

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
SECURITIES DIVISION**

IN THE MATTER OF)	
)	
LPL FINANCIAL, LLC)	Administrative Consent Order
)	Number LS-15-1362
<i>Respondent</i>)	
)	

CONSENT ORDER

WHEREAS, the Securities Division of the Mississippi Secretary of State (“Division”), having the authority to administer and provide for the enforcement of all provisions of the Mississippi Securities Act (“Act”) codified at Mississippi Code Annotated Sections 75-71-101 et. seq.,

WHEREAS, LPL Financial, LLC (“Respondent”), individually, has advised the Division of his agreement to resolve the matter,

WHEREAS, Respondent, solely for the purpose of concluding this matter with the Division and without admitting or denying the Findings of Fact and Conclusions of Law set forth herein, agrees to certain actions described herein, and consents to the terms and conditions of this Administrative Consent Order (“Order”); and

WHEREAS, Respondent elects to permanently waive any right to a hearing and appeal under the Act in Sections 75-71-604 and 75-71-609 with respect to this Order;

NOW, THEREFORE, the Division, as Administrator of the Act, hereby enters this

Order:

I. FINDINGS OF FACT

Parties

1. The Secretary of State (“Administrator”), pursuant to the Act, is the Administrator of the Act. The Administrator administers and enforces the Act and regulates the offer and sale of securities in Mississippi, including the firms and persons who offer or sell securities or who provide investment advice regarding securities.

2. LPL Financial, LLC (“LPL”) is a broker-dealer firm with a principle place of business of 75 State Street, 24th Floor, Boston, Massachusetts 02109. LPL’s Central Registrations Depository (“CRD”) number is 6413 and has a branch office located at 509 Cobblestone Ct, Suite 2, Madison, Mississippi 39110. The branch’s CRD number is 479714.

3. Leo Thomas Landry III (“Landry”) is a broker-dealer agent and investment adviser representative registered with LPL. Landry’s CRD number is 5516058.

Events

4. Landry is the branch manager and principal at the Madison branch.

5. In November 2014, the Division received a complaint concerning a LinkedIn message sent from Landry concerning a 401(k) rollover plan.

6. Page 26 of the LPL Written Supervisory Procedures (the “Procedures”) states, “The DP (Designated Principal) is responsible for reviewing the OSJ branch manager’s correspondence and communications with the public to determine compliance with the rules of the various regulatory bodies as well as to protect clients and the image and reputation of LPL Financial.” Page 200 of the Procedures states, “Designated Principals, Analysts and OSJ Branch managers

will conduct daily review of incoming and outgoing electronic mail correspondence in the OSJ Review Tool Email Task.”

7. In January 2015, an examiner from the Division performed a branch exam of LPL and discovered that within the previous six months, Landry sent electronic messages through the LinkedIn website, without prior approval from LPL, concerning a rollover into Nissan’s 401(k) plan (the “LinkedIn messages”). Landry sent these LinkedIn messages to over three hundred (300) Nissan-employed prospects.

8. The LinkedIn messages identified two Nissan-employed clients of Landry’s using their personal information to market Landry’s financial products and services.

9. The LinkedIn messages contained the statements, “The rollover cost them nothing ... No fee, no penalties, and no taxes” and “Ask Erik and John how it worked for them.”

10. LPL’s electronic review system failed to detect any of Landry’s over three hundred (300) LinkedIn messages.

II. APPLICABLE LAW

11. Miss. Code Ann. § 75-71-102(1) sets forth that the “‘Administrator’ means the Secretary of State.”

12. Miss. Code Ann. § 75-71-601(a) states, “The administrator shall administer this chapter.”

13. Miss. Code Ann. § 75-71-412(b) and (c) sets forth:

Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration.

...

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not:

(1) Institute a revocation or suspension proceeding under this subsection (b) based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one (1) year after the date of the order on which it is based; or

(2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), (12) or (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of the amount specified in Section 75-71-613 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

14. Miss. Code Ann. § 75-71-412(d)(2) and (d)(9) set forth:

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

* * * *

(2) Willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years.

* * * *

(9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or rule adopted or order issued under this chapter or the predecessor act within the previous ten (10) years.

15. The Division may employ remedies set out in Miss. Code Ann. Section 75-71-604 of the Act which sets forth:

Administrative enforcement.

(a) **Issuance of an order or notice.** If the administrator determines that a person has engaged, is engaging, or is about to engage in an act,

practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice or course of business constituting a violation of this chapter or rule adopted or order issued under this chapter, the administrator may:

- (1) Issue an order engaging in directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions of a broker-dealer under Section 75-71-401(b)(1)(D) or (F) or an investment adviser under Section 75-71-403(b)(1)(C); or
- (3) Issue an order:
 - (A) Under Section 75-71-204;
 - (B) Imposing a civil penalty in the case of an issuer of registered securities, broker-dealer, investment advisor, agent, investment adviser representative, or other person who violated this chapter;
 - (C) Barring or suspending the person from association with a broker-dealer or investment advisor registered in this state; or
 - (D) Requiring the person to pay restitution for any loss or disgorge any profits arising from the violation, including interest.

(d) Civil penalty. In a final order under subsection (c), the administrator may impose a civil penalty in an amount set forth in Section 75-71-613 for each violation and each violation shall be considered a separate offense in a single proceeding or a series of related proceedings.

16. Mississippi Securities Act Rule 5.21(B)(6) sets forth:

Standards of Conduct. Each broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of their business. Acts and practices, including, but not limited to, the following, are considered contrary to such standards and may constitute grounds for denial, suspension, or revocation of registration, imposition of fines, or such other action authorized by statute.

(6) Engaging in conduct specified in subsection (A) 1, 2, 3, 4, 5, 6, 8, 11, 12, 16, 17, 18, 19, 23 of this Rule.

17. Mississippi Securities Act Rule 5.21(A)(19) sets forth:

Using any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material, or presentation based on conjecture, unfounded or unrealistic claims, or assertions in any brochure, flyer, or display by words, pictures, graphs, or otherwise designed to supplement, detract from, supersede, or defeat the purpose or effect of any prospectus or disclosure.

18. Mississippi Securities Act Rule 5.21(A)(23) states, “Violating any laws or rules of the SEC or a national securities exchange or national securities association of which it is a member, or violating any federal or state securities law or any rule or regulation promulgated thereunder.”

19. FINRA Rule 2210(d)(2) states, “Any comparisons in retail communications between investments or services must disclose all material differences between them, including (as applicable) investment objectives, costs and expenses, liquidity, safety, guarantees or insurance, fluctuation of principal or return, and tax features.”

20. FINRA Rule 2210(d)(4) states, “In retail communications and correspondence, references to tax-free or tax-exempt income must indicate which incomes taxes apply, or which do not, unless income is free from all applicable taxes.”

III. ACTION NECESSARY TO PROTECT THE PUBLIC

21. Action by the Division to halt future conduct by Respondent is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and provisions of the Act.

22. Respondent, by execution of this Order, affirmatively states that it has freely agreed to the signing of this Order, and that no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Division or any member

of the staff of the Division, or any agent or employee of the Division in connection with the signing of this Order.

23. Based upon the foregoing Findings of Fact, and consistent with the consent of the Respondent, the Division makes the following:

IV. CONCLUSIONS OF LAW

24. The Administrator, after consideration of the facts set forth above and on the consent of LPL and the Division, finds and concludes that the Secretary has jurisdiction over LPL and this matter and that the following is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by the Act.

25. The LinkedIn messages that LPL—through its agent Landry—sent comparing investments and services failed to disclose investment objectives, costs and expenses, fluctuation of principal or return, and tax features in violation of FINRA Rule 2210(d)(2), which is a violation of Mississippi Securities Act Rule 5.21(A)(23).

26. LPL through its agent Landry failed to indicate in his LinkedIn messages as to which income taxes apply or which do not after stating that the rollover would be “tax free” in violation of FINRA Rule 2210(d)(4), which is a violation of Mississippi Securities Act Rule 5.21(A)(23).

27. LPL through its agent Landry misled over three hundred (300) people with his LinkedIn messages about a 401(k) rollover plan in violation of Mississippi Securities Act Rule 5.21(A)(19).

28. LPL, as Landry’s supervisor and employer, failed to reasonably supervise its agent Landry, allowing him to violate FINRA Rule 2210 (d)(2), FINRA Rule 2210(d)(4), and Mississippi Securities Act Rule 5.21(A)(23).

V. ORDER

IT IS HEREBY ORDERED:

1. This Order concludes the open matter with the Division with respect to LPL supervising Landry's LinkedIn messages. However, nothing herein limits the ability of the Division, individually or jointly with other agencies, in pursuing any investigation with respect to any other securities-related matter involving LPL.
2. This Order is entered into solely for the purpose of resolving the aforementioned matters as applicable in the State of Mississippi and is not intended to be used for any other purpose.
3. Respondent shall fully and fairly comply with all of the following requirements:
 - a. Respondent shall pay to the Mississippi Secretary of State's Office Securities Division an administrative penalty in the amount of Four Thousand Dollars (\$4,000);
 - b. Respondent shall not take any action, or make or permit to be made any public statement, denying, directly or indirectly, any finding in this Order or creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligation or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Administrator is not a party; and
 - c. Respondent agrees he will, from this point forward, comply with all requirements of the Act and the Rules promulgated thereunder.
4. If Respondent defaults in any of his obligations set forth in this Order, the Division may, at its sole discretion and upon fifteen (15) days' notice to Respondent, without opportunity for

administrative hearing, refer this matter for enforcement as provided in Section 75-71-604(g) of the Act.

5. This Order shall not disqualify Respondent from any business that he otherwise is qualified or licensed to perform under applicable state law and this Order is not intended to form the basis for any disqualification.

6. This Order contains, constitutes, and embodies the entire agreement between the undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and this Order supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Order.

7. In the event that one or more provisions contained in this Order shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Order.

8. By his consent to and execution of this Order, Respondent affirmatively represents that he freely agrees to the signing of this Order by the Division, and that no threats, promises, representations, inducements, or offers of any kind, other than as stated in this document, have been made by the Division, any member of the staff of the Division, or any agent or employee of the Division in connection with the negotiations and signing of this Order.

Dated this the 6th day of July 2015.

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

By: 

JESSICA LEIGH LONG
Senior Attorney
Securities Division

CONSENT TO ENTRY OF FINAL ORDER

LPL Financial, Inc. hereby acknowledges that it has been served with a copy of this Administrative Consent Order ("Order"), has read this Order, is aware of his right to a hearing and appeal in this matter, and has waived the same.

LPL Financial, Inc. admits the jurisdiction of the Division, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to entry of this Order by the Division.

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

Dated this the 22nd day of July 2015.

LPL Financial, Inc

By: [Signature]
Name: _____
Title: **JAMES S. SHORRIS
EXECUTIVE VICE PRESIDENT
DEPUTY GENERAL COUNSEL**

STATE OF Massachusetts

COUNTY OF Suffolk

SUBSCRIBED AND SWORN TO before me this 22 day of July 2015.

[Signature]
Notary Public



My commission expires: July 15, 2016