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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF THE LICENSE OF:	PETITION TO CENSURE LICENSEE AND IMPOSE A FINE
LPL FINANCIAL, LLC, CRD#6413	Docket No. SD-18-0013

Pursuant to the authority of the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-6, the Utah Division of Securities (the "Division") hereby petitions the Utah Securities Commission ("Commission") to enter an Order censuring Respondent LPL Financial, LLC ("LPL") and imposing a fine. In support of this Petition, the Division alleges the following:

STATEMENT OF FACTS

1. LPL is a broker-dealer licensed in Utah with its primary place of business in Boston, Massachusetts. LPL has branch offices located throughout Utah.
2. Cyprus Credit Union Inc. ("Cyprus") is a federal credit union with its primary place of business in West Jordan, Utah
3. Mountain America Credit Union ("MACU") is a federal credit union with its primary place of business in West Jordan, Utah.

Division Examination

4. In 2015 and 2016 the Division conducted examinations of broker-dealers transacting business in Utah on the premises of Utah credit unions. Those examinations included LPL and the business it conducts through networking agreements with Cyprus and MACU, both of which are credit unions that are not licensed as broker-dealers or investment advisers.
5. The Division found that LPL failed to comply with the regulatory requirements governing networking arrangements between broker-dealers and credit unions, approved the use of misleading sales and advertising materials and other information provided to customers and the public, failed to follow and enforce its policies and procedures, and failed to reasonably supervise the business run through the credit unions.

The Chubb Letter and Networking Agreements

6. Networking agreements between credit unions and broker-dealers originated sometime after a 1993 no-action letter (“Chubb letter” or “Chubb”) was issued by the United States Securities & Exchange Commission (“SEC”) staff.¹ While an SEC no-action letter is not binding or controlling authority, the Chubb letter has been recognized by Utah and other state securities regulators as setting the minimal standards required for credit unions to offer on-site brokerage services through a networking agreement with a broker-dealer. The Division has previously permitted such agreements so long as the activities are in compliance with Chubb, and has taken prior regulatory actions for noncompliance.²

¹ <https://www.sec.gov/divisions/marketreg/mr-noaction/chubb112399.pdf>

² See Division Case Nos. SD-07-0022, -0023, -0024, and -0027.

7. Networking agreements allow broker-dealers such as LPL to gain instant access to potential clients – credit union members – by having their agents on-site in credit union locations. Credit unions in return gain a competitive advantage and the benefit of being able to offer those additional services to their members, and pursuant to the Chubb letter may receive a fee based upon business arising from the networking relationship.
8. A material distinction exists between traditional bank products offered through credit unions such as CDs, checking or savings accounts, which are insured by the National Credit Union Administration (“NCUA”), and nondepository investment products offered through broker-dealers, which are not NCUA insured. Those products include stocks, bonds, government and municipal securities, mutual funds, and variable annuities, all of which have greater risks, market volatility and are not insured or guaranteed. For those reasons, as a matter of policy it is critical that members fully understand the difference between credit union products and broker-dealer products, and which products are offered through which entity.
9. Accordingly, in the Chubb letter, the SEC staff set forth the conditions and requirements necessary for a credit union to offer on-premises brokerage services without becoming licensed as a broker-dealer. Among those requirements are the following:
 - a. the broker-dealer must provide its services in an area that is physically separate from the credit union’s regular business activities, in such a way as to clearly segregate and distinguish its services from those of the credit union;
 - b. the broker-dealer must exclusively control, supervise and be responsible for all securities business conducted in the credit union;

- c. the broker-dealer must approve and be responsible for all materials used to advertise or promote the investment services provided by its representatives, and such materials will be deemed to belong to the broker-dealer;
 - d. advertising and promotional materials must indicate clearly that:
 - i. brokerage services are being provided by the broker-dealer and not the credit union;
 - ii. the credit union is not a licensed broker-dealer;
 - iii. the broker-dealer is not affiliated with the credit union.
 - e. references to the credit union in advertising or promotional materials must be for the sole purpose of identifying the location where brokerage services are available and will not appear prominently in such materials.
10. In the years since the Chubb letter, additional regulatory guidance for networking arrangements has been issued by the Financial Industry Regulatory Authority ("FINRA") and NCUA.
11. NASD (now FINRA) Notice to Members 95-49, *NASD Clarifies Use Of Bank And Financial Institution Logos And Names* ("NTM 95-49"), reiterates the applicability of Chubb and specifically addresses the use of financial institution logos in advertisements and sales literature versus those of the broker-dealer, and the need to avoid confusion based upon logo prominence, such as size and location in such materials:
- ...in communications where a [credit union] is named, the relationship between the [broker-dealer] and the [credit union] shall be clear, no confusion shall be created as to which entity is offering which products and services, and securities products and services must be clearly offered by the [broker-dealer]. The existing rules also recognize that the position of any disclosure can create confusion, even if the disclosure is accurate. If in fact such confusion occurs, it will violate [FINRA] rules.

Additionally, the logo may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size so that it is unclear as to which entity is offering broker/dealer services. This application is consistent with the general requirement that the context and audience to which the communication is directed be considered.⁴

12. In addition, FINRA Rule 3160 incorporates and codifies key requirements from the Chubb letter with respect to distinguishing services and products offered by the broker-dealer from those of the credit union, including the clear display of the broker-dealer's name in the area in which its services are provided.⁵
13. NCUA is the federal agency that charters and supervises federal credit unions. Pursuant to a 2010 NCUA Letter to Credit Unions 10-FCU-03 ("NCUA Letter"), federal credit unions "must structure their securities activities carefully to strictly meet the terms of SEC guidance applicable to federal credit unions contained in" Chubb.⁶
14. The NCUA Letter further emphasizes the need to distinguish credit union activities from broker-dealer activities, to avoid misleading or confusing credit union members as to the nature or risks of brokerage products, and to ensure that appropriate disclosures are made in writing and in a location and type size that are clear and conspicuous to the credit union member.⁷

LPL Written Supervisory Procedures

15. LPL's written supervisory procedures incorporate many of the regulatory requirements of the Chubb letter, from FINRA and the NCUA Letter.

⁴ http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=1907

⁵ http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=9093

⁶ See 10-FCU-03 at 2. <https://www.ncua.gov/Resources/Documents/LFCU2010-03.pdf>

⁷ *Id.* at 6-7.

16. LPL’s guidelines regarding *Communications with the Public* (“Communications Guidelines”), Section 26.1.1, *Overview*, states “[c]ommunications with the public are subject to the rules and regulation set forth by FINRA, SEC, MSRB, as well as state government.”
17. The Communications Guidelines, Section 26.1.1, also state: “All communications must:
- Be based on principles of fair dealing and good faith
 - Be fair and balanced
 - Give the investor a sound basis for evaluating the facts
 - Not omit material information, including risk disclosures
 - Not make exaggerated, unwarranted or misleading statements, opinions, or claims
 - Not contain untrue or false statements
 - Not contain predictions or projections of actual investment results
 - May not imply that past performance will recur.”

18. Section 26.8.1 of the Communications Guidelines, *Advisors affiliated with Banks or Credit Unions – Overview*, states in part:

LPL Financial advisors operating on the premises of financial institutions are subject to special considerations in addition to the policies stated herein.

FINRA Rule 3160 and the Interagency Statement on Retail Sales of Non-deposit Investment Products impose further requirements for advisors who operate on the premises of a financial institution.

In addition to disclosing the nature and risk of the non-deposit investment product, any communication [with a credit union member] must indicate clearly that the brokerage services are being provided by LPL Financial, not the financial institution, and that the customer will be dealing with LPL Financial with respect to non-deposit investment products. The following disclosure is required on investment webpages that are posted to a financial institution’s website and may be required on materials if the relationship between the financial institution and LPL Financial needs further explanation.

“[Insert name of financial institution] is not a registered broker-dealer and is not affiliated with LPL Financial.”

References to the financial institution in communications should be solely for the purpose of identifying the location where brokerage services are available.

The financial institution's name may not be used in a way that is misleading or confusing, such as appearing in a disproportionate size, or appearing in an excessive number of times in the communication, so that it is unclear as to which entity is offering broker-dealer services.

19. Section 26.8.2 of the Communications Guidelines, *Advisors affiliated with Banks or*

Credit Unions – Nature and Risk of Non-Deposit Investment Products, states in part:

Communications that announce the location of a financial institution where broker-dealer services are provided or that are distributed on the premises of a financial institution or at such other location where the financial institution is present or represented, must disclose that securities products are provided by LPL Financial. The broker-dealer disclosure must be used by advisors in communications that include, but are not limited to radio or television broadcasts, signs, posters and brochures.

20. Section 26.8.3 of the Communications Guidelines, *Advisors affiliated with Banks or*

Credit Unions – DBAs for Financial Institution Programs, states in part: “When a

financial institution uses a DBA name, there are the following requirements:

- FINRA member name (i.e., LPL Financial) must be shown clearly and prominently. Specifically, it should say “Securities offered through LPL Financial.”
- The relationship between LPL Financial and any other entity must be clearly identified in the communication and must not be confusing. . . .
- If different products are offered by the member and nonmember, it should be easy to determine which products are offered by which entity.
- When advisors are identified in the communication, the relationship between the registered individual and each of the firms named should be clear. In the financial institution context, names that would give disproportionate prominence to the financial institution or create confusion as to which entity is offering securities would be prohibited. . . .
- Any email address using a compliance-approved DBA name must be hosted by or journaled through one of the LPL Financial-approved email vendors.

21. Finally, Section 26.14 of the Communications Guidelines, *Advisors affiliated with Banks*

or Credit Unions – Office Signage, states: “Registered office locations must be clearly

identified within building signage and lobby directories. They must also:

- Prominently disclose “LPL Financial” so that it is visible before or upon entering the office; and

- Prominently display the Securities Investor Protection Corporation (SIPC) sign.”

Networking Agreement with Cyprus Credit Union Inc.

22. On or about January 13, 2011, LPL and Cyprus entered into a networking agreement for LPL to provide securities brokerage services to Cyprus members on Cyprus premises through LPL’s registered representatives.
23. In 2010, Cyprus registered the assumed business name (“DBA”) “Cyprus Investment Services” (“CIS”) with the Utah Division of Corporations. The on-site investment services provided by LPL are marketed using the “CIS” name, which appears intended to brand LPL’s services as part of the credit union rather than disclosing such services are provided through a separate company – a licensed broker-dealer – pursuant to a networking agreement.
24. LPL and Cyprus did not comply with Chubb and other applicable regulations. Among other things, LPL approved use of the misleading marketing name “CIS”, as well as Cyprus promotional materials where the Cyprus logo appears more prominently than that of LPL, references to Cyprus are for more than location and are at the least confusing, and suggest CIS is offering investment products and services.
25. Cyprus has eighteen branch offices, all of which may be used for LPL client meetings. LPL has two representatives, Jeff Meiling (“Meiling”), CRD#2775146, and Stephen Martin (“Martin”), CRD#4083969, who provide investment services on credit union premises.

26. Meiling has passed the FINRA Series 4, 6, 7, 24, 63, and 65 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.⁸
27. Martin has passed the FINRA Series 6, 7, 63, 65, and 66 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.
28. On February 24, 2016, the Division conducted an announced field examination with Meiling at the LPL branch office located within Cyprus Credit Union's headquarters located on Center View Drive in West Jordan, Utah. Upon entering the building, examiners proceeded to Meiling's office which was on the first floor. The only signage referring to LPL was a small 5" x 5" sign in the entrance window to the office lobby. The office lobby wall, however, had a significantly larger CIS sign that was 4' x 3' in size.
29. On March 17, 2016, the Division conducted an announced field examination with Martin at the LPL branch office located within Cyprus Credit Union on 1381 West 9000 South in West Jordan, Utah. Upon entering the building, examiners proceeded to Martin's office which was on the first floor around the corner from the teller lines. There was no signage referring to LPL in the office lobby. In the office, there was one SIPC sign on the cabinet and a second SIPC / LPL sign on Martin's credenza.

Misleading Materials Approved by LPL

30. In February 2016, Cyprus' marketing team created an icon for CIS, which consists of the same graphic symbol as the credit union, to be used on Meiling's email signature line. Although LPL approved the logo, Meiling stated that there was no discussion as to the size or prominence of the logo.

⁸ LPL is also a federal registered investment adviser notice-filed in Utah.

31. The CIS logo appears on other CIS documents provided to clients after a consultation, such as letterhead, envelopes, promotional folders and business cards. The CIS logo appears in a much larger font than the LPL disclosures on those items and on Meiling's email signature.
32. Meiling uses a Cyprus rather than LPL email address: jmeiling@cypruscu.com. Meiling's email signature, as approved by LPL, includes his name followed by the title of "Program Manager / Wealth Consultant". Beneath Meiling's title is "Cyprus Investment Services" with the Center View Way address, phone, fax, and cell phone numbers.
33. Below that in a large font is the credit union logo and "Cyprus Investment Services." A smaller-font disclosure below states:
- "Securities offered through LPL Financial, member FINRA/SIPC. . . The investment products sold through LPL Financial are not insured Cyprus Credit Union deposits and are not NCUA insured. These products are not obligations of Cyprus Credit Union and are not endorsed, recommended or guaranteed by Cyprus Credit Union or any government agency."
34. Meiling's current business card, approved by LPL, provides no title for Meiling but instead says "Cyprus Investment Services" below his name, includes his Cyprus email address and a large CIS logo, but no LPL logo. The bottom of the card, in very small print states: "Securities offered through LPL Financial, member FINRA/SIPC."
35. The letterhead approved by LPL and used by Meiling has a logo header for CIS but no LPL logo. The bottom of the letter head states in fine print "Securities offered through LPL Financial, member FINRA/SIPC" and includes Meiling's name and contact information, but no title.
36. Meiling's voicemail message does not state a job title or mention LPL, but begins "Hi, you have reached Jeff Meiling, with Cyprus Investment Services. . ."

37. Meiling's LinkedIn profile states that he is a "Senior Investment Advisor" at CIS.⁹
38. Martin's introductory letter to clients, approved by LPL, states "Please allow me to introduce myself as the new LPL Investment Advisor Representative with Cyprus Investment Services assigned to you and your accounts."
39. Martin's LinkedIn profile states that he is a "Senior Investment Advisor" at LPL Financial and Cyprus Credit Union Investment Services.
40. Martin's business card, as approved by LPL, has the CIS logo but no LPL logo, identifies him as a "Senior Investment Advisor" and only states in fine print on the bottom of the card "Securities offered through LPL Financial, member FINRA/SIPC." Similarly, Martin's voicemail identifies him as a "Senior Investment Advisor" with CIS and does not mention LPL. Martin's approved email address, included on his business card, is smartin@cypruscu.com.
41. Although Section 26.6.1.3. of LPL's written supervisory procedures lists numerous approved titles for use by representatives depending on which licenses they hold, "Senior Investment Advisor" is not among them. Moreover, Section 26.6.2.1. prohibits the use of nonexistent or self-conferred degrees or designations.¹⁰

Websites

42. At the time of the Division's examination, Cyprus's website, located at www.cypruscu.com, lists "Investment Services" under the accounts tab below savings

⁹ Section 5.3.1 of LPL's written supervisory procedures requires supervisory review of social media profiles on LinkedIn as well as training for those who use social media.

¹⁰ Even though "Senior Investment Advisor" was approved by LPL, it appears that the title came from Cyprus. After Martin expressed specific concerns with use of that title, LPL approved him using his designation as a Certified Financial Planner ("CFP") instead when he reorders business cards in the future but did not require an immediate change.

accounts and above certificate accounts. Choosing “Investment Services” navigated to “Cyprusinvestmentservices.com”.

43. That website uses the same colored font and logo art as Cyprus’ logo, with the substitution of “Investment Services” for “Credit Union” appearing after “Cyprus.”
44. When a client logs in and views an account statement online, the statements include CIS’ logo at the top of the statement and the LPL logo at the bottom left corner. If printed, the LPL logo disappears.
45. The website cyprusinvestmentservices.com displays “Check the background of this financial professional on FINRA’s BrokerCheck.” The coupling of BrokerCheck with what appears to be a Cyprus website could lead one to believe that Cyprus is a broker-dealer.
46. Further, the website includes a CIS logo with the text, “Welcome to Cyprus Investment Services, where you’ll find a wealth of information on investment and retirement planning.” The only information on the website regarding LPL is at the bottom of the page in the fine-print boilerplate disclosure.

Business Entity Confusion

47. During the examination, Meiling stated that CIS was a department within Cyprus Credit Union that was created when Cyprus changed its business model from having an independent contractor to having employees.
48. Meiling was unsure of his employment status with LPL. During the interview with examiners, Meiling recognized that LPL had supervisory responsibilities over him, but he said he did not consider himself a dual employee or an independent contractor of LPL.

49. Meiling trains Cyprus employees to spot interest rate complainers, self-employed individuals and retirees, and ask whether those members would like to meet “Jeff our investment guy”.
50. Having a department for investment services and referring to Meiling as the “program manager” or “investment guy” could lead members to believe that “Cyprus Investment Services” is a broker-dealer or investment adviser and that Meiling is an agent or investment adviser representative of CIS.
51. During the Division’s examination, Martin referred to himself as a financial advisor, but his business card – approved by LPL – and voicemail represent that he is a “Senior Investment Advisor with Cyprus Investment Services.” His email signature contains the title “Certified Financial Planner.”¹¹ Martin’s business card was available to clients in the business card holder in Cyprus’ lobby mixed in with credit union business cards.
52. Martin’s nameplate contains Cyprus’ logo and color scheme but does not refer to LPL.
53. Both Meiling and Martin downplayed their relationships with LPL, with Meiling stating LPL is “just a broker dealer we’ve chosen to run our [credit union] business through.” Martin stated that LPL was “just an entity in the background” that “most people don’t care” about.
54. Although some credit unions operating through networking agreements have employed a “dual employee” model – using credit union employees who become licensed as agents

¹¹ The Certified Financial Planner (“CFP”) designation requires the successful completion of course work and examinations and is issued by the CFP Board. Although Martin is a CFP in good standing, identifying himself as a CFP in relation to “CIS” is misleading and problematic. Section 26.6.1.3 of LPL’s written supervisory procedures requires that when using the term ‘financial planner’ “it must be clear that the title is held through LPL Financial. This can be done by placing ‘LPL’ in front of the title.”

of the broker dealer – both Meiling and Martin denied being dual employees, and stated that neither has any separate credit union responsibilities.

55. Three out of four of Meiling's clients contacted by Division examiners believed that Cyprus was Meiling's employer. When asked about LPL, one client understood it was a brokerage firm but said he believed it had no direct relationship to the credit union.
56. Pursuant to the networking agreement, LPL shares transaction-based compensation from securities business with the credit union. During the period of 2014 through 2017, LPL earned gross dealer concessions ("GDC") from credit union business in the amount of \$1,267,400, of which \$1,024,692 was paid to the credit union, \$776,408 was paid to LPL agents, and \$195,133 retained by LPL.

Networking Agreement with Mountain America Credit Union

57. In 2008 LPL and MACU entered into a networking agreement for LPL to provide securities brokerage services to MACU members on credit union premises through LPL's registered representatives.
58. In June 2016, Division examiners conducted announced field examinations at LPL's branch offices located within MACU branches in South Ogden and Sandy, Utah. As part of the examination the Division interviewed "Wealth Advisor" Ashley Carrillo ("Carrillo"), CRD#5603957; "Sales Manager" Matt Meese ("Meese"), CRD#5029138; "Wealth Advisor" Ray Nishikawa ("Nishikawa"), CRD#4355724; and "Sales Manager" Stewart Campbell ("Campbell"), CRD#5736581, who are all "dual employees" of MACU and LPL.
59. Carrillo passed the FINRA Series 7 and 66 examinations and was licensed with LPL as both a broker-dealer agent and investment adviser representative until May 2017.

60. Meese has passed the FINRA Series 7 and 66 examinations and is licensed with LPL as a broker-dealer agent.
61. Nishikawa has passed the FINRA Series 6, 7, 31, 63 and 65 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.
62. Campbell has passed the FINRA Series 7 and 66 examinations and is licensed with LPL as both a broker-dealer agent and investment adviser representative.
63. LPL and MACU did not comply with Chubb and other applicable regulations. Among other things, LPL has failed to supervise the “dual employees” of LPL and MACU relative to Chubb as evidenced by a lack of clear separation in the MACU culture between the dual roles.

Lack of Separation Between Roles in MACU Culture

64. At the time it was issued, the Chubb letter recognized that some individuals who became licensed as broker-dealer agents pursuant to a networking agreement would also be employees of the financial institution with separate duties being performed specifically for the financial institution outside of broker-dealer activities. Significantly, the MACU/LPL individuals interviewed by the Division all disclaimed having any credit union responsibilities despite emphasizing that the credit union rather than LPL was their employer.
65. During an interview with Carrillo and Meese, Meese explained to the examiners that advisors and sales managers dislike being identified as “the LPL guys”. Meese went on to state,

we hope that the member doesn’t feel like, oh, I’m going outside of the credit union. We hope that we say, no, this is a credit union feel. Certainly, LPL provides us the platform to be able to give you meaningful wealth management tools and securities, but it’s not the LPL team. We work for Mountain America.

66. The practice at MACU is to display the required logo that indicates “LPL at Mountain America”, but the culture continues to emphasize MACU over LPL to portray MACU as a one-stop shop for members to receive traditional credit union services as well as investment advice.
67. Another example of the emphasis on MACU over LPL is that the LPL advisers use macu.com email addresses exclusively. When asked why the macu.com address is used rather than an LPL address, Meese responded,
- So the members understand where we’re coming from. The members really know us as their Mountain America wealth advisors. . . [w]e do explain the LPL relationship, but LPL is unknown to them, in large part. We talk about how it’s the largest independent broker dealer nationally and . . . kind of the breadth and depth that they provide us as the credit union, but . . . they recognize us as MACU.
68. In an interview with Nishikawa and Campbell, Campbell stated,
- we have the stereotype that we’re trying to debunk where they call us “the LPL guy”. . . We have clients who do that and we hate that because we want them to think of us as a partner, just like any of the other partners. . . they always refer to us as the LPL guy and we hate that . . . because it makes us feel like we’re outside of the credit union and... because we’re an employee of the credit union we always have to remind them and say, “We’re an employee of Mountain America.”
69. When asked how a client would know whether he was acting as a MACU employee or a representative of LPL, Nishikawa responded,
- That’s a good question. They know I work for the credit union but they also know that I’m separate from them in that I don’t do loans, I don’t do cash transactions, I can’t take care of typical bank-related activities. So, they know from that aspect that I am a separate entity, but I am working for the credit union. . . but they also associate me with LPL because all their statements come from LPL.
70. When asked to introduce themselves as they would to prospective clients, neither Nishikawa nor Campbell mentioned LPL.

71. Nishikawa told examiners that “[w]e’re not contract employees. We work for the credit union, so we want to be treated like we work for the credit union.”
72. During a conversation with examiners regarding training provided to MACU employees who might refer members to the LPL representative, Campbell stated “that’s something Mountain America is really cognizant of. We feel . . . we feel like it’s proprietary to us that, um, our members have a Mountain America experience . . . Mountain America feels that if...if our investment team or wealth management team were to separate from the credit union that they couldn’t be able to control [the Mountain America experience].”
73. When asked by examiners who, in their opinion, drove the marketing and advertising, Nishikawa responded, “Credit union. LPL doesn’t do any. . . in my mind, it’s the credit union that drives the advertising. Now, once again, they partner with LPL to make sure everything is compliant, because any advertising has to go through LPL’s compliance.”

Additional Concern of Unlicensed Branch Employees

74. “Licensed Branch Employees” are credit union employees who are licensed with LPL but typically function in the credit union side of the business. They are licensed in order to assist members with basic investment needs and questions when the designated licensed agent is unavailable or out of the office.
75. Examiners found at least one MACU employee who was designated and acting as a Licensed Branch Employee, but who was not licensed with LPL.
76. Examiners were provided with a list of all “Licensed Branch Employees” across MACU branches. Of the 36 listed only 11 were licensed in their state of residence, 14 were identified as having an “Active” Rep ID status, and 12 were identified as “Needs to be Registered”.

77. Pursuant to the networking agreement, LPL shares compensation from securities business with the credit union. During the period of 2014 through 2017, LPL earned GDC from credit union business in the amount of \$20,738,970, of which \$17,849,878 was paid to the credit union, \$11,593,341 of which was paid to LPL agents with \$6,256,537 retained by the credit union and \$2,889,092 retained by LPL.

FIRST CAUSE OF ACTION

Dishonest or Unethical Practices Under § 61-1-6(2)(a)(ii)(G) of the Act

Misleading or Deceptive Advertising

78. As described herein, LPL engaged in dishonest or unethical conduct under Utah Admin. Code Rule R164-6-1g(C)(18) by using advertising in such a fashion as to be deceptive or misleading, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act. Those actions included approving the use of marketing material, advertising, promotional materials and other representations to the public that were misleading or deceptive.
79. The common theme in LPL's networking agreement with Cyprus in particular is that great efforts were expended to create the appearance of an investment entity that was part of the credit union organization. In the case of Cyprus, a DBA was created with a name similar to the credit union, and used with credit union logos to brand and market the purported investment entity to credit union members. "Cyprus Investment Services" downplayed LPL and diminished or negated required disclosures, and blurred the clear separation between the credit union and broker-dealer as required by Chubb and other regulations as described herein. The fact that LPL also has a networking agreement in Utah with MACU that requires certain disclosures and procedures to ensure that

networking agreements comply with Chubb shows that LPL was unwilling to follow what it should have understood to be the law in Utah.

SECOND CAUSE OF ACTION

Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

Splitting Transaction-Based Compensation

80. LPL failed to comply with Chubb and other regulations as described herein, which is a prerequisite for sharing compensation with a credit union pursuant to a networking agreement.
81. LPL engaged in dishonest or unethical conduct under Utah Admin. Code Rule R164-6-1g(C)(31) by dividing or otherwise splitting commissions, profits or other compensation with unlicensed entities, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.
82. LPL's conduct also violates FINRA Rule 2040, which prohibits sharing transaction-based compensation with an unlicensed entity. The violation of a FINRA rule is a dishonest or unethical practice under Utah Admin. Code Rule R164-6-1g(C)(28) of the Act, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

THIRD CAUSE OF ACTION

Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

False or Misleading Public Communications

83. LPL violated FINRA Rule 2210(d), which is a dishonest or unethical practice under Utah Admin. Code Rule R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act by, among other things:

- a. publishing, circulating or distributing public communications that LPL knew or should have known contained false or misleading statements of material fact;
- b. failing to ensure its communications were clear and not misleading; and
- c. failing to prominently disclose its name in communications and correspondence.

FOURTH CAUSE OF ACTION

Dishonest or Unethical Practices under § 61-1-6(2)(a)(ii)(G) of the Act

Failure to Follow Networking Arrangement Disclosure Requirements

84. LPL violated FINRA Rule 3160 by failing to clearly identify itself as the entity providing broker-dealer services and distinguishing its broker-dealer services from those of the credit union, and in some cases failed to conduct its services in areas that clearly displayed its name. That conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

FIFTH CAUSE OF ACTION

Failure to Supervise under § 61-1-6(2)(a)(ii)(J) of the Act

85. As described above, LPL approved and permitted the use of numerous misleading marketing, advertising, promotional and other materials in its business conducted on the premises of Cyprus.
86. In so doing, LPL failed to follow regulatory requirements for networking agreements with credit unions. Although those requirements are well established and addressed in detail in its own written supervisory procedures as described in paragraphs 15 - 21, LPL failed to implement, enforce and follow policies and procedures reasonably designed to

detect and prevent its and Cyprus' numerous securities law violations, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

87. LPL permitted Meiling and Martin to hold themselves out as "Senior Investment Advisors" with "Cyprus Investment Services" which is not licensed as an investment adviser. LPL's approval of the misleading materials likewise permitted the credit union to misrepresent the services offered through LPL.
88. LPL failed reasonably to supervise MACU by permitting the culture at MACU to flourish, which blurs the line between securities functions and credit union functions and emphasizes the agents' connections with MACU while minimizing their connection to LPL.
89. LPL further allows MACU to direct the marketing and advertising for LPL services within MACU branches.
90. Finally, many of the violations and supervisory failures described herein are the same as those that led to the Division's 2007 actions against MACU and the prior broker-dealer with which it had a networking agreement. Through Stipulation and Consent Orders ("SCOs") MACU and the broker-dealer agreed to specific remedial actions going forward, including ceasing the use of a misleading credit union DBA name and changes to communications with the public, marketing, advertising, compensation and oversight by the broker-dealer. LPL is – or should be – well aware of those requirements and that the terms of the SCOs apply equally to LPL and any other credit union in Utah with which LPL has a networking agreement. LPL, however, failed to apply the MACU standards equally to Cyprus and failed to ensure that MACU was also meeting the requirements of the SCOs.


91. LPL's failure to supervise likewise violates FINRA Rule 3110 which is a dishonest or unethical practice under R164-6-1g(C)(28), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

REQUEST FOR RELIEF

The Division requests that, based upon Respondent's willful violations of the Act, pursuant to §61-1-6 of the Act, the Commission enter an order:


- a. censuring Respondent;
- b. imposing a fine in the amount of \$750,000.00; and
- c. any further relief as determined by the Commission.

Dated this 4th day of April, 2018.



Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:



Jennifer Korb
Assistant Attorney General

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

**IN THE MATTER OF THE LICENSE
OF:**

**LPL FINANCIAL, LLC,
CRD#6413**

NOTICE OF AGENCY ACTION

Docket No. SD-18-0013

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of adjudicative proceeding has been commenced against you by the Utah Division of Securities ("Division"). Pursuant to Utah Admin. Code Rule R164-18-6(C) and Utah Code Ann. §63G-4-202(3), the Division Director finds that it is in the public interest and does not unfairly prejudice the rights of any party to convert this adjudicative matter from an informal to formal proceeding, which will be conducted according statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code Rule R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Petition. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-6. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code Rule R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Petition, including a detailed explanation for any response other than an unqualified admission. Allegations in the Petition not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Petition, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Lee Ann Clark
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

Jennifer Korb
Assistant Attorney General
Utah Attorney General's Office
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0310

An initial hearing in this matter has been set on May 21st, 2018 at the Division of Securities, 2nd Floor, 160 East 300 South, Salt Lake City, Utah, at 9:30 a.m. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Petition.

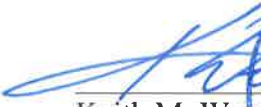
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code Rule R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Petition, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The presiding officer in this matter is the Utah Securities Commission (“Commission”). Utah Code Ann. §§ 61-1-6 and 63G-4-103(1)(h)(i). Under 61-1-18.5(2)(a)(v)(A), the Commission has delegated that all pretrial procedural, evidentiary, and dispositive motions be heard and ruled upon by Administrative Law Judge Bruce Dibb, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6706. For dispositive motions, the Administrative Law Judge will prepare a recommended order for the Commission’s review and approval. If the Commission declines to enter the recommended order, it will schedule whatever proceedings are necessary to address the dispositive motion.

This adjudicative proceeding will be heard by Judge Dibb and the Utah Securities Commission. At any hearings, the Division will be represented by the Attorney General's Office. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Petition should be directed to Jennifer Korb, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0310

Dated this 5th day of April, 2018


Keith M. Woodwell
Director, Division of Securities



Certificate of Mailing

I certify that on the 5th day of April, 2018, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Petition to:

LPL Financial LLC
Attn: David Wagener
75 State Street, 24th Floor
Boston, MA 02109-1827

Certified Mail # 7017 0660 0001 07549629


Executive Secretary

