email architecture was unsustainable and began holding meetings to discuss how to address the firm’s email problems. In fact, this issue was identified as being GRC’s number one priority for 2010. However, little concrete action was taken to correct the problems or simplify the email system.

**LPL Failed to Supervise Certain DBA Emails until 2011**

LPL’s registered representatives are independent contractors and many operate under one or more DBA names. Therefore, as the firm knew, many of its representatives used one or more DBA email addresses in addition to an lpl.com email address for their business. From 2008 to 2011, the firm did not review and supervise 28 million DBA emails sent and received from thousands of representatives. This failure to supervise emails occurred because: (i) the firm’s policies and procedures failed to reasonably ensure that DBA email addresses were linked to the firm’s supervisory system, and (ii) LPL’s supervisory system did not capture all DBA email addresses since it was designed to review only one DBA email address per representative even though many LPL advisors conducted business using multiple DBA email addresses.

LPL was aware of numerous red flags over many years that its supervisory system for the review of DBA emails was not functioning properly. In fact, from March 2007 to February 2008, the firm did not review DBA emails because LPL’s supervisory system could not accommodate DBA email. When the firm discovered that it was not supervising DBA email, its response was inadequate—modifying its system so that only one DBA email address per representative was ingested into its review system while many representatives continued to use multiple DBA email addresses.

In 2008, a GRC employee discovered that 2,500 DBA email addresses were not set up in LPL’s supervisory system. A project was initiated to add these 2,500 DBA email addresses to the supervisory system, but the project was stopped before it could be completed.

In 2009, this same GRC employee remained concerned about LPL’s supervision of emails and referred the matter to the firm’s internal audit department. An audit of LPL’s supervision of emails was commenced in May 2010. In September 2010, the auditor identified discrepancies between the email addresses that were subject to review and those that advisors were actually using. The auditor notified his supervisor of these preliminary findings. A day or two later, the audit was stopped, never to be recommenced. A senior audit executive stopped the audit, and
never gave an explanation to the auditor as to why the audit was shut down. That executive also failed to memorialize his decision with any written documentation, and stopped the audit on his own without consulting the audit committee of LPL’s Board. At the time the audit was stopped, there was no requirement that audit management adhere to any decision making criteria or to seek approval of the audit committee on whether to stop an audit. If the 2010 audit had continued as planned, the auditor’s preliminary findings would likely have led to the discovery of the full scope of LPL’s DBA email supervision problems.

Throughout 2010, various groups of employees in LPL’s technology and GRC departments met to discuss the numerous failures and shortcomings of LPL’s email systems. In September 2010, one manager gave a presentation to the firm’s ROC, in which the manager recommended that the firm automate the setup of DBA email addresses to replace the existing and inadequate manual process.

Shortly after this ROC meeting, the firm approved funding of a project, which was called the “Tighten Email Controls” project. Among the project’s goals was to automate ingestion of the DBA email addresses into the supervisory system and to improve the firm’s supervisory system so that it captured more than one DBA email address per representative for review. In its project funding proposal, the “Key Driver” listed was the firm’s “[f]ailure to properly surveil email...There is currently an enforcement action referral against LPL Financial regarding DBA emails and this project will address that.” The same proposal listed the following risks if the firm “fail[ed] to implement the project:” “Increased regulatory scrutiny as a result of becoming a more frequent target of regulators and legal authorities,” “Inability to ensure that all emails and messages from all systems are captured and supervised,” “Potential for fraud from advisors and employees,” and “Not knowing if an advisors DBA emails or messages from other systems are being supervised.” However, after being approved, the project languished.

LPL’s Other Email Review and Retention Problems

The DBA email issue was but one of at least 35 separate deficiencies in LPL’s email retention and review system. Some of those deficiencies affected the firm’s ability to retain and monitor millions of emails.

1. LPL Failed to Adequately Ensure that Emails were Archived Properly When It Implemented a New Email Retention System

In March 2009, LPL switched to a cheaper email archive provider. The transition to the new platform was fraught with issues that rendered the firm unable to respond completely to certain requests for emails from regulators. These issues also likely affected the firm’s ability to fully respond to all requests from customers with arbitration claims and private litigants.

First, for almost five months after it switched providers, from March 28, 2009 to August 10, 2009, the firm had limited access to emails sent or received between March 28, 2009 and June 7,
2009.

Second, on October 19, 2009, the company that had previously archived email for LPL terminated LPL’s access to emails sent or received prior to March 28, 2009. As a result, LPL lost access to 280 million emails. LPL made little effort to regain access, and manually loaded hard drives of emails from the old archive into the new archive, a laborious process that took until March 21, 2010. Thus, from October 19, 2009 to March 21, 2010, LPL did not have access to 280 million emails sent or received prior to March 28, 2009.

Third, while LPL believed that the ingestion process was complete by March 21, 2010, in fact, 80 million of the 280 million historical emails were corrupt and could not be accessed in LPL’s new archive. Firm personnel detected this issue in September 2010. For several months, the firm took inadequate and unsuccessful steps to access these corrupted emails. Finally, it was forced to execute a contract on December 31, 2010 with its old archive provider to grant access to the pre-March 28, 2009 emails. Therefore, from March 22, 2010 to December 31, 2010, LPL did not have access to 80 million of its 280 million emails that were sent or received prior to March 28, 2009.

The firm was aware of these email archive issues. Its inability to access emails caused LPL to provide partial, incomplete, or delayed responses to numerous email requests from regulators. These issues also likely affected the firm’s ability to fully respond to all requests from customers with arbitration claims, and private litigants.

2. **LPL Failed to Supervise and Archive Bloomberg Messages**

LPL did not review or archive Bloomberg messages for seven years prior to 2011. In 2010, LPL’s executive officers learned that the firm was not supervising or archiving Bloomberg messages but did not take adequate steps to ensure it was archiving and surveilling Bloomberg messages until February 2011. As a result, 3.5 million historical Bloomberg messages were not archived or surveilled by the firm. It took the firm two years, until 2013, to begin reviewing these Bloomberg messages, a process that has yet to be completed. The firm’s failure to have access to and review Bloomberg messages compromised its ability to respond to regulatory requests for correspondence completely. Prior to February 2010, in response to requests, the firm would only produce hard copy versions of Bloomberg messages retained in the firm’s trading files but had no system or procedure in place to ensure all messages were printed and saved.

3. **LPL Failed to Supervise Certain Registered Employee Email**

Prior to 2011, only the emails of the firm’s independent advisors were subject to supervision. The firm did not review the emails of any of its registered employees, such as home office personnel, who should have also been subject to supervision in addition to its independent advisors.
4. LPL Failed To Adequately Enforce its Policies against Unauthorized Email Use

During LPL's branch exams, the firm routinely identified advisors using unauthorized email addresses to conduct business, finding 1,029 instances of advisers using unauthorized DBA email addresses from 2008 to 2011. LPL did not adequately respond to these instances in which advisors were using unauthorized addresses; it did not discipline any of advisors, it did not prohibit advisors from continuing to use the email addresses, and it did not archive and review emails sent through the unauthorized email addresses.

5. LPL Failed to Archive Emails Sent Through Third-Party Advertising Platforms

The firm allowed its registered representatives to send emails through third-party email-based advertisement platforms. Since at least 2010, GRC personnel knew that the emails transmitting these advertisements through these platforms were not being archived. In May 2012, the firm attempted to address this issue by requiring its representatives to copy their own LPL email address on any messages sent to customers using the advertising platforms but took inadequate steps to ensure the representatives were complying with this requirement.

6. LPL Had Additional Significant Email Supervision Failures

In 2011, three different financial institutions had problems transferring their emails to LPL's system. This resulted in approximately 700,000 total emails not being supervised by the firm. Additionally, in October 2011 and February 2012, the firm found that over 200 email addresses from financial institutions were not reported to the firm, resulting in those accounts not being supervised.

\[\text{LPL Made Incomplete Productions of Emails in Response to Certain Requests from Regulators, and Likely Made Incomplete Productions to Certain Private Litigants and Customers in Arbitration Proceedings}\]

LPL's inadequate systems and procedures relating to emails caused the firm to provide incomplete responses to email requests in certain regulatory investigations and exams. These same shortcomings also likely affected the firm's ability to fully respond to all requests from customers with arbitration claims and private litigants. Dozens of regulatory matters and hundreds of customer arbitrations or litigations may have been affected.

\[\text{LPL Made Misstatements to FINRA in January 2012}\]

In September 2011, LPL reported its DBA email issue to FINRA, pursuant to Rule 4530. During a subsequent conference call, FINRA staff asked for additional information concerning how and when the problem was discovered. On January 4, 2012, LPL responded to FINRA's request with
a cover letter and chronology of events concerning the discovery of the DBA email issue.

The letter and chronology made two material misstatements. First, the letter and chronology incorrectly stated that the firm first learned of the DBA email issue in June 2011. Second, the letter stated that “in the normal course, Firm Compliance Analysts regularly observed and reviewed not just LPL.com emails, but a significant number of DBA emails. Therefore, there were no red flags suggesting any issues with DBA email accounts, which helps explain why this issue was not discovered until recently.” However, as discussed, the firm was aware of problems relating to DBA emails as early as 2008.

Violations

The Firm Did Not Have an Adequate System and Procedure to Retain and Review Emails

NASD Rule 3010(a) requires that firms establish and maintain systems to supervise their employees that are reasonably designed to achieve compliance with the federal securities laws and FINRA and NASD Rules. NASD Rule 3010(d)(2) further requires that firms develop procedures for the review of emails.

As described above, the firm failed to establish and maintain systems and procedures that were reasonably designed to comply with its obligation to review and retain email. Deficiencies in the firm’s systems and procedures caused systemic, widespread email failures and the firm failed to respond adequately to these failures. LPL allowed such deficiencies to persist, ultimately leading to 28 million DBA emails, 3.5 million Bloomberg messages, and all registered home office employee emails not being subject to supervisory review over a multi-year period, as well as other significant problems. Moreover, the firm’s email archiving and other failures caused it to make incomplete productions of emails in response to certain regulatory requests, and likely caused it to make incomplete productions of emails in response to certain requests by private parties in civil litigation and arbitration.

As a result of the foregoing, LPL violated NASD Rule 3010(a) and (d)(2). This conduct also constitutes a violation of NASD Rule 2110 from January 2007 to December 14, 2008, and FINRA Rule 2010 from December 15, 2008 to June 2012.

The Firm Failed To Retain Emails Thereby Violating Its Books and Records Obligations

Securities and Exchange Act Rule 17a-4 requires that every broker dealer preserve for a period of not less than three years, the first two years in an easily accessible place “[o]riginals of all communications received and copies of all communications sent … by the member, broker or dealer (including inter-office memorandum and communications) relating to its business as such.”

NASD Rule 3110(a) provides that “[e]ach 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 with the Rules of this
Association and as prescribed by SEC Rule 17a-3. The record keeping format, medium, and
retention period shall comply with Rule 17a-4 under the Securities Exchange Act of 1934.”
NASD Rule 3110 was replaced by FINRA Rule 4511 effective December 5, 2011.

As described above, the firm failed to retain certain DBA emails that were identified during
branch exams. Moreover, LPL failed to archive millions of its emails and Bloomberg messages
in a manner that allowed for reasonable accessibility due to its 2009 archive provider switch, its
failure to capture certain advertising emails, and its failure to route Bloomberg messages into its
archive. By failing to retain and archive its email, the firm violated Exchange Act Rule 17a-4.
LPL also violated NASD Rule 3110 from January 2007 to December 4, 2011 and FINRA Rule
4511 from December 5, 2011 to date. This conduct also constitutes a violation of NASD Rule
2110 from January 2007 to December 14, 2008, and FINRA Rule 2010 from December 15, 2008
to date.

The Firm Did Not Adequately Supervise its Internal Audit Department

The firm’s supervisory systems and procedures were not adequate to ensure that internal audits
concerning compliance with the federal securities laws and FINRA and NASD Rules were
conducted properly. In 2010, an auditor made preliminary findings that raised concerns about
LPL’s system for reviewing email. At the time, LPL did not have adequate procedures in place
for stopping an audit, resulting in a senior audit executive stopping the audit without any
contemporaneous documentation of his decision, nor any notification to the audit committee of
LPL’s Board of Directors. This conduct violated NASD Rule 3010(a) and FINRA Rule 2010.

The Firm Made Material Misstatements to FINRA in its January 4, 2012 Letter and Chronology

As discussed above, the firm’s response to FINRA’s inquiry concerning its Rule 4530 report did
not meet FINRA’s “high standards of commercial honor and just and equitable principles of
trade.” Accordingly, the firm violated FINRA Rule 2010.

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

1. A censure;

2. A fine of $7.5 million; and,

The firm further agrees to the following undertakings:

3. Payments to Brokerage Customer Claimants

a. Within 30 days of the date the AWC is accepted, LPL shall deposit $1.5
million into an escrow account to establish a fund (the “Fund”) to make payments to brokerage customer claimants in arbitrations or litigations brought against LPL initiated on or after, or still open as of, January 1, 2007, and which were closed on or before December 17, 2012 (“Eligible Claimants”). Those payments shall represent discovery sanctions for LPL’s likely failure to produce all responsive emails in certain of such matters. Payments under the Fund will be made pursuant to the terms of a Plan of Distribution, annexed hereto, to which LPL hereby agrees.

b. LPL shall pay all costs and expenses associated with the administration of the Fund.

c. Any funds remaining in the Fund, after payment of all amounts to Eligible Claimants, will revert to FINRA as an additional fine amount. In no event shall such additional fine amount exceed $1.5 million.

4. Report and Certification Concerning LPL Email Retention and Review Systems and Procedures

a. LPL has retained an email consulting firm to help it address and remediate its email retention and review deficiencies. Within 60 days of the date this AWC is accepted, LPL shall provide a report to FINRA setting forth its remedial plan.

b. Within 180 days of the date this AWC is accepted, a principal of the firm shall certify in writing to FINRA staff that the firm has established systems and procedures reasonably designed to achieve compliance with the books and records and the supervision requirements related to emails, including but not limited to the deficiencies identified herein.

5. Notification to All Regulatory Agencies that Received Potentially Incomplete Production of Email

a. Within 30 days of the date this AWC is accepted, LPL shall provide FINRA staff with a list of all regulatory agencies that received potentially incomplete production of email in response to requests or subpoenas sent from January 1, 2007 to December 17, 2012.

b. Within 60 days of the date this AWC is accepted, a principal of the firm shall certify in writing to FINRA staff that the firm has notified all such regulatory agencies of its potentially incomplete email productions.
Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

The firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payments are due and payable. The firm has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

The firm 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

The firm 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

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, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, 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.

The firm 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

The firm 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 the firm; and

C. If accepted:

1. this AWC will become part of the firm'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 response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. the firm 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. The firm 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 the firm'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. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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.

Date (mm/dd/yyyy) 5/3/2013

Respondent, LPL Financial LLC

By: Stephanie L. Brown
General Counsel & Managing Director

Reviewed By:

Lori Martin, Esq.
Counsel for LPL Financial LLC
WilmerHale
7 World Trade Center
250 Greenwich Street
New York, New York 10007
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.

Date (mm/dd/yyyy)  
Respondent, LPL Financial LLC

By:  
Stephanie L. Brown  
General Counsel & Managing Director

Reviewed By:

Lori Martin, Esq.  
Counsel for LPL Financial LLC  
WilmerHale  
7 World Trade Center  
250 Greenwich Street  
New York, New York 10007
Accepted by FINRA:

5.24.13
Date

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

James E. Day
Vice President and Chief Counsel
FINRA Department of Enforcement
15200 Omega Drive
Rockville, MD 20850
301-258-8520 (phone)
202-721-8303 (fax)
Plan of Distribution  
(AWC No. 2012032218001)

1. Within 30 days of the date the AWC is accepted, LPL shall select a neutral Fund Administrator (the "FA"), not unacceptable to FINRA, who shall have certain duties as set forth herein. The FA shall be compensated for his/her time and expense by LPL pursuant to such terms as may be agreed to by LPL and the FA.

2. Within 30 days of the date the AWC is accepted, LPL shall provide a list to FINRA staff of all Eligible Claimants, i.e., all brokerage customer claimants in arbitrations or litigations brought against LPL initiated on or after, or still open as of, January 1, 2007, and which were closed on or before December 17, 2012. That list shall include names of the claimants; the caption of the arbitration and/or litigation; the claimants' address and, if available, phone number; and, the name, address and phone number of the claimants' attorneys, if represented.

3. Within 60 days of the date the AWC is accepted, LPL shall notify by letter Eligible Claimants of their rights as established by the AWC. Such letter shall also contain an Election Form along with a postage-paid self-addressed envelope designed to assist Eligible Claimants in making and submitting their elections herein. The letter and Election Form shall not be unacceptable to FINRA staff. LPL must take reasonable steps to assure itself that the address it has for each claimant is valid; and, in any instance where a letter is returned as undeliverable and/or in which LPL has notice that its address is otherwise no longer valid, it must take such further reasonable steps that may be necessary in order to obtain a valid address and to provide actual notice to Eligible Claimants of their rights hereunder. The letter contemplated by this Section shall describe Eligible Claimants' rights hereunder, including as follows:

a. The Right To Receive Emails. Upon any request made within 45 days of receipt of LPL's letter, Eligible Claimants shall have the right to receive all available, non-privileged emails relevant to the claims and defenses at issue in the arbitration or litigation. LPL will provide these emails within 60 days of its receipt of the Claimant's request. LPL will include a statement in its production correspondence indicating that it has conducted a reasonable search for emails, but that some emails may be missing because they were never retained.

b. The Right To Receive Payment. Upon any request made within 45 days of receipt of (i) LPL's letter or (ii) emails requested from LPL, whichever is longer. Eligible Claimants shall also have the right to elect one of the following two options:
i. **Standard Payment.** Eligible Claimants have the right to receive a payment of $3,000 per case. To the extent there are multiple Eligible Claimants in a case, the payment will be made payable to the order of all such Eligible Claimants collectively or to a designated attorney on their behalf. Cases that were consolidated or jointly tried will be considered separate for purposes of the per case payment. Additionally, for all matters with four or more claimants who are natural persons, the Eligible Claimants therein shall be entitled to receive a collective payment of $3,000 for each multiple of three claimants who are natural persons, or any portion thereof. Any dispute as to what represents a “case,” as to the number of claimants who are natural persons, or as to the amount of the payment hereunder will be submitted to the FA for final resolution. In order to receive the Standard Payment, Eligible Claimants must provide the Limited Waiver described in Section 5 below.

ii. **Independent Determination.** Alternatively, Eligible Claimants may elect to waive the Standard Payment, and instead seek to have the FA determine the appropriate monetary sanction for LPL’s actual or apparent failure to produce emails, based on the facts and circumstances of each case, up to a limit of $20,000. This option will only be available if all claimants in a case agree to its use. Eligible Claimants must be advised, prior to this election, that choosing to participate in the Independent Determination process could result in their receiving less than the Standard Payment or no payment at all. For each case in which this election is made, the FA shall receive within 30 days from LPL a copy of the complaint and/or statement of claim, the answer, the emails which were not produced, and a copy of the award, judgment and/or settlement. In addition, Eligible Claimants shall have the right to submit to the FA a written claim setting forth its position. The FA will take into account the content of any emails not produced, the number of such emails produced, the potential significance of the emails to the claims and defenses in the case, and any other factors the FA deems relevant. The FA may in his or her discretion direct the parties to provide additional information that may be necessary for him/her to arrive at an equitable award. The FA shall have broad discretion in exercising his/her duties hereunder. All determinations by the FA shall be final and not subject to appeal.

4. **Timing of Payments.** LPL agrees to use the Fund to make the payments called for above within 30 days of receipt of the request for Standard Payment by Eligible Claimants or of notice from the FA of the amount awarded.

5. **Escheat.** In the event that any claimant, who is eligible for payment and has otherwise complied with the conditions hereunder, cannot be located at the time payments are
made, despite reasonable and documented efforts to do so, LPL shall, in accordance with state law, remit the amount due to the appropriate escheat, unclaimed property or abandoned property fund for the state in which the customer is last known to have resided. LPL shall provide as part of its report to FINRA described at Section 8 below a list of amounts subject to the process described in this section.

6. **Adequacy of Fund Amount.** In the event that additional monies are needed to ensure that each Eligible Claimant receives the payment contemplated herein, LPL agrees herein to provide such additional monies to the Fund.

7. **Limited Waiver.** Prior to receiving payment from the Fund, Eligible Claimants must execute a limited waiver in which the claimant agrees that, in return for any payments from the Fund, the claimant waives the right to seek any other payment from LPL that is intended to sanction the firm for its actual or apparent failure to produce emails in the case for which it is receiving payment. Such limited waiver shall expressly state that all other rights and claims of the claimant, if any, arising out of the non-production of emails, are not waived. A description of the terms and/or a copy of such waiver must be included in the letter referenced in Section 3 above.

8. **Report to FINRA.** Within 180 days from the date the AWC is accepted, or such additional period agreed to by a FINRA staff member in writing, a registered principal on behalf of LPL shall submit a report to FINRA identifying all requests for emails, payments, independent determinations, and all payments made hereunder. Such report shall be submitted to James E. Day, Chief Counsel, 15200 Omega Drive, 3rd Floor, Rockville, MD 20850-3241 by letter that identifies LPL Financial LLC, Matter No. 2012032218001 or by email from a work-related account of the registered principal of Respondent firm to EnforcementNotice@FINRA.org. LPL shall supplement such report every 60 days as needed until all of its payment obligations under the Fund are completed.

9. Within 180 days from the date the AWC is accepted, or such additional period as may be agreed to by a FINRA staff member in writing, LPL shall forward any undistributed funds up to an aggregate of $1.5 million to FINRA as an addition to the fine imposed by this AWC.

10. If an Eligible Claimant is no longer living as of the date of the notice, that claimant's rights under this AWC will pass to his or her legal successor. That legal successor will be bound by all requirements for Eligible Claimants identified herein.
Corrective Action Statement of LPL Financial LLC

In connection with the issuance of the Acceptance, Waiver & Consent in this matter, LPL Financial LLC ("LPL" or "Respondent") submits this statement describing the many corrective actions it has taken in response to the issues described in the AWC.1 These actions commenced in the immediate aftermath of LPL’s self-report of its DBA email surveillance problem in the summer of 2011 and have continued through the present. Among the first changes made was to immediately improve accountability for the firm’s email compliance by designating a Senior Vice President within its Governance, Risk and Compliance ("GRC") department with responsibility for the regulatory compliance of LPL’s email surveillance and supervision systems. In addition, LPL has hired experienced new senior executives in the IT area, including the former CIO of Dell Online who became the firm’s Chief Information Officer in December 2012.

Email

In 2012, in connection with the DBA email issues described in the AWC, LPL retained the firm of Stroz Friedberg, a leading email consultant in the United States, to assist the firm in the review and enhancement of its email systems, which is an ongoing process. Stroz Friedberg provided a report with recommendations in October, 2012 and the firm is now seeking to implement its principal recommendations which include:

- Enhancing monitoring of email traffic;
- Consolidating the number of DBA email vendors;
- Ongoing tuning of the email surveillance software to reduce false positives; and
- Comprehensive testing of the email surveillance software and email archive conversions

LPL’s Executive Management Committee agreed to implement Stroz’s recommendations as part of a 2013 project and allocated the appropriate funding to implement them.

Separately, the firm is pursuing a longer term and fundamental shift in its approach to capturing and surveilling financial advisor email. Under this new approach, developed under the leadership of the firm’s Chief Information Officer, the firm would create a Microsoft Exchange environment. Following the initial step towards consolidation of email vendors as recommended by Stroz Friedberg, the firm would migrate to a single Microsoft Exchange environment that would simplify and reduce the operational and regulatory risk associated with the handling of DBA email addresses as well as the email journaling process used with some banking and credit union channel relationships. This new email solution, which simplifies operational control and surveillance while providing advanced capabilities, will be piloted later in 2013.

With respect to unapproved email addresses used by LPL financial advisors, LPL has reviewed historic branch exam reports from 2008-2011 to identify unauthorized email addresses and capture and surveil emails associated with these unauthorized addresses. Historically, branch examiners were instructed to identify any unapproved email addresses identified during onsite exams and, if such addresses were identified, to (a) assess whether the advisor has used such

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1 This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.
address for business purposes, (b) review the history and content of such emails that are identified, and (c) cite the findings in the exam report as a deficiency.

Since March 2012, in addition to the above steps, branch examiners have been instructed to:

- facilitate the capture of any business communications from an unapproved email account that is identified and forward them to the home office for surveillance;
- consistently impose disciplinary action upon the financial advisor; and
- coordinate with email compliance staff with a view to ensuring that the emails from the identified email address, if still used, are being captured and supervised by the firm.

The firm has also recognized the need for procedures governing the search for and collection of electronic communications when LPL receives requests for electronic communications from regulators or litigants in arbitration. Accordingly, the GRC department has adopted written procedures for such functions that require:

- Centralized processing and tracking of requests;
- Specification of databases to be searched for materials responsive to requests (e.g., email archive); and
- Creation of a documentary record of searches requested and conducted, the name of the requestor, the matter generating the request, the name of the collector, and search results.

The firm’s new e-discovery database has been implemented, and LPL home office staffers have been trained in the proper use of this required database tool.

Information Technology And Controls

In early 2012, LPL retained Bain & Company to conduct a focused assessment of the firm’s Information Technology delivery, governance, organization, and strategy. Following the initial assessment, Bain focused on developing a plan for broad transformation, particularly with respect to the firm’s Business Technology Services (“BTS”) department. Included in that plan was the development of a “three-year end state” providing benefits relating to, among other things, IT delivery, platform management, and employee engagement. The plan should enhance the IT organization throughout LPL, so that BTS is able to meet the technological needs of this growing company.

In January 2013, LPL commenced a review of the controls, escalation protocols, and reporting and monitoring tools within the broker-dealer. The review will examine controls in brokerage ops, fin ops, compliance and other areas of the firm. The assessment is prioritized based on potential level of operational, regulatory, financial and reputational risk. The assessment and solutions will be benchmarked against industry practices and is governed by a senior executive working group, with operational department accountability, and periodic reporting to the LPL Board.
Internal Audit

With respect to supervision of the internal audit function, the firm has implemented changes to the Internal Audit department’s policies and procedures. Accordingly, audit plans are now presented to the Audit Committee of the firm’s parent company by the Head of Internal Audit for review and approval. Internal Audit staffers are required to articulate the rationale for each change to the approved plan. Internal Audit is accountable to complete all audits on the audit plan, taking into account Audit Committee adjustments. The Audit Committee must approve any decision to permanently stop work on an audit or remove it from the plan. The Audit Committee Chair and Head of Internal Audit consult monthly one-on-one. And Internal Audit reviews its charter annually and proposes revisions for Audit Committee approval.