UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

January 17, 2025

Matthew Beville, Esq.
WilmerHale
2100 Pennsylvania Ave. NW
Washington, DC 20037

Re: **LPL Financial LLC**
Waiver of disqualification pursuant to Rule 506(d)(2)(ii) of Regulation D

Dear Matthew Beville:

This is in response to your letter dated January 16, 2025 ("Waiver Letter"), written on behalf of LPL Financial LLC ("LPL") and constituting an application for a waiver of disqualification under Rule 506(d)(2)(ii) of Regulation D under the Securities Act of 1933. In the Waiver Letter, LPL requests relief from any disqualification that will arise as to LPL under Rule 506 of Regulation D under the Securities Act as a result of entry of the Commission's order on January 17, 2025, against LPL pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 (the "Order").

Based on the facts and representations in the Waiver Letter and assuming that LPL complies with the Order, we have determined that LPL has made a showing of good cause under Rule 506(d)(2)(ii) of Regulation D that it is not necessary under the circumstances to deny it reliance on Rule 506 of Regulation D by reason of the entry of the Order. Accordingly, the relief requested in the Waiver Letter is hereby granted on the condition that LPL complies with the terms of the Order. Any different facts from those represented or LPL's failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/ M. Hughes Bates

M. Hughes Bates
Chief, Office of Enforcement Liaison
Division of Corporation Finance

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January 16, 2025

BY ELECTRONIC DELIVERY

Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: **In the Matter of LPL Financial LLC**

Dear Office of Enforcement Liaison:

We write on behalf of our client, LPL Financial LLC ("LPL" or the "Firm"), in connection with the Firm's settlement with the Securities and Exchange Commission (the "Commission"). The Commission has instituted a settled administrative proceeding against the Firm pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (the "Exchange Act") that found that the Firm violated Exchange Act Section 17(a) and Exchange Act Rule 17a-8 (the "Order"). The Order requires, among other things, that the Firm pay a civil money penalty and engage a compliance consultant to perform a review of certain components of its anti-money laundering ("AML") policies, procedures, and controls. Absent a waiver, the Firm would be disqualified with respect to offerings issued in reliance on Rule 506 of Regulation D until it satisfies the undertakings required by the Order.

As set forth below, LPL believes that it satisfies the requirements for a waiver under the Division of Corporation Finance's guidance and that a waiver is appropriate under the circumstances. Accordingly, pursuant to Rule 506(d)(2)(ii) of Regulation D, LPL respectfully requests a waiver of any disqualification that arose from the Order.

I. BACKGROUND

LPL is a dually registered broker-deal and investment adviser; the Firm has been registered with the Commission as a broker-dealer since 1973 and as an investment adviser since 1975.

A. The Order

The Commission entered the Order instituting settled administrative proceedings against LPL pursuant to an Offer of Settlement that consented, without admitting or denying the findings in the Order, to the entry of the Order. The Order found that LPL violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder. Exchange Act Rule 17a-8 provides that broker-dealers subject to the requirements of the Currency and Foreign Transactions Reporting Act of 1970 must comply with the reporting, recordkeeping and record retention requirements in the Bank Secrecy Act's implementing regulations. This includes a requirement to, among other things, have an AML

program that includes appropriate risk-based procedures for conducting ongoing customer due diligence ("CDD"), 31 C.F.R. § 1023.210 (the "CDD Rule"); and a requirement to have a written Customer Identification Program ("CIP"), 31 C.F.R. § 1023.220 (the "CIP Rule").

The Order found that LPL violated the CIP Rule by failing to adopt and implement reasonably designed account closure procedures. The Order found that, in addition, LPL failed to accurately document its CIP procedures in that the Firm failed to make, maintain, and preserve CIP records, and that LPL's personnel, in some instances, lifted restrictions on accounts that had not satisfied LPL's CIP requirements without forming a reasonable belief as to the customer's identity. Finally, the Order found that LPL violated the CDD Rule by failing to accurately document its procedures for conducting ongoing customer due diligence with respect to the opening and maintenance of certain cannabis-related accounts and foreign accounts held at the Firm.

The Order recognized the Firm's remedial efforts, including that the Firm voluntarily engaged a compliance consultant to assess and provide recommendations for the enhancement of its CIP and CDD processes after the Staff initiated its investigation but before the entry of the Order. The Order also recognized that the Firm has already taken steps to implement the compliance consultant's recommendations. In addition, the Order recognized that LPL increased resources allocated to its compliance program, including specifically in relation to its AML program. Finally, the Order recognized that the Firm cooperated with the Enforcement Staff's investigation.

The Order censured LPL and required it to cease and desist from committing or causing any future violations of Exchange Act Section 17(a) and Exchange Act Rule 17a-8. It also required LPL to pay an $18,000,000 penalty. The Order also included an undertaking requiring LPL to continue its engagement of the compliance consultant, who will be required to perform a post-settlement review of certain components of LPL's AML program. The compliance consultant will be required to report to the Commission in connection with its review.

B. The 2021 Action

The SEC has previously entered an order related to LPL's AML program. Specifically, on September 30, 2021, the SEC entered a settled administrative proceeding against LPL that found that LPL violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder (the "2021 Order").[1] The 2021 Order also found that LPL caused a client's violations of Sections 17(a)(2) and (3) of the Securities Act of 1933 and Section 206(2) of the Investment Advisers Act of 1940, in connection with a fraudulent scheme undertaken by the client against a third-party. The 2021

[1] In re LPL Financial LLC, Exchange Act Release No. 93,201 (Sept. 30, 2021).

Order did not include any undertakings and did not result in a disqualification under Rule 506(d) of Regulation D.

The 2021 Order also recognized that "LPL has undertaken significant remedial measures through modifications of its policies and procedures designed to prevent violations such as those described herein." It noted that these "remedial measures include, among other things, increased staffing and enhancements to the firm's fraud surveillance program, centralized surveillance and investigation functions, enhanced consistency of anti-money laundering escalations and reporting, and enhanced quality control testing for transaction monitoring and customer due diligence."

While the Order at issue in this request and the 2021 Order both involved violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, they involved very different conduct. The 2021 Order found that LPL did not comply with its CIP program with respect to the opening and ongoing review of a single client, who was found to have misappropriated funds from an entity for which he was purportedly providing investment advice. The 2021 Order also found that the client provided false information to LPL about the source of the funds and the purpose of certain transactions. The 2021 Order found that LPL did not identify the client's false statements because it did not verify that the "identification document photograph matched [the client's] physical appearance before processing the account opening paperwork," "did not verify the address listed in [the client's] account application," and did not effectively address conflicting information associated with certain activity in the client's account, which were required by its CIP program.

In contrast, as set forth above, the Order focused on broader issues that were not at issue in the 2021 Order. Given these differences, LPL believes that the 2021 Order and the current Order addressed different underlying issues and that the 2021 Order should not preclude the relief requested herein.

II. REQUEST FOR RELIEF

As a result of the Order, LPL would be disqualified with respect to offerings issued in reliance on Regulation D absent the waiver requested here.

Under Rule 506(d)(2)(ii), the Commission, or the Division Staff acting under delegated authority, can waive this disqualification upon a showing of good cause if it determines that a disqualification is not necessary under the circumstances. As the Division of Corporation Finance has outlined, among the factors considered in deciding whether a waiver should be granted are: (A) the nature of the violation; (B) whether the violation involved the offer and sale of securities; (C) whether the conduct involved a criminal conviction or a scienter-based violation; (D) who was

responsible for the misconduct and the duration and scope of the misconduct; (E) the remedial steps the Firm has taken; and (F) the impact that would result from a denial of the waiver.[2]

As set forth below, LPL believes that it has demonstrated that there is good cause to find that disqualification is not necessary under these factors.[3]

A. Whether the violation involved the offer and sale of securities

These violations do not involve the offer or sale of securities. The violations in the Order arise in connection with deficiencies in LPL's AML policies, procedures, and controls, in violation of Exchange Act Section 17(a) and Exchange Act Rule 17a-8.

B. Whether the conduct involved a criminal conviction or scienter-based violation, as opposed to a civil or administrative non-scienter-based violation

The Order is not a criminal conviction. The Order did not find that LPL violated any of the scienter- or non-scienter-based antifraud provisions of the securities laws.

C. Responsibility for and Duration of the Misconduct Described in the Order

The Division of Corporation Finance has indicated that, when evaluating who was responsible for misconduct in connection with a waiver application, it considers whether (1) "the misconduct reflects more broadly on the entity as a whole" or (2) "the tone at the top of the party seeking the waiver condoned, encouraged or did not address the misconduct, or actions or omissions by the party seeking the waiver, or any of its affiliates, obstructed the regulatory or law enforcement investigation."[4]

The Order did not find that LPL's senior management participated in or directed the violations identified in the Order. Rather, certain roles and responsibilities relevant to CIP and CDD were spread across multiple functions without a single reporting line or appropriate coordination. As discussed below, LPL believes this organizational issue has now been addressed, through clearer and more centralized accountability and coordination for CIP and CDD. The Order

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[2] Div. of Corp. Fin., Secs. & Exch. Comm'n, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

[3] LPL was previously granted waivers under Rule 506 in connection with the Commission's Share Class Selection Disclosure and Off-Channel Communications Initiatives. *See* In re Off-Channel Communications at Registered Entities, Securities Act Release No. 11,298 (Aug. 14, 2024); In re Certain Investment Advisers Participating in the Share Class Selection Disclosure Initiative, Securities Act Release No. 10,612 (March 11, 2019).

[4] Div. of Corp. Fin., Secs. & Exch. Comm'n, Waivers of Disqualification under Regulation A and Rules 505 and 506 of Regulation D (Mar. 13, 2015).

found that several of the issues identified in the Firm's CIP and CDD programs were in existence for several years.

D. Remedial Efforts

LPL has invested significantly in enhancing its governance and internal controls to ensure that the issues described in the Order do not recur. These efforts include the engagement of a compliance consultant in 2023 to assess the Firm's controls related to its CIP and CDD programs; investments made by the Firm in its AML program; and changes in leadership. The Firm has taken the following steps to address the deficiencies described in the Order:

- In late 2022, the Firm formed a dedicated working group to consolidate all outstanding CIP issues in a single remediation program, with a designated project management team and a commitment to moving remediation forward under the accountability of an executive-level sponsor. The working group later added all other open AML remediation items into its scope, in addition to the CIP issues identified at the outset of the working group.

- In 2023, LPL retained a compliance consultant to conduct a comprehensive current state assessment of its CIP and CDD policies, procedures, and practices, and to provide findings and recommendations. The work undertaken by the compliance consultant was both broad and deep, and provided LPL with a clear path to continue to enhance and improve its AML compliance program. LPL has already made significant progress in executing on the compliance consultant's recommendations. As of the date of this submission, LPL has closed 33 of the 45 remediation projects initiated in response to the compliance consultant's recommendations to date. In connection with the settlement, the compliance consultant will conduct an additional review of LPL's CIP and CDD policies and procedures, the results of which will be reported to the Commission, which will include an evaluation of LPL's progress on the compliance consultant's original recommendations.

- LPL has also made changes to its leadership and organization since the start of the Commission's investigation, including the appointment of new personnel in key legal and compliance roles. In addition to this new leadership, the Firm clarified organizational roles and sharpened internal accountability for the AML compliance program by restructuring reporting lines within the AML compliance program. For example, this effort included moving the Due Diligence and various other components of the AML Compliance group under a new SVP of AML Program Execution. In addition, the Firm has brought Operations, Risk, and Compliance (including the AML program) under the same reporting structure. These enhancements were designed to ensure that, among other things, historical challenges in marshaling resources across departments were addressed.

- Under this new leadership structure, the Firm has continued to dramatically increase the resources allocated to its compliance program, including specifically in relation to its AML program. This includes, from the start of the relevant period through today, significant investments in human capital and technology. For example, the Firm has spent approximately $25 million in recent years to upgrade its transaction monitoring system, implement Real-Time CIP, and engage outside consultants to advise on AML-related projects. Implementing Real-Time CIP transformed the Firm's CIP processes because accounts going through the Real-Time CIP workflow must pass CIP before they can be opened, so there is no longer a risk that a CIP-related restriction could be lifted prematurely for those accounts and there will be no account closure issues for those accounts.

- Finally, the Firm has engaged outside consultants to advise on several AML-related projects in recent years. First, in 2019, LPL engaged a third-party consultant to evaluate an upgrade of the Firm's transaction monitoring system. Second, in 2022, the Firm engaged a third-party consultant, among other tasks, to review LPL's AML case management tool and relevant procedures. Finally, in 2023, LPL retained a third-party consultant to support certain AML remediation work.

As these efforts reflect, LPL has taken extensive steps to enhance its AML policies, procedures, and controls, and to remediate the issues identified in the Order.

In addition, the sufficiency and thoroughness of LPL's remediation will be further substantiated because the Order requires LPL to continue its engagement of the compliance consultant. This undertaking requires the compliance consultant to conduct a post-settlement evaluation of certain components of LPL's AML policies, procedures, and controls and to report on its findings to the Commission Staff.

E. Impact if Waiver is Denied

A disqualification would have a negative impact on the Firm and its clients. As described below the Firm currently offers two investment programs that include Regulation D offerings. The first is an enhanced, full-service offering for high-net-worth clients. The second is a longstanding Delaware Statutory Trusts ("DSTs") program. Both of these programs would be negatively impacted if LPL were to become subject to a disqualification.

1. High-Net-Worth Services Program

The Firm is in the process of investing heavily in its high-net-worth services program, which is designed to meet the more complex needs of high-net-worth clients through a network of professionals such as CPAs and advanced planners, but also through an expanded suite of alternative investment offerings, including access to private placements. Many of these private

placement offerings, which include hedge funds, private equity funds, certain real estate investments and opportunities, and private credit offerings, are issued in reliance on Regulation D.

LPL launched its enhanced high-net-worth services offering in the third quarter of 2023. It currently acts as a placement agent for 36 semi-liquid or illiquid alternative investments issued by third-party funds. Of these, 18 are offered under Regulation D. LPL has approved and is currently onboarding an additional 9 third-party funds offered in reliance on Regulation D, and the Firm has plans to onboard an additional 20 to 30 third-party Regulation D offerings over the next twelve months. During the last two quarters of 2023, LPL sold approximately $30 million in Regulation D offerings. Through August 2024, the Firm sold an additional $80 million in Regulation D offerings. These figures are continually increasing. LPL is currently offering these products to clients and these offerings hold closings on at least a monthly basis.

LPL expects that this figure will continue to grow rapidly as its high-net-worth services offering matures. Currently, LPL clients hold approximately $6.3 billion of their total assets at LPL, in alternative investments, which includes approximately $1.2 billion in Regulation D offerings. Given recent industry trends to allocate approximately 15% of eligible clients' portfolios to alternative investments, LPL expects this figure to grow significantly as its Regulation D offerings expand; currently, about 10% of The Firm's alternative investment business is in Reg D offerings.

LPL has recently made significant investments into its high-net-worth services offering, a key component of which is the ability to offer sophisticated clients the ability to invest in private placements. These investments have included multiple multi-year contracts worth over $10 million in infrastructure to support offering these products. In addition, LPL currently employs approximately 68 personnel dedicated to alternative investment product offerings, and the Firm currently has an additional 14 open positions dedicated to supporting these products. LPL expects its high-net-worth services program to represent a significant amount of growth in its business over the next several years, and a disruption in offerings at this point in the business's new development would represent a significant setback for the Firm's growth and client offerings.

Further, LPL's high-net-worth clients have unique financial needs and goals, which are often served by access to alternative investments. For example, many of the Firm's high-net-worth clients benefit from the returns, reduced correlation, or diversification offered by private placement offerings. These benefits are a key reason why private placements are now a key component in many modern portfolio construction methodologies. If LPL lost the ability to provide those products, it may face challenges in retaining high-net-worth clients. Those clients would either have to accept potentially sub-optimal investment selections or undergo the potentially costly and time-consuming process of finding a new brokerage or advisory firm. This would also put LPL at a significant competitive disadvantage with respect to its key competitors, who would be able to continue offering those products without restriction.

Further, the loss of this business would have detrimental impacts on the LPL personnel who are qualified to sell private placements and whose income may heavily depend on the continued viability of the Firm's high-net-worth services program. As alternative investments become an increasingly important aspect of portfolio construction, more clients are looking for access to these products. Indeed, LPL understands that access to alternative investments is a key factor for certain clients when selecting a brokerage or advisory firm. As these clients tend to have larger accounts, losing the ability to offer these products would create disproportionately large impacts for independent advisors. An inability to offer these products would also have a negative impact on LPL's business and growth. Accordingly, LPL believes that an inability to offer such products would cause significant harm to the Firm's efforts to recruit and retain both advisors and clients.

2. Other Offerings

In addition, LPL has long offered eligible clients the opportunity to invest in Delaware Statutory Trusts ("DSTs"), many of which are offered in reliance on Regulation D. Over the past year, LPL has averaged approximately $4.8 million in monthly DST sales. LPL estimates that, in the aggregate, these transactions provide clients with approximately $1.1 million in economic benefits per month. These products tend to have limited capacity and, accordingly, are short lived. Over the last 12 months, LPL has on-boarded 11 DSTs, only 2 of which are still accepting subscriptions. In LPL's experience, DSTs typically reach capacity in less than a month due to high-investor demand. LPL also offers clients the ability to invest in Qualified Opportunity Zones and Exchange Funds, which provide other tax advantages and which are also often issued in reliance on Regulation D.

DSTs are investments in professionally managed real-estate properties that qualify as "like-kind" investments for Internal Revenue Code ("IRC") 1031 exchanges. Through these instruments, LPL clients can invest the proceeds from selling their home or other real estate holdings on a tax-deferred basis. IRS regulations require clients to identify the "like kind" investment (here, the DST) in which they intend to reinvest their real estate sales proceeds within 45 days from the initial sale and require that the "like kind" transaction close within 180 days. Once these requirements are met, clients can continue to defer taxes by rolling assets into additional DSTs as necessary and appropriate.

If LPL lost the ability to participate in Regulation D offerings, it would potentially cause significant harm to clients that have already purchased these assets. Many clients rely on DSTs, Opportunity Zones, and Exchange Funds as part of longer-term investment and tax strategies and they reasonably purchased those instruments based on the understanding that LPL could roll those assets into other tax-deferred investment options when necessary. If LPL was disqualified, those clients could suffer harm. For example, a client may have listed or sold a real estate holding, in expectation that they could defer taxes through a DST purchased through LPL. If the client could not identify another broker with comparable offerings *and* complete the onboarding process in the

limited window available, they could be forced to realize gains that they otherwise could have deferred through a DST. Similarly, clients in existing DSTs could be harmed if the underlying asset is sold and LPL is not in a position to help them reinvest their funds in another DST in the time-period imposed by the IRS.

3. Lack of Alternative Exemptions

Finally, LPL is not in a position where it could continue offering these products in reliance on another offering exemption, such as Securities Act Section 4(a)(2). The decision to offer a private placement under Regulation D or another exemption is made by the issuer, not the placement agent. Private funds, particularly those that accept individual investors and that may be offered through multiple placement agents, are almost always issued in reliance on Regulation D or another exemption, rather than solely under Section 4(a)(2) because of the additional protection and legal certainty provided by these safe harbors. If LPL were disqualified, it expects that virtually all private funds would opt to transact through other placement agents and cease doing business with LPL. As a result, LPL does not believe it has a realistic option to continue its alternative investment business in the current form without reliance on Regulation D.

III. CONCLUSION

LPL recognizes the historical issues in its AML program outlined in the Order. However, for the reasons set forth above, the public interest would not be served by disqualifying the Firm from offering investment products to its clients in reliance on Rule 506. The conduct at issue was completely unrelated to the offer or sale of private placement interests or the Securities Act's registration requirements. Further, the Firm has taken extensive steps to remediate the underlying issues identified by the SEC, including by engaging a compliance consultant to conduct a thorough review of its CIP and CDD policies and procedures, and by working to implement the recommendations delivered by that compliance consultant. In addition, a disqualification from offering products under Regulation D would have a significant impact on a growing product line in which LPL has made significant recent investments to the benefit of its clients.

Accordingly, the Firm respectfully requests that the Commission, pursuant to Rule 506(d)(2)(ii) of Regulation D, waive any disqualification provisions in Rule 506 of Regulation D that were triggered as a result of the entry of the Order, effective as of the date of the Order.

* * *

Thank you for your attention to this matter. Please let me know if any additional information is required.

Sincerely,

Matthew Beville

Cc: Daniel Schubert