

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 10992 / September 30, 2021

SECURITIES EXCHANGE ACT OF 1934
Release No. 93201 / September 30, 2021

INVESTMENT ADVISERS ACT OF 1940
Release No. 5881 / September 30, 2021

ADMINISTRATIVE PROCEEDING
File No. 3-20612

In the Matter of

LPL Financial LLC

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND SECTIONS
203(e) AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, MAKING
FINDINGS AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against LPL Financial LLC (“Respondent” or “LPL”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-And-Desist Proceedings Pursuant to Section 8A of the Securities Act of

1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

These proceedings arise out of Respondent’s failure to verify and respond to conflicting information when it opened a customer account and processed wire transfers at the request of Eugenio Garcia Jimenez, Jr. (“Garcia”). As alleged in the Commission’s December 1, 2020 complaint against Garcia, he acted as an unregistered investment adviser and misappropriated \$7.1 million of taxpayer funds from the Municipio Autónomo de Mayagüez, Puerto Rico (“The City”) over the course of seven months in 2016. The City entrusted Garcia to provide advice and carry out his promised strategy to invest \$9 million of City funds such that they had principal protection and 8-10% returns.

After misappropriating \$4.1 million of the City’s funds through an account at Brokerage Firm 1, Garcia approached LPL in April 2016 to open an investment account. During its review before opening the account, LPL failed to comply with its Customer Identification Program procedures and, despite various individuals in different departments questioning the account’s beneficial ownership, source of funds, and reason for transfer from the Brokerage Firm 1, Garcia opened an account controlled by him at LPL in June 2016. LPL subsequently processed wire transfers that Garcia requested. In the less than one month before LPL froze (and later liquidated) the account, Garcia was able to misappropriate an additional \$3.1 million of City funds.

Through certain failures, LPL was a cause of Garcia’s violations of Securities Act Sections 17(a)(2) and (3) and Advisers Act Section 206(2), which prohibit fraudulent conduct in the offer or sale of securities and upon any client or prospective investment advisory client. Further, LPL willfully² violated Exchange Act Section 17(a) and Rule 17a-8 thereunder, which require broker-dealers to comply with reporting, record keeping and record retention

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² “Willfully,” for purposes of imposing relief under Section 15(b) of the Exchange Act and Section 203(e) of the Advisers Act “means no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965). The decision in *The Robare Group, Ltd. v. SEC*, which construed the term “willfully” for purposes of a differently structured statutory provision, does not alter that standard. 922 F.3d 468, 478-79 (D.C. Cir. 2019) (setting forth the showing required to establish that a person has “willfully omit[ted]” material information from a required disclosure in violation of Section 207 of the Advisers Act).

requirements in regulations implemented under the Bank Secrecy Act,³ including the customer identification program rule (31 C.F.R. § 1023.22, the “CIP Rule”).

Respondent

1. LPL is a California Limited Liability Company headquartered in Fort Mill, South Carolina, and has been dually registered with the Commission as a broker-dealer and an investment adviser since August 1975.

Other Relevant Individuals and Entities

2. Garcia, age 48, is a resident of Orlando, Florida. Garcia is the “Chief Executive Officer and Investment Advisor” of Eugenio Garcia Jr. & Associates LLC, a consulting firm that holds itself out as a company that assists municipal governments in facilitating investment in public development, establishing business relationships with potential investors, and “pursu[ing] capital endeavors and carry[ing] out business endeavors.” Neither Garcia nor his firm has ever been registered with the Commission in any capacity. On December 1, 2020, the Commission filed a complaint in federal court against Garcia alleging violations for defrauding the City. *See SEC v. Eugenio Garcia Jimenez, Jr.*, Case No. 3:20-cv-01682, (D.P.R.) Dkt. Entry 1 (Lit. Rel. No. 24975, December 2, 2020).

3. The City is a municipality located in the western part of the Commonwealth of Puerto Rico including a city center and outlying environs. The City has an estimated population of 71,000 (as of the 2020 census) with a median household income (in 2019 dollars) of \$14,236.

4. Mayaguez Economic Development, Inc. (“MEDI”) is an active “for profit” Puerto Rico Municipal Enterprise incorporated on April 11, 2014. The City created MEDI for the general purpose of generating economic investment and development. MEDI’s board of directors consists of City officials, including the Mayor and Finance Director. MEDI is not registered with the Commission in any capacity.

5. Mayaguez Economic Development Financial Strategies, Inc. (“MEDI FS”) was a for profit Puerto Rico Municipal Enterprise incorporated on December 26, 2014, with its place of business in Mayagüez, Puerto Rico. Public records show that Garcia was the incorporator and sole director and officer of the company and that MEDI FS’s registration with Puerto Rico’s Secretary of State was terminated on December 31, 2019. MEDI FS was not registered with the Commission in any capacity.

Garcia’s Fraudulent Scheme

³ Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act and other legislation (commonly referred to as the Bank Secrecy Act), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951- 1959, and 31 U.S.C. §§ 5311–5314 and 5316–5332.

6. As alleged in the Commission’s complaint against Garcia, from at least 2016 through 2018, Garcia, acting as an investment adviser to his advisory client, the City, engaged in a fraudulent scheme involving the misappropriation of approximately \$7.1 million of taxpayer funds. In early 2016, Garcia presented a plan to the City to invest approximately \$9 million in unused City funds for two years promising a return of 8-10% annually with no risk to principal. However, over the course of six months, Garcia fully leveraged the City’s \$9 million investment at two successive broker-dealers, resulting in a margin call and closure of the brokerage accounts.

7. Instead of executing an investment strategy designed to generate the promised returns, Garcia opened an investment account under his control, but in the name of MEDI, at a Santa Barbara County, California branch office of Brokerage Firm 1 and purchased \$9 million in U.S. Treasuries notes (“Treasuries”). Garcia then entered into a margin agreement using the Treasuries in the MEDI account as collateral. From March 31, 2016 through April 20, 2016, using margin loans, Garcia requested a series of wire transfers through which he misappropriated \$4.1 million of the City’s funds while at Brokerage Firm 1.

8. In late April 2016, the Brokerage Firm 1’s personnel questioned the account’s wire activity and investment strategy noting MEDI’s account was losing money because the funds borrowed on margin and transferred out were subject to a higher interest rate than the rate of return earned on the Treasuries. Brokerage Firm 1 decided to close the account giving Garcia until June 16, 2016 to liquidate or transfer the account assets.

9. By the end of April 2016, Garcia contacted a registered representative (“the representative”) at a Santa Barbara, California branch office of LPL to begin the process of transferring the MEDI account assets to LPL and sent the representative various documents including a Brokerage Firm 1 account statement for MEDI and the Brokerage Firm 1 account application he had submitted. Garcia, among other things, also sent to LPL: MEDI corporate documents; other documents showing MEDI’s relationship to the City; an LPL account application; and a copy of his passport.

10. Garcia’s MEDI account application listed as the investment objective: “Income and Capital Preservation... considered [] the most conservative investment objective.” Garcia’s MEDI account application also listed an investment horizon of three – five years with no need for liquidity.

LPL Fails to Accurately Document Its Customer Verification Procedures During the Account Opening Review Process

11. LPL’s Customer Identification Program (“CIP”) procedures required, among other things, the representative to advise LPL whether or not the representative has: (1) personally reviewed the original customer identification document; (2) verified that information (including address) appearing on the identification document “conforms with the information provided by the client on new account documentation;” and (3) verified that “the [identification document] photograph matches the client’s physical appearance.”

12. Although required by LPL's procedures, the LPL representative never verified that the identification document photograph matched Garcia's physical appearance before processing the account opening paperwork.

13. MEDI's corporate records list Puerto Rico physical and mailing addresses for MEDI. MEDI has never conducted business or maintained an address outside of Puerto Rico. However, Garcia's MEDI account application listed a Newport Beach, California mailing address and a separate Newport Beach, California physical address for MEDI. LPL's automated CIP system flagged the inconsistency between the addresses listed on MEDI's corporate documents and the two unverified California addresses. LPL never verified the California addresses and the CIP alert was instead resolved after the account was approved when Garcia updated the address to a Puerto Rico address (again different from the address listed in MEDI's corporate documents).

14. Accordingly, because LPL never verified that the identification document photograph matched Garcia's physical appearance, as required by LPL procedures, and did not verify the address listed in Garcia's MEDI account application, LPL did not accurately document its CIP procedures.

LPL Fails to Reconcile Conflicting Information Concerning MEDI

15. In addition to LPL's standard account opening review process, because the account transfer from Brokerage Firm 1 involved a sizeable margin balance, the proposed transfer underwent review by LPL's Margin Department Service, Trading, and Operations Group ("STO"). As part of its review, STO asked LPL's Financial Intelligence Unit ("FIU") to confirm the beneficial owner of the account.

16. Public documents reviewed by the FIU showed a relationship between MEDI and the City. The FIU's review also found news articles alleging MEDI was not transparent with respect to certain municipal contracts. Further, the possibility that Brokerage Firm 1 may have terminated the MEDI account was raised within FIU. Based on this review, the FIU recommended rejection of the MEDI transfer and based on "elevated risks," LPL sought further clarification on MEDI's beneficial ownership, purpose, and source of funds.

17. The FIU requested that the representative obtain additional information from Garcia concerning MEDI's purpose, beneficial ownership, and source of funds. In response to these additional questions about his relationship to MEDI and the source of funds, Garcia told the representative, who provided the information to the FIU, that he was the beneficial owner of MEDI, and the source of funds was real estate holdings owned by MEDI. Garcia also provided LPL with a purported shareholder ledger showing his 100 percent ownership of MEDI.

18. Due to the contradiction between Garcia's responses and MEDI's articles of incorporation and other publicly available information, the FIU again recommended that LPL reject the account and exit the relationship. The FIU communicated its concerns to the representative.

19. The representative informed Garcia of the FIU's concerns. Garcia responded to the representative by providing information about MEDI FS, a different entity controlled by Garcia. Garcia also provided a MEDI FS shareholder ledger and amended the account opening documents to reflect MEDI FS as the account holder instead of MEDI.

20. At this point, various different LPL departments and personnel were in possession of the contradictory information Garcia had provided. The FIU had concerns about the reasons Garcia was seeking to transfer the account from Brokerage Firm 1, the source and beneficial ownership of the funds in the MEDI account, and Garcia's responses contradicting publicly available information. LPL's CIP program had flagged the unverified California address in MEDI's initial LPL account application and various LPL personnel were in possession of the purported MEDI corporate and other documents containing information inconsistent with Garcia's oral representations to the representative and LPL. However, this collection of information was not reasonably channeled through any central reporting function.

21. Notwithstanding these concerns, LPL proceeded to open an investment account with margin in the name of MEDI FS with the amended account opening documents still listing a Newport Beach, California address rather than a Mayagüez, Puerto Rico location.

22. Before the funds arrived via transfer from Brokerage Firm 1, the representative was attempting to facilitate a line of credit with a bank at Garcia's request. The bank spoke with LPL's FIU about the MEDI line of credit application and concerns the bank had similar to those expressed initially by the FIU. After this exchange, the bank requested additional information from Garcia, who responded by sending the MEDI FS shareholder ledger to the bank. Thereafter, the bank informed the LPL representative that it had issues with the documentation originally supplied for MEDI and, therefore, would not proceed with a line of credit for MEDI FS. The LPL representative did not communicate the bank's denial to the FIU or any other LPL personnel involved in the account opening review process.

LPL Approves Wire Transfers Resulting in Misappropriation of Funds

23. In June 2016, the Treasuries from the MEDI account at Brokerage Firm 1 were transferred to the MEDI FS account at LPL, thereby funding the account. Additionally, the \$4.1 million margin liability at Brokerage Firm 1 was satisfied by releveraging the assets transferred into the new MEDI FS account via a margin account at LPL. As a result, the MEDI FS margin account at LPL assumed a beginning margin balance of \$4.1 million.

24. Within one week of the transfer of assets to LPL, Garcia began requesting wire transfers using the MEDI FS margin account, including two wire requests for a total of \$2 million. Despite Garcia's prior insistence that MEDI FS had no economic relationship with the City, one of the wires Garcia submitted to the LPL representative was for \$1.8 million payable to the City. After being informed that LPL's Margin Department would need to confirm the third party wires, Garcia asked LPL to disregard the two requests. Garcia then submitted a new wire request for \$2 million payable to MEDI FS's outside bank account, thus avoiding the need for additional confirmation.

25. Before processing the wire, however, LPL inquired about the purpose of the wire. Garcia claimed the wire was to purportedly fund construction of a bank in Puerto Rico. Ultimately, LPL approved the wire in addition to a separate \$650,000 request submitted in late June 2016.

26. In early July 2016, Garcia submitted a wire request for \$1.7 million to the representative. The representative informed Garcia that requests exceeding \$500,000 would require review due to the loan-to-value requirements on the account. On July 5, 2016, Garcia submitted wire requests of \$500,000 and \$900,000, which were again reviewed by STO. LPL approved only the \$500,000 wire, purportedly for an investment in a film.

27. Before approving any additional wires, including the \$900,000 wire request, STO escalated the account to the FIU for review citing concerns about the wire activity in the account. The FIU's investigation could not verify any connection between the Newport Beach addresses used in the initial account opening documents and MEDI, MEDI FS, or Garcia. The FIU was also concerned that the account's outgoing wire transfers and investment strategy appeared inconsistent with the purpose of a municipal economic development company. Based on this second investigation of the account, on July 12, 2016, LPL decided to exit the relationship with MEDI FS and froze any further wire activity.

28. In the weeks that followed, LPL liquidated the Treasuries to satisfy a margin call, retained \$114,318 in fees and margin loan interest, and sent MEDI FS a \$1.7 million check representing the remaining account funds.

The CIP Rule

29. On April 29, 2003, the Commission and the Treasury Department jointly issued the CIP Rule. The CIP Rule is designed to prevent use of the securities industry for money laundering and terrorist financing and requires broker-dealers to make and keep records related to the identification of its customers and to "establish, document, and maintain a written CIP appropriate for the broker-dealer's size and business" 31 C.F.R. § 1023.220(a)(1). As part of its written CIP program, a broker-dealer must collect, at a minimum, basic information about each of its customers, including each customer's name, date of birth, address, and identification number. 31 C.F.R. § 1023.220(a)(2)(i).

30. The CIP must include risk-based procedures for verifying the identity of each customer such as to enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. 31 C.F.R. § 1023.220(a)(2)(ii).

31. The broker-dealer's CIP also must include procedures for making and maintaining records of the customer's identifying information and its verification of the customer's identity. 31 C.F.R. § 1023.220(a)(3).

32. Rule 17a-8, which was promulgated under Section 17(a) of the Exchange Act, requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements in regulations implemented under the Bank Secrecy Act, including the CIP Rule.

Violations

33. As alleged in the Commission's December 1, 2020 complaint against Garcia, Garcia, among other securities law provisions, violated Sections 17(a)(2) and (3) of the Securities Act and Section 206(2) of the Advisers Act, which prohibit fraudulent conduct in the offer or sale of securities and upon any client or prospective investment advisory client.

34. As a result of the conduct described above, LPL willfully violated Section 17(a) of the Exchange Act and Rule 17a-8 thereunder and was a cause of Garcia's violations of Sections 17(a)(2) and (3) of the Securities Act and Section 206(2) of the Advisers Act.

Disgorgement and Civil Penalties

35. The disgorgement and prejudgment interest ordered, but deemed satisfied, as described in Paragraph IV.C. below is consistent with equitable principles, does not exceed Respondent's net profits from its violations, and returning the money to Respondent would be inconsistent with equitable principles.

Respondent's Remedial Efforts

36. Since 2016, LPL has undertaken significant remedial measures through modifications of its policies and procedures designed to prevent violations such as those described herein. 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.

37. LPL has paid, \$3,269,975, plus interest of \$848,901, to MEDI, representing the loss suffered by MEDI and the City as a result of LPL's causing violations.

38. In determining to accept Respondent's Offer, the Commission considered the remedial acts promptly taken by Respondent, the cooperation afforded the Commission staff, and the undertaking set forth in Paragraph III.37 above.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent LPL's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations, and any future violations, of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, Sections 17(a)(2) and (3) of the Securities Act, and Section 206(2) of the Advisers Act.

B. Respondent is censured.

C. Respondent shall pay disgorgement of \$114,318 and prejudgment interest of \$26,884; however, the disgorgement and prejudgment interest amounts shall be deemed satisfied by Respondent's payment described in Paragraph III.37 above.

D. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$750,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying LPL Financial LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Glenn S. Gordon, Associate Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, Suite 1950, Miami, Florida 33131.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the penalty ordered in this proceeding. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty,

Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary