

**COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108**

IN THE MATTER OF:)	
)	
ROGER S. ZULLO and)	Docket No. E-2016-0039
LPL FINANCIAL LLC,)	
)	
Respondents.)	
)	

ADMINISTRATIVE COMPLAINT

I. PRELIMINARY STATEMENT.

The Enforcement Section of the Massachusetts Securities Division of the Office of the Secretary of the Commonwealth (the "Enforcement Section" and the "Division," respectively) files this Administrative Complaint (the "Complaint") to commence an adjudicatory proceeding against Roger S. Zullo ("Zullo") and LPL Financial LLC ("LPL") (together, "Respondents"), for violations of MASS. GEN. LAWS ch. 110A, also known as the Massachusetts Uniform Securities Act (the "Act"), and 950 MASS. CODE REGS. 10.00-14.413 (the "Regulations").

The Enforcement Section alleges that Zullo fabricated the financial suitability profiles of numerous LPL clients, selling them scores of large, illiquid, unsuitable, high-commission variable annuities, at substantial upfront profits to himself and LPL, in violation of Sections 101, 102, and 204(a)(2)(G) of the Act. The Enforcement Section further alleges that LPL failed in its responsibility to supervise Zullo, in violation of Sections 204(a)(2)(J) and 203 of the Act.

The Enforcement Section seeks an order: 1) finding as fact all allegations set forth in Sections III to VII, inclusive, of the Complaint; 2) requiring Zullo to permanently cease and desist from violation of Sections 101, 102, and 204(a)(2)(G) of the Act, and the attendant Regulations, in

the Commonwealth; 3) requiring LPL to permanently cease and desist from violation of Sections 204(a)(2)(J) and 203 of the Act, and the attendant Regulations, in the Commonwealth; 4) censuring Respondents; 5) revoking Zullo's registrations as an investment adviser representative and broker-dealer agent in the Commonwealth; 6) permanently barring Zullo from registering in the Commonwealth as, or associating in the Commonwealth with, an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, Securities and Exchange Commission registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above; 7) requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing; 8) requiring Respondents to provide an accounting of losses attributable to the alleged wrongdoing and to provide restitution to fairly compensate investors for those losses attributable to the alleged wrongdoing, including, but not limited to, requiring Respondents to make written offers to pay all surrender charges associated with all current variable annuities held by former and current clients of Zullo and sold by Zullo during the Relevant Time Period, and requiring Respondents to return to all former and current clients of Zullo all surrender charges incurred on all annuity sales made by Zullo during the Relevant Time Period; 9) requiring LPL to retain an investigator and independent compliance consultant to conduct an investigation of Zullo's annuity sales, identify key weaknesses in and recommend improvements to LPL's annuity transaction supervisory review process, and identify key weaknesses in and recommend improvements to LPL's client complaint resolution procedure; 10) imposing administrative fines on Respondents in amounts and upon such terms and conditions as the Director or Presiding Officer may determine; 11) taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors; and 12) finding that all the sanctions

and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors.

II. SUMMARY.

For years, Roger S. Zullo, an LPL advisor, has defrauded his clients, lied to his supervisors, and fabricated client financial suitability profiles, in order to enrich himself and LPL by selling scores of identical, unsuitable, illiquid, and high-commission variable annuities. Zullo unnecessarily and prematurely switched out his clients' existing annuities (also sold by Zullo), caused unnecessary surrender charges, and disregarded his clients' life circumstances, age, access to emergency funds, income needs, and liquid net worth – all of this at an enormous profit to Zullo and LPL. Over the course of three years, Zullo and LPL received more than \$1,825,000 in variable annuity commissions alone; of this amount, more than \$1,791,000, or 98%, represented commissions from the sale of the same annuity product, the Polaris Platinum III (B Shares) variable annuity. Zullo bypassed LPL's paper-thin compliance review process for these sales by fabricating client financial suitability information, such as age and liquid net worth.

For its part, LPL rewarded Zullo's fraudulent practices and suspicious sales patterns with the accolade of a place in LPL's "Chairman's Club" for top annuity production, and actively disregarded and denied not only countless warning signs and red flags, but deliberate and specific supervisory attempts to escalate concerns with Zullo's sales practices, as well as a written complaint made on behalf of a cognitively impaired senior citizen that affirmatively identified Zullo's fraud.

Zullo's greed for commissions at times led him to disregard the wellbeing of his clients. Zullo knew one client personally for more than twenty years – a single, retired healthcare worker, with no financial sophistication, no assets at her disposal except those in Zullo's hands,

and no nearby family to assist her financially. In 2008, Zullo sold the client a variable annuity, which thereafter generated income payments that the client relied on as her primary source of income. In 2015, with the client past the age of 80 and experiencing cognitive impairment, and with the client seeking out assisted living arrangements, Zullo had the client meet him at a subway station near his office to sign paperwork for a switch into a new variable annuity with a fresh, seven-year surrender schedule. The switch was unnecessary, unsuitable, and unwanted; cost the client \$1,391.03 in surrender charges; and deprived the client of income she relied on to pay for the basic costs of living.

The annuity switch provided Zullo and LPL with cash up front, while devastating the client financially. Zullo knew that the client had relied on income from her previous annuity, and nevertheless switched her into the same annuity product that he sold to every other client. That product is a deferred annuity, or long-term income planning tool, and by its terms did not provide income for at least two years.

Zullo misrepresented the client on annuity application paperwork to be ten years younger than she actually was and to have ten times the liquid net worth that she actually did. LPL was on notice of both misrepresentations, and should have taken immediate and decisive action to make the client whole and investigate Zullo. Instead, LPL denied the complaint, adopting Zullo's justification without any due diligence whatsoever, on the false basis that the client had indicated that she "had a liquid net worth in excess of \$1 million," which "represents, at most, approximately 11% of [her] liquid net worth," and the self-serving, conclusory assertion that "our findings have determined that Mr. Zullo conducted an appropriate review of your financial situation, liquid net worth, investment time horizon, investment objectives and need to access these funds." LPL made these statements despite knowing that the client's age information was

misreported, being on notice that the client's liquid net worth information may have been misrepresented, knowing of Zullo's disciplinary background at LPL, described below, knowing of compliance issues with Zullo's annuity sales patterns, and knowing of Zullo's direct supervisor's stated concerns regarding Zullo's annuity sales patterns.

Zullo's unconscionable treatment of this client, and LPL's categorical failure to address it, are alone grounds for all of the sanctions requested in this Complaint. But Zullo's fraud was not limited to one client. Zullo consistently lied to other clients and to LPL about his many annuity switches and sales.

For example, in another equally egregious annuity switch, Zullo sold one of his trusting clients a variable annuity in 2008, and in 2014 replaced it, at a surrender charge, with the same variable annuity that he sold to every other client, while disregarding the client's stated needs. The client had repeatedly expressed concerns for her liquidity and lack of income to Zullo, writing that she had "no income coming in" at this time and significant medical expenses, and that she therefore may have to access the money she had with Zullo, and inquiring about "the kind of penalty" she would face if she "pulled out some of that money." In response, Zullo ignored her concerns, and rolled the entire existing annuity into a new annuity that did not provide for any immediate income, at a surrender charge that he did not explain to her, with a seven-year surrender schedule, and, as always, at a generous commission to himself and LPL. Zullo made this switch despite knowing that the client had been diagnosed with a debilitating disease and had "no income coming in" because she had recently lost her job.

These are just two of the many clients to whom Zullo sold a Polaris Platinum variable annuity. During testimony, Zullo was asked about a random sampling of his clients, most of

whom are discussed below – and appears to have lied about nearly all of them. It is thus yet to be established how many other clients were harmed by Zullo’s misconduct.

Meanwhile, LPL failed to supervise Zullo’s annuity sales in numerous ways. LPL’s process for annuity supervision is fundamentally flawed. Moreover, LPL was presented with countless opportunities to take corrective or investigative action, and repeatedly failed to do so. Instead, LPL turned a blind eye to the fraudulent activities of one of its top annuity salesmen.

For example, LPL’s review system for variable annuity sales was inherently unable to detect even careless advisory fraud. Specifically, Zullo repeatedly submitted inconsistent information to LPL about the same clients, in one instance in connection with the same transaction, and LPL did not notice or take action in response.

LPL supervisors and analysts also failed to detect Zullo’s fraud or question Zullo’s nonsensical annuity justifications, even in cases where LPL’s supervisory system ostensibly may have “worked,” if actually followed. For example, LPL supervisors approved annuity transactions with false information about client age and liquid net worth, even when such information was on record with LPL in various other formats, and should have been flagged via LPL’s compliance review tools. For another example, the same supervisor reviewed and approved separate sales of the same annuity product within months, to the same client, with inconsistent suitability justifications.

In addition, LPL was aware of Zullo, as one of LPL’s top annuity producers, repeatedly and openly selling only one product, with the same features and the same justifications, to almost every annuity client, and did nothing to stop it. LPL was also aware that Zullo’s clients repeatedly incurred surrender charges on these sales, and repeatedly surrendered the same annuities that Zullo had previously sold to them, at the same high commission. As Zullo’s

supervisor put it in internal LPL communications – “It did very much seem to me that he had a pattern of switching everybody out of their annuities every 6 or 7 years and that he was getting commissions over and over again from the same clients.”

LPL effectively ignored the oft stated concerns of Zullo’s direct supervisor. LPL’s direct supervisor inquired about Zullo’s uniform annuity sales with Zullo by email in April 2014, and Zullo responded that he sells only one product because it “has the best income rider.” The supervisor variously told LPL managers, other supervisors, and central supervision unit analysts that:

- “I’ve got a rep, Roger Zullo, 1NXB, who sells a lot of AIG annuities. Many times there is a surrender charge on the old contracts as he seems to sell annuities to his clients and then flip them right before the surrender period is done.”
- “He is a big annuity guy and he has a very cookie cutter approach to his annuities. They are switches, they incur surrender and he was the original rep who sold the previous product. He uses only AIG because he likes the income riders and apparently he uses the same subaccount allocations.”
- “It did very much seem to me that he had a pattern of switching everybody out of their annuities every 6 or 7 years and that he was getting commissions over and over again from the same clients”
- “I have concerns about his business.”
- “I think this issue needs to be escalated.”

The only thing that LPL did in response to Zullo’s supervisor’s concerns was to set up a phone conversation between Zullo, Zullo’s “relationship manager,” and central supervision unit members, aimed at assisting Zullo with identifying “any specific areas we may help with in terms of client situations/specific information, documentation through the AOE [annuity order entry] system & pre-approval requirements, regulatory environments, product considerations, other LPL VA [variable annuity] sales populations, etc.” Neither Zullo’s supervisor nor her manager participated in the call, the call had no effect whatsoever on Zullo’s continued sales of

the same annuity product, and no one at LPL noticed or took any follow up action. Moreover, during testimony, Zullo did not remember this call as it related to his supervisor's concerns, and did not remember anyone else expressing to him the product diversity concerns that his supervisor raised in her April 2014 email.

In addition, LPL was aware of Zullo's disciplinary history, which included multiple fines for relevant items such as violation of LPL's document signature policy (i.e., maintaining a blank form signed by a client), variable annuity policy, and use of an unapproved email address. LPL stated that it hoped a \$500 fine, for instance, would impress upon Zullo the importance of adherence to LPL Financial policy and all regulatory rules. It did not. Zullo did not remember the fine or the exam letter during his testimony until presented with both.

In addition, both Zullo's supervisor and an LPL examiner conducted an examination of Zullo's branch office in April 2015. Neither uncovered Zullo's fraud.

In addition, LPL failed to question broad and suspicious trends in Zullo's annuity sales, such as the fact that every client to whom Zullo sold an annuity in 2015 was reported to have a liquid net worth of more than \$1 million, despite many having listed professions unlikely to result in such a degree of liquid net worth, or the fact that nearly all of Zullo's clients were reported to hold significant assets outside of LPL (when, in fact, they did not).

Finally, LPL's client complaint resolution procedure was, as described above, nothing more than a self-serving pretense. Even when Zullo's fraudulent misrepresentations were affirmatively identified by a written customer complaint made on behalf of a cognitively impaired senior citizen, LPL ignored them. LPL was in possession of the client's one-page complaint letter, on top of call notes from FINRA's senior helpline pointing directly to Zullo's fraudulent misrepresentations. LPL managers and supervisory analysts have been in possession

of easily verifiable information contradicting Zullo's justifications for the unsuitable annuity sale since December 2015, and even explicitly noted the age discrepancy among them in internal communications. Despite all of this, LPL's ultimate response in September 2016 was to request that the client assist LPL in having the same Polaris Platinum annuity contract reissued, and in November 2016 to offer the client a settlement "solely as an accommodation" while maintaining that the "purchase of the AIG annuity was both suitable and appropriate."

The allegations set forth in this Complaint demonstrate that Zullo cannot remain in the securities business. But, ultimately, this case equally concerns LPL's total failure to protect its customers from the prolonged and systematic fraud perpetrated by one of its major producers.

III. JURISDICTION AND AUTHORITY.

1. As provided for by the Act, the Division has jurisdiction over matters relating to securities pursuant to Chapter 110A of the Massachusetts General Laws.
2. The Enforcement Section brings this action pursuant to the authority conferred upon the Division by Sections 407A, 204, and 414 of the Act, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and the Regulations.
3. This proceeding is brought in accordance with Sections 204, 407A, and 414 of the Act and its Regulations.
4. The Enforcement Section reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current and ongoing investigation.

IV. RELEVANT TIME PERIOD.

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate time period of January 1, 2013 to present (the "Relevant Time Period").

V. RESPONDENTS.

6. LPL Financial LLC ("LPL") is a broker-dealer and investment adviser with headquarters in Massachusetts. LPL has a Financial Industry Regulatory Authority ("FINRA") Central Registration Depository ("CRD") number of 6413. LPL has been registered with Massachusetts as a broker-dealer since 1981 and notice filed as a federally registered investment adviser since 1994.
7. Roger S. Zullo ("Zullo") is a broker-dealer agent and investment adviser representative of LPL with a FINRA CRD number of 1882087. Zullo has been registered as a broker-dealer agent in Massachusetts since 1988 and as an investment adviser representative in Massachusetts since 2006. Zullo has been registered as a broker-dealer agent of LPL since 2004 and as an investment adviser representative of LPL since 2006. Zullo is a resident of the Commonwealth of Massachusetts.

VI. STATEMENT OF FACTS.

A. Background.

i. Variable Annuity Suitability.

8. In general, variable annuities sold by LPL agents and representatives ("advisors") are illiquid financial products, sales of which require suitability analysis and compliance review by LPL.
9. Janet Rochon ("Rochon"), a senior supervisory principal at LPL and Zullo's direct supervisor during the Relevant Time Period, explained during testimony before the

Enforcement Section that LPL supervisors must consider a client's assets and age when reviewing annuity sales made to that client:

A: [Y]ou have to check the suitability of a product for the client. You have to check whether or not it's being surrendered or what the source of funds were if it wasn't a surrender. You had to check the riders. You had to check the client's net worth, liquid net worth, their financials, their investment objective and then overall suitability for the client, emergency funds and how much of a percent of their liquid net worth is the annuity.

Q: And what is your understanding of why the [LPL review tool] told you to review liquid net worth, net worth, and access to emergency funds?

A: It's part of determining overall suitability.

Q: But, specifically, why is it relevant to suitability?

A: Well, because an annuity is an illiquid product and so you have to -- you don't want to sell an annuity to somebody who has no other liquid assets, because annuities are not considered liquid.

...

Q When you're reviewing annuity sales, or when you were reviewing annuity sales, is age also an important factor?

A: In suitability?

Q: Yes.

A: Of course.

Q: And why is that?

A: There are different liquidity requirements based on the age of the client and there are different LPL guidelines in terms of the age of the client, and then, like I said, an overall suitability concern as well.

Q: So, what are the LPL liquidity requirements based on age, specifically?

A: I think it is, over 70 and up, it can't represent more than a certain percentage of a client's liquid net worth...

ii. **Variable Annuity Commissions.**

10. A broker-dealer or investment adviser firm and its advisor stand to receive commission typically between 3% and 7%, usually up front, of the premium paid by a client on a given variable annuity sale. In other words, a larger variable annuity sale equates to a greater financial benefit to a firm and its advisor.
11. During the Relevant Time Period, the American International Group Polaris Platinum III (B Shares) annuity (hereinafter, "Polaris Platinum" annuity), which carries a 7% commission, constituted the vast majority of Zullo's annuity sales.

12. For each sale of a Polaris Platinum annuity, Zullo and LPL received commission equaling 7% of the premium paid by the client, up front. Zullo retained 90% of that commission, while LPL retained 10%. On a \$1,000,000 annuity sale, for example, Zullo would receive \$63,000 in commission, while LPL would receive \$7,000.¹
13. In 2014, Zullo sold at least or approximately 36 variable annuities to his clients.
14. In 2015, Zullo sold at least or approximately 32 variable annuities to his clients.
15. Many of the Polaris Platinum annuities sold by Zullo carried a living benefit known as an optional income rider, which Zullo often pitched to his clients and cited in annuity suitability documentation and correspondence with supervisors as the reason or justification for the sale.²
16. Zullo and LPL received in excess of \$1,250,000 in sales commissions from variable annuities alone in 2014 and 2015, in addition to any fees received from Zullo's brokerage and investment advisory services.³
17. From May 16, 2013 to April 6, 2016, Zullo and LPL received approximately \$1,825,371.25 in variable annuity commissions; of this amount, approximately \$1,791,124.23, or 98%, represented commissions from the sale of the Polaris Platinum annuity.

¹ All dollar figures in this Complaint are approximate and do not necessarily form the basis for an accounting of client losses or Respondents' unjust profits.

² In general, an income rider is an income planning tool that guarantees that the figure that will be used to determine the annuitant's payout, the "income base," grows at a given percentage during a certain number of deferral years prior to the annuitant beginning to receive payments during the "income phase." It does not add to an annuity's principal and does not grow the annuitant's assets; its use is to "guarantee" income should the annuity assets deplete.

³ Zullo has been registered as an investment adviser representative of LPL since 2006, and currently manages numerous "investment advisory use only" retirement accounts for his clients, to whom he owes a fiduciary duty. Notably, based on Zullo's testimony, it is unclear whether Zullo understands that he is an investment advisor, or the distinctions between broker-dealer suitability requirements and investment advisory fiduciary duties.

18. As a result of these sales, Zullo was a "Top Producer" for LPL and was recognized by LPL as a member of its "Chairman's Club."
19. Zullo was also the second highest earning representative out of approximately 61 advisors under Rochon's supervision during the Relevant Time Period.

iii. LPL's Annuity Suitability Review Process.

20. From the beginning of the Relevant Time Period until August 2014, Zullo's annuity sales were reviewed by Zullo's direct supervisor, Rochon.
21. Currently, Zullo's annuity sales are reviewed by various individuals working at the LPL Central Supervision Unit of LPL Governance, Risk & Compliance. Beginning on September 30, 2014, all annuity replacements were reviewed by that unit.
22. LPL's process for reviewing and approving advisor annuity sales relied on the advisor to submit information about the client to LPL for each annuity sale, currently through the Annuity Order Entry ("AOE") system.
23. LPL's process for reviewing and approving advisor annuity sales includes, under LPL policies, a supervisor's review of a client's suitability information, such as a client's assets held at LPL, time horizon, and investment objective.
24. LPL's process for reviewing and approving variable annuity sales does not require supervisors to identify or examine prior or concurrent annuity sales to the same client.
25. Rochon testified that she did not, when reviewing an annuity sale, examine any prior or concurrent annuity sales to the same client during the Relevant Time Period.
26. In order to examine other prior or concurrent annuity sales, a supervisor, according to Rochon:

...would have to go to the asset page and see if there's anything current, and if there were annuities that the client held in the past, I think you have to have the advisor disclose those on the annuity order

entry system as well as any other annuities that they hold that are maybe not networked to an LPL account. It's not required that they be networked.

27. According to Rochon, this process requires the advisor to disclose the existence of other annuities in the suitability section of the AOE system form for a particular sale.⁴
28. As such, LPL relies on the advisor to disclose the existence of other annuities for suitability review: either by voluntarily networking the annuity to LPL or by voluntarily listing the annuity on the order report form in the AOE system.
29. LPL also relies on the advisor to provide suitability information about the client, including liquid net worth and age, for each annuity sale.

B. Zullo's Clients.

30. The clients discussed below represent only a segment of Zullo's client base.
31. On information and belief, the facts and allegations developed in this Complaint likely pertain to other clients of Zullo not discussed below.
32. The clients discussed below include a number of retired and active nurses and healthcare workers, as well as administrators in lower and higher education, and other similar or similarly compensated professions.
33. Zullo testified under oath before the Enforcement Section on August 1, 2016 regarding his clients and annuity sales.
34. Zullo testified as follows:

Q: So, are you aware that, of the clients that you have with more than a million dollars liquid net worth, at least 12 of them that we're aware of appear to be nurses or retired nurses? Is there a reason that you have a lot of nurses as clients? Is it just through referrals or --

A: I started doing seminars way back when in 1987 in health care, Mass. General Hospital, Dana Faber. That's where I established my practice. So, my focus in getting clients -- I came from New York not knowing anybody, was doing seminars. So, I'll have doctors and nurses or people, administrative, in health care. I would say a larger percentage of my clientele is health care.

⁴ This information is requested in Section 15 and 15a of AOE Order Summary Report Forms for annuity sales.

i. Client 1.

35. Client 1, a retired healthcare worker, has known and been a client of Zullo for more than twenty years.

36. According to Client 1's sister, Client 1 trusted Zullo deeply:

I would like to put [Client 1's] business relationship with Mr[.] Zullo in perspective. He became--and remained--her advisor when she took early retirement from [redacted] Hospital in 1994. Her trust in him—which we believe he violated— was so deep that she even asked him to witness her will.

37. According to Client 1's sister, Client 1 has been experiencing medical problems during the Relevant Time Period, and Client 1's cognitive ability was compromised in 2015 due to her advancing age.

38. Client 1 currently holds less than \$190,000 in investment assets,⁵ and held roughly the same amount while a client of Zullo during the Relevant Time Period. For example, as of November 19, 2015, Client 1 held approximately \$183,116 in investment assets, consisting of two LPL Optimum Market Portfolios ("OMP") accounts and a Polaris Platinum annuity at the following approximate values:

- Polaris Platinum annuity – \$104,170
- OMP Account – \$ 41,225
- OMP Account – \$ 37,722

39. In 2008, Zullo sold Client 1 a Nationwide Achiever Annuity at an approximate premium of \$110,000, the majority of her assets at LPL.

40. Client 1 depended upon income payments she received from the Nationwide Achiever annuity, which, other than her social security benefits, were her only source of income.

41. In January or February 2015, Zullo met Client 1 at a subway station near his office, where he had Client 1 sign the paperwork for a switch into a Polaris Platinum annuity.

⁵ The terms "assets," "investable assets," "investment assets," and "liquid assets," as used herein, are not intended to reflect immaterial amounts of cash held in checking or savings accounts outside of LPL or another broker-dealer.

42. The Polaris Platinum annuity that Zullo sold Client 1 replaced the Nationwide Achiever Annuity while it was still in its surrender period, incurring a surrender charge to Client 1 of \$1,391.03.⁶
43. As a deferred annuity, the Polaris Platinum annuity did not provide for any income payments until Client 1 entered into the "income phase," which, under the annuity contract, could only take place at least two years after issuance of the contract⁷.
44. Moreover, the annual income credit that is an important feature of the income rider would be cancelled as soon as Client 1 elected to begin receiving the income that she needed.
45. If Client 1 instead elected to take withdrawals from the Polaris Platinum annuity prior to beginning the income phase, any excess withdrawals would, in addition to decreasing the amount available under the contract, negatively impact the income rider benefit that Zullo claimed was necessary for Client 1 to purchase.
46. As such, Zullo ignored Client 1's income needs, of which he was aware, and placed Client 1 into financial dire straits, from which she has yet to recover, by selling her the Polaris Platinum annuity.
47. Yet Zullo and LPL received a commission of \$7,933.30 on this annuity switch.

⁶ This is known in the industry as an annuity "switch" or annuity replacement. Annuity switches have drawn regulatory and consumer-minded scrutiny, in part because they often require clients to pay surrender charges. Financial Industry Regulatory Authority, Inc., Investor Alert: Should You Exchange your Variable Annuity?, March 2, 2006, <http://www.finra.org/investors/alerts/should-you-exchange-your-variable-annuity>; Securities and Exchange Commission Division of Investment Management, June 19, 2001 Letter re: "Retail Exception" to Section 11, <https://www.sec.gov/divisions/investment/guidance/nash061901.htm>.

⁷ According to the Polaris Platinum annuity prospectus: "When does the Income Phase begin? Generally, you can annuitize your contract any time after your second contract anniversary ('Annuity Date') and on or before the Latest Annuity Date, defined below, by completing and mailing the Annuity Option Selection Form to our Annuity Service Center."

48. In connection with the unsuitable Polaris Platinum annuity switch, Zullo submitted fabricated suitability information to LPL, representing Client 1 to be younger and wealthier than she actually was.
49. Specifically, in January 2015, Zullo submitted an annuity application and corresponding account application to LPL indicating that Client 1 was born in 1944, while knowing that she was actually born in October 1934 (making her 80⁸ years old at that time).
50. Yet Zullo had filled out all of Client 1's prior account applications from 2004, 2008, and 2010, and all reflect a birth date of October 27, 1934.
51. LPL possessed these account applications during the Relevant Time Period, and LPL supervisors had access to them through their supervisory review tools.
52. LPL also had access to Client 1's driver's license, which is required as a form of identification upon account opening.
53. Only when Zullo sold Client 1 a Polaris Platinum annuity in 2015 did Zullo submit annuity and account applications reflecting a birthdate of 1944, making Client 1 appear to be 70, rather than 80, years old.
54. In general, LPL considers a senior citizen's age in reviewing and approving its advisors' annuity sales for suitability. For example, with respect to one annuity switch concerning a different client, Zullo's supervisor for the transaction commented in the AOE system:

In light of her age (80), please provide a detailed advisor rationale with the client's specific financial situation and needs information specifically supporting the justification for incurring long-term fees. Please confirm the client is fully aware of the investment risks and fees associated with this VA [variable annuity] as well as the CDSC [contingent deferred sales charge] period. If other family members, advisers, etc. were present at the meeting, please make note.

⁸ The maximum age set by AIG for issuance of a Polaris Platinum annuity with a living benefit such as an income rider was 80.

55. Zullo therefore had an incentive to falsify Client 1's age in order to avoid or pass suitability review at LPL.
56. When asked by the Enforcement Section whether he knew Client 1's age, Zullo testified that he believed Client 1 to be 81 years old, which is the accurate figure.
57. Zullo then testified that he "found out through looking at client information" only "within the last couple of weeks" that Client 1 was actually ten years older what he had written on Client 1's 2015 annuity application and corresponding account application.
58. Specifically, Zullo testified as follows:

Q: So, there was a miscommunication with [Client 1] about her birth date?

A: That's correct.

Q: And did she ever tell you that that information was incorrect?

A: No, and I actually delivered a contract, and that information was on there, and we both didn't pick it up. I don't know if she told me or I miscommunicated from hearing her, from her, what the birth date was, but that's not something that she was aware of, I understand, from what I heard, but I picked it up later.

Q: Later as in recently?

A: Correct.

Q: And that was the first time it was brought to your attention?

A: That's correct. That's something I found out.

59. This testimony was false. Client 1 emailed Zullo on March 19, 2015 when she noticed the error in her birth year, stating:

Thank you for your letter of March 5th with attachments for two signatures for Polaris Application and Receipt Delivery. I looked over the application form and found an error on the year of my birth. It should be 08.27.1934, NOT 1944.

I tried phoning you but could not get through, so I decided to email you instead. How do you want me to handle this? Do you want me to cross the wrong date and write in the correct birth day, or will you send me a new application with the correct date of birth for me to sign?

60. Zullo replied to this email and instructed Client 1 not to do either, writing, "Please just sign and return to me and I will tell the company about the wrong date. Thank you."
61. But Zullo did not "tell the company about the wrong date."

62. Zullo testified that he did not remember receiving or replying to Client 1's email, and did not remember why he neglected to inform LPL about the change in date.
63. Nor did Zullo identify an individual at LPL, during testimony, whom he would have contacted about the change in date, nor a reason why he chose to handle the incorrect figure in this manner instead of instructing Client 1 to correct the date.
64. Zullo's testimony that he only became aware of the age discrepancy was false for another reason: Client 1's sister reminded Zullo (and LPL) of Client 1's actual age by complaint letter dated December 14, 2015, stating:

[Client 1] would have to be 88 years old to access these funds or lose \$10,200. You recommended this purchase earlier this year, despite knowing [Client 1] personally for many years and being aware that she is dealing with medical issues and is single with no other resources at her disposal when considering her options for assisted living.

(Emphasis added.)

65. With respect to the 2015 Polaris Platinum annuity sale, LPL relied on the incorrect age information deliberately submitted by Zullo in approving the annuity switch. Specifically, the CSU analyst reviewing this switch, Hope Lorick, stated in approving the sale, "Client is 70 yrs old & plans to start taking withdrawals in 10+yrs."
66. A discrepancy in age should have been flagged by LPL's electronic supervisory review tools, since LPL's account information on file for Client 1 should have indicated Client 1's correct birth year, in the course of Lorick's review of the annuity sale.
67. However, Lorick either failed to notice, or LPL failed to flag, that the age information submitted in connection with the annuity sale was inconsistent with age information already on file for the client from prior account applications.
68. On information and belief, Zullo may also have submitted information and documents to LPL with false birth dates for other variable annuity clients.

69. In addition to misrepresenting Client 1's age, Zullo also misrepresented Client 1's liquid net worth, which is another crucial factor in variable annuity suitability analysis.
70. Specifically, Zullo submitted a variable annuity application to LPL reflecting that Client 1 possessed approximately \$1,500,000 in liquid assets, when he knew that she possessed no other investment assets or cash apart from the less than \$190,000 in total that he managed at LPL.
71. Zullo falsely stated during testimony, when asked, that Client 1's liquid net worth was greater than \$1,000,000.
72. However, Zullo then testified that he could not remember where most of this liquid net worth was held, what Client 1's former profession was (she is a retired healthcare professional), or what the source of Client 1's liquid net worth is or was.
73. As noted, Zullo had known Client 1 for many years, and was fully aware of her actual liquid net worth. However, just as with Client 1's age, Client 1's sister reminded Zullo (and LPL) of Client 1's actual liquid net worth by complaint letter dated December 14, 2015, stating:
- [Client 1] would have to be 88 years old to access these funds or lose \$10,000. You recommended this purchase earlier this year, despite knowing [Client 1] personally for many years and being aware that she is dealing with medical issues and *is single with no other resources at her disposal when considering her options for assisted living.*
- (Emphasis added.)
74. Client 1's liquid net worth has never been greater than \$1,000,000; currently she has less than \$190,000 in investment assets, including the unsuitable annuity that Zullo sold to her, and had approximately the same amount while a client of Zullo in recent years, which Zullo knew.

75. As noted, Zullo nevertheless in 2015 recommended that Client 1 liquidate the Nationwide Achiever Annuity in full, pay a surrender charge of \$1,391.03, and purchase a Polaris Platinum annuity at approximately the same value, with an income rider, with a fresh seven-year surrender schedule, receiving, with LPL, a commission of \$7,933.30 on this annuity sale.

76. Lorick approved the annuity switch because she understood from Zullo that Client 1 intended to take withdrawals in 10 or more years, even though Zullo knew that Client 1 depended upon the income payments she was currently receiving from the Nationwide Achiever annuity in order to pay for her basic living expenses.

77. During the course of its review of the 2015 Polaris Platinum annuity switch, LPL relied on the false age, liquid net worth, and income need information contained in the annuity application and corresponding account application. The CSU analyst responsible for reviewing the 2015 sale, Lorick, stated the following in reviewing and approving the transaction, in pertinent part:

Transaction is 7% of client's stated 1.5 mil LNW; total exposure 34% with 1 other VA. Subacct in line with 'growth with income' IO [investment objective] & 'moderate' RT [risk tolerance]. Lg term time horizon so B share selected. Client is 70 yrs old & plans to start taking withdrawals in 10+yrs.

(Emphasis added.)

78. Lorick did not inquire during the course of her review how Client 1 now possessed more than fifteen times her previous recorded liquid net worth. Nor did Lorick otherwise note that Client 1's liquid net worth was listed on other account applications as being between \$25,000 and \$49,999 in 2004, \$50,000 and \$99,999 in 2008, and \$50,000 and \$99,999 again in 2010.

79. Nor did Lorick note that Client 1's age was listed on her driver's license, on file with LPL, and account applications from 2004, 2008, and 2010 as being 80, which would have

called into question Zullo's justifications for the annuity sale (e.g., "Client is 70 yrs old & plans to start taking withdrawals in 10+yrs.")

80. Zullo testified that he received the December 2015 complaint letter sent by Client 1's sister on Client 1's behalf, but did not remember whether or how he responded to it.
81. Zullo did not respond to the complaint.
82. LPL policies and procedures require LPL advisors to immediately forward all customer complaints to LPL's compliance department.
83. Zullo did not forward the complaint to LPL's compliance department.
84. Zullo testified that he understood that LPL requires complaints to be forwarded to LPL compliance, but when asked why he did not do so, Zullo testified: "I don't know. I just didn't. I couldn't tell you the reason. I just did not. I thought maybe it would get resolved in a positive way. I couldn't tell you the exact reasoning."
85. On information and belief, Zullo has not been investigated or formally questioned by LPL as to why he did not submit the customer complaint letter to LPL compliance.
86. For its part, LPL did not report the written customer complaint on Zullo's Form U-4, in violation of FINRA Rule 4530 and Division Regulations.
87. The Client 1 complaint also courtesy copied FINRA's "Securities Helpline for Seniors" by email.
88. In addition, FINRA's senior helpline received a call from Client 1's sister on or about December 15, 2015. FINRA forwarded notes from the call to LPL indicating, in pertinent part:

[Client 1's sister] explains that her sister, [Client 1], in April 2015, purchased \$100,000 AIG Polaris variable annuity at the direction of Roger Zullo (CRD No. 1882087). [Client 1's sister] explains that her sister has problems processing information as a result of a health problem that she will be undergoing surgery for in the near future and will be moving into an assisted living facility soon

thereafter. [Client 1's sister] is concerned that at 80 years of age, [Client 1] may not have been appropriate for an illiquid product such as a variable annuity.

89. A member of LPL's ERISA/Retirement and Senior Investors Compliance team forwarded these notes to Rochon on December 21, 2015, stating, "Below was a customer complaint to FINRA regarding Roger Zullo (1NXB) selling a VA to an 80 year old client and the complaint was questioning the transaction's suitability (and a few other things). Since you are his OSJ, I wanted to see if you were aware of this issue. Please let me know whenever you get a chance."
90. On the same day, Rochon forwarded this email to Hope Lorick at LPL's CSU, writing, "I got this email just now. I wanted to make sure you saw this." On the same day, Lorick responded:

I show that this client is 71 yrs old, not 80. I'm not sure if the DOB was entered incorrectly. Based on my notes, client couldn't add LB to existing VA so she wanted to move to VA to add a LB rider for income down the line. Only 34% of 1.2 LNW in annuities (2 total). There was a clear benefit to the client based on the info provided.
91. The next day, Rochon forwarded this email exchange to James Krause, her direct manager, stating, "Please see below. I didn't know about this. I wanted to keep you in the loop."
92. As such, Lorick, Rochon, and Krause were put on notice of Zullo's potential misrepresentation or misreporting of Client 1's age in December 2015.
93. Yet none of these individuals ever took any steps to rectify this discrepancy.
94. On information and belief, LPL came into possession of the written complaint only through FINRA's customer complaint resolution procedure, which forwarded the customer complaint to LPL.

95. LPL has thereby been in possession of Client 1's complaint letter – which stated both that “[Client 1] would have to be 88 years old to access these funds,” and that Client 1 “is single with no other resources at her disposal” – since December 2015.
96. LPL has also been in possession of call notes from FINRA and internal emails from employees questioning Client 1's age as reported since December 2015.
97. However, LPL did not contact Client 1, or her sister, in order to resolve the complaint or address the problems identified therein.
98. Had LPL spoken with either Client 1's sister or Client 1 about Zullo, it would have been provided another opportunity to notice that Zullo submitted fabricated information to LPL about Client 1's age and liquid net worth.
99. According to Zullo's testimony, LPL did not provide Zullo with any written documentation of the complaint, and did not request any documentation from Zullo. Nor, according to Zullo, did LPL call Zullo to ask any questions regarding the complaint.
100. Nor did LPL review three of the four account applications on file for Client 1 (from 2004, 2008, and 2010). Had it done so, it would have discovered that Client 1's age and liquid net worth changed upon the sale of the Polaris Annuity, making Client 1 appear younger and wealthier for suitability and liquidity purposes.
101. Nor did LPL conduct a review of any communications on LPL's email server between Zullo, Client 1, or Client 1's sister. Had it done so, it would have noticed that Zullo may have misrepresented Client 1's age.
102. Nor did LPL review any client notes taken by Zullo.
103. Instead, according to Zullo, LPL's entire complaint resolution procedure was to email Zullo requesting a justification of the annuity sale from Zullo.

104. Zullo responded by providing LPL with his justification for the annuity sale.
105. LPL then adopted Zullo's justification wholesale, and denied Client 1's claim in whole by letter to Client 1 dated March 1, 2016.
106. The letter specifically noted that "[Client 1's sister] on or around December 15, 2015 expressed to the Financial Industry Regulatory Authority her concern that the above-referenced annuity may not have been a suitable investment given your *age and life circumstances*." (Emphasis added).
107. Thus, LPL's legal department denied Client 1's sister's claim while Zullo, Zullo's CSU compliance analyst, Zullo's direct supervisor, and Zullo's direct supervisor's direct supervisor (Kraus), were all on notice that Client 1's age may have been misrepresented or misreported.
108. LPL also indicated in the letter that "you indicated you had a liquid net worth in excess of \$1 million," which "represents, at most, approximately 11% of your liquid net worth," and that "our findings have determined that Mr. Zullo conducted an appropriate review of your financial situation, liquid net worth, investment time horizon, investment objectives and need to access these funds...you indicated that you would likely live with family members if a need arose, because of the closely knit relationship that existed with your family."
109. However, Client 1's sister's initial complaint explicitly stated that Client 1 "is single with no other resources at her disposal," that Client 1 was older than the information contained in LPL's account documents, that Client 1 was not planning to live with her family, but was considering options for assisted living, and that Client 1 needed income now, not in ten years.

110. Rather than investigate any of these conflicting factual accounts, or review any documentation related to Client 1 other than the latest annuity application, LPL adopted the contradictory justification of its agent wholesale.
111. Had LPL contacted either Client 1's sister or Client 1, reviewed the various account opening documents or driver's license in its own possession, reviewed any relevant emails on its own server, investigated the assertions in the Client 1 complaint about age and liquid net worth, or conducted a substantive internal inquiry, it would have been reminded of Client 1's actual age and liquid net worth, and therefore been alerted again that Zullo may have deliberately submitted false information to LPL.
112. Such an inquiry could also have led LPL to discover the systematic fraud that Zullo has perpetrated on his client base – prior to regulatory intervention.

ii. Client 2.

113. Client 2, also a retired nurse, and her husband, a retired postal worker, have been clients of Zullo for approximately or at least ten years.⁹
114. As of August 2016, Client 2 and her husband owned an AIG Polaris Platinum annuity sold to them by Zullo, and an LPL OMP account (\$31,715.91) and OMP Roth IRA (\$23,673.04) managed by Zullo.
115. Client 2 and her husband have never hired another financial adviser since engaging Zullo, and do not have investment assets elsewhere, other than inherited blue-chip stock worth about \$45,000.

⁹ For purposes of liquid net worth, liquidity needs, access to emergency funds, and similar concerns, this Complaint considers the assets of married couples together.

116. Zullo sold Client 2 a Polaris Platinum annuity with an income rider in October 2013, at an estimated premium of \$750,000 (ultimately Client 2 paid \$782,763.72 in premiums). The source of funds for this annuity was a rollover from 403(b) retirement plans.¹⁰
117. Zullo and LPL received \$56,750.37 in commission from this annuity sale up front.
118. At this time, Client 2 and her husband's only other material liquid assets were the LPL OMP account (\$60,299.33), an LPL Roth IRA account (\$21,816.99), and inherited public company stock worth about \$45,000.
119. Nevertheless, Zullo falsely testified to the Enforcement Section that Client 2's liquid net worth is currently approximately \$2,500,000.
120. Zullo testified that Client 2 told him that she and her husband had a liquid net worth of \$2,500,000. Zullo testified that Client 2's husband has "got his own money," which Zullo knew because "he asked her what she has and she mentioned that her husband has it."
121. However, Client 2 and her husband do not have other investable assets other than what is managed by Zullo, and neither Client 2 nor her husband has ever told Zullo that they had any other such assets.
122. In the course of approving the October 2013 Polaris Platinum annuity sale, Rochon asked Zullo to break down the client's liquid net worth, and Zullo responded as follows:

Client needs income from this account today and needs it to last over 10 years. Will be using combination of Vanguard brokerage account and wants guaranteed income from one source which is this annuity contract. [...] Liquid net worth: [...] Cash Balance account \$510,000, Fidelity 403(b) account \$100,000, TIAA CREF \$150,000, Bank of American [sic] Savings Account \$250,000, Vanguard Brokergae [sic] Account \$1,500,000.

¹⁰ 403(b) plans are tax-sheltered investment plans available to cooperative hospital service organizations and public service organizations, among others.

123. However, there was no “Vanguard Brokerage Account,” or any other account, that contained \$1,500,000 in liquid assets. The “Vanguard Brokerage Account” was a fabrication.
124. In addition, Client 2 and her husband could not obtain “income from this account today” because Polaris Platinum annuities are deferred annuities, and cannot begin the income phase until two years after the contract date.
125. The fact that Polaris Platinum annuities are deferred (rather than immediate) annuities should have been known to LPL CSU analysts and supervisory principals reviewing Zullo’s variable annuity sales for suitability – in particular because Zullo sold the Polaris Platinum annuity almost exclusively. Yet Rochon approved the annuity sale, incorrectly stating:

Rep states that client's LNW is \$2,500,000. Client has one account at LPL and it currently has no assets. The time horizon on this account is 10+ years with client needing income now and for the next 10 years. This is consistent with a B shares purchase. Rep states that the client is retiring and needs income so the annuity includes a Guaranteed Withdrawal Benefit, Income Plus Single Life Dynamic Option which guarantees annual withdrawals for the life of the owner, which is in line with her need for income during retirement.

126. As discussed in greater detail below, LPL’s account applications only require that a client indicate a “range” of liquid net worth. Clients whose account applications indicate more than \$1,000,000 in liquid net worth do not require or provide for a specific figure. Rochon testified before the Enforcement Section that, as a result, she was bound to rely on Zullo’s description of Client 2’s liquid net worth.

127. Rochon further testified as follows:

Q: Is there any other way that you could know or verify that the client’s liquid net worth was actually, in this case, \$2,500,000?

A: Not at that time.

128. Had Zullo disclosed that Client 2 did not have these other assets outside of LPL, Rochon would not have approved the transaction, per her testimony:

Q: Well, the question was: if you knew or if Mr. Zullo told you that the client had no other assets outside of LPL, would you have approved that transaction?

A: Okay. Oh, I see, none of the assets. No.

Q: Why is that?

A: Because I cannot approve an annuity order if a client has no assets.

Q: Why can you not approve an annuity order if the client has no assets?

A: Because an annuity is a long-term vehicle that is not used for daily cash needs or investments or anything like that. It's designed to be held a long time and to, you know, in general, take distributions after you've reached the age of retirement.

129. Client 2 and her husband did not hold these other assets, and in fact were struggling to make ends meet.

130. In March 2014, Client 2 emailed Zullo, stating in pertinent part:

I'm writing to you because our local savings account is now down to \$5,000. We have had a number of unexpected expenses this year, including \$2,000 for car repairs for [redacted] car, \$6,000 for my [redacted] surgery, and larger than usual heating bills. I know you didn't want us to access my retirement until this summer, but our savings account won't last until then. *Should I take money from our LPL savings account or start taking money from my retirement?* I'm not sure how to access the LPL account, and I didn't want to wait until the last minute to address this issue. Thanks for your help. Have a great weekend.

(Emphasis added.)

131. Zullo testified that he did not know when or whether he discussed Client 2's and her husband's purported additional \$1,500,000 in liquid assets with Client 2 following this email.

132. In August 2015, Client 2 emailed Zullo, stating, in pertinent part:

Our money situation has become difficult as our water and trash rates have increased as well as our utilities, in part, due to the fact that my daughter and her two children live with us. We also try to help our grandchildren by contributing to camp, dance, et cetera. *I find that between this and some ongoing medical bills we are short of money every month.* Our savings account is down to less than \$500. We are also going to have to replace [redacted] car as it is 13 years old and having more mechanical issues. We usually buy cars at the end of the season to get a better price and we will be down-sizing his car to save money. We will have to increase the monthly amount of my pension from \$2,700 to \$3,400 to meet our expenses. This amount will have to increase when we buy the car, unless we pay cash. This was the reason that I discussed paying off the mortgage with you so we could build up our savings and cut back on the amount of money I take each month from my pension. Let me know what you think. I will also need \$2,000 from our savings account. Thanks for your help. Take care.

(Emphasis added.)

133. Zullo was unable to explain either the content of this email or his response to it when questioned, testifying as follows:

Q: Why is [Client 2] saying that her money situation has become difficult?

A: Because things must be difficult.

Q: Does she have 2.5 million dollars in liquid assets?

A: Well, she's got over a million with me. I don't know why things are that difficult. I couldn't tell you why.

Q: And then, when she says, "Between this and some ongoing medical bills, we are short of money every month," why is she saying that?

A: She must be having difficulty with paying her bills.

Q: But doesn't she have two and a half million dollars that she can access?

A: Well, she should.

Q: Did you say that to her?

A: I don't remember my response to this.

Q: Did you do anything to address this?

A: Yeah, I think we gave her more money and helped look at her expenses and adjust her income.

Q: When you say *gave her more money*, do you mean you withdrew more money from her pension?

A: Well, it says: We'll have to increase the monthly amount from our pension from \$2,000 to \$3,400. So, it sounds like we increased the amount.

Q: Did you do that?

A: I don't know if I did. I don't remember.

Q: Why would you increase the withdrawal from the pension if you have other liquid assets in an investment account or somewhere else?

A: I don't know. I couldn't tell you.

134. Currently, Client 2 and her husband's remaining liquid assets are collectively worth approximately \$100,000.

iii. Client 3.

135. Client 3 is a retired school administrator. Client 3 hired Zullo in 2015 in order to invest approximately \$700,000 that she received from the sale of real estate.

136. Client 3 opened two accounts with Zullo in September 2015, an OMP account and an account containing an AIG Polaris Platinum annuity. The OMP account contains

approximately \$185,080.40 in liquid assets as of July 2016, and the Polaris Annuity is valued at approximately \$678,786.02 as of February 2016.

137. Client 3 also manages a self-directed brokerage account with another broker, worth approximately \$60,000, and owns two other annuities not sold by Zullo, collectively worth approximately \$40,000.
138. Client 3 has no other investments, and has never told Zullo that she has any investments apart from those listed above.
139. Client 3 depended on Zullo for his financial acumen in making investment recommendations, but was skeptical about Zullo's suggested annuities, and had several "heated conversations" with Zullo about purchasing an annuity.
140. Nevertheless, Zullo persuaded Client 3 to purchase a Polaris Platinum annuity in September 2015 at a premium of \$700,000.
141. Zullo and LPL received a commission of \$49,000 up front on this annuity sale.
142. Client 3 emailed Zullo on November 4, 2015, noting that Zullo had incorrectly indicated on the annuity application that Client 3 owned no other annuities:

I received the Polaris Annuity application. Before I sign it, I have a question. On page 5, there is a statement checked "No" that states that I do not have any existing annuity contracts. I do have an annuity contract with Met Life. How should I proceed? On page 7 there is a statement checked "No" which you have to sign that states you do not have reason to believe that I as the applicant have any annuity contracts. I just want to remind you that I do have an annuity contract.

143. Zullo responded by email on November 5, 2015, stating: "I will change that yes you do have an annuity with other company. Thank you. My best."
144. But Zullo, as with Client 1, did not tell LPL about the change.
145. Client 3's actual liquid net worth at this time was approximately \$1,000,000.

146. Yet Client 3 also received and signed a Form F439-F1 (“Important Information Regarding Your Variable Annuity Purchase”) that currently indicates in two places a liquid net worth of \$7,000,000, but did not identify this error at this time.
147. On information and belief, Zullo may have falsified this document to reflect a \$7,000,000, rather than \$1,000,000, liquid net worth, after it was signed by Client 3.¹¹
148. Zullo reported to LPL that Client 3’s liquid net worth at the time of the annuity purchase was \$7,000,000. Put another way, Zullo reported that Client 3 would have more than \$6,000,000 in liquid assets following the annuity purchase, and that the \$700,000 premium represented only 10% of Client 3’s liquid net worth. In reality, the annuity purchase represented more than or approximately 75% of Client 3’s liquid net worth at that time.
149. Zullo testified before the Enforcement Section as follows:
- Q: Do you know how much of that seven million is with the [sic] another broker?
- A: I don’t know. She may even have more than one broker. She invests in real estate. She’s invested in stocks. She may have more than two brokers.
- Q: Do you know how much is with other brokers?
- A: Well, the difference between what I have and what she has. I have, I believe, seven hundred thousand. I have an advisory account with her, about three hundred.¹² So, I have about a million of her money.
- Q: And the other six million you believe is with other brokers elsewhere?
- A: Yes.
150. LPL relied on the \$7,000,000 liquid net worth figure in approving the Polaris Platinum annuity sale as suitable. Specifically, Zullo’s CSU analyst for this purchase, Lorick, wrote, in approving the transaction, “Single VA represents 10% of stated 7mil LNW.”

¹¹ Zullo may also have similarly falsified application documents for other clients described herein, or other clients more generally. For example, Client 1 noticed the error in her birth year for the 2015 Polaris Platinum annuity, so presumably may have noticed the misrepresentation of her liquid net worth prior to signing.

¹² Client 3’s advisory account held about \$185,000 as of July 31, 2016, not \$300,000.

Lorick did not ask any follow up questions as to the size of the annuity, Zullo's sale of the annuity, or the \$7,000,000 liquid net worth figure.

iv. Client 4.

151. Client 4 is a retired college administrator, and her husband is a retired software developer. Client 4 and her husband have been clients of Zullo since at least 2004, opening multiple accounts since that time.
152. As clients, Client 4 and her husband have always been dependent on Zullo for financial advice. Client 4 described their relationship with Zullo as follows: "we sign the papers, and he moves the money."
153. As of July 2016, Client 4 and her husband also had Strategic Asset Management ("SAM") (\$395,412.69) and individual OMP advisory accounts (\$158,348.56) (\$216,832.73) with Zullo at LPL, totaling \$770,593.98.
154. According to Client 4, the total net worth of Client 4 and her husband when they first met Zullo in 2004 was about \$1,000,000. Client 4 estimated that their current total net worth, including annuities, may be about \$3,000,000. Client 4 and her husband do not have other investments held elsewhere, and do not have another broker.
155. Zullo systematically replaced Client 4's and her husband's LPL invested assets with Polaris Platinum annuities, on four separate occasions, beginning in 2013 – first surrendering fixed annuities outside of their surrender periods, then liquidating liquid assets, and finally replacing existing annuities not yet out of surrender (incurring surrender charges), in order to fund the Polaris Platinum annuity purchases.
156. In March 2013, Zullo sold Client 4 and her husband a Polaris Platinum annuity at a premium of \$765,000.00, funded by the surrender of multiple fixed annuities.

157. LPL and Zullo received a commission of approximately \$57,354.36 on this annuity sale.
158. Under the "other annuities"¹³ section in the AOE system for this purchase, upon which LPL supervisors rely to conduct suitability review, Zullo listed a Best of America annuity at an investment amount of \$335,000.
159. This purchase did not include an income rider because, according to Zullo's response in the AOE system, the client had fixed income already and wanted greater income in ten or more years.
160. At this time, Zullo provided documentation to LPL reflecting a liquid net worth of \$2,500,000 for Client 4 and her husband.
161. LPL relied on the \$2,500,000 liquid net worth figure in approving the March 2013 Polaris Platinum annuity sale as suitable. Specifically, Zullo's supervisor for this purchase, David Josephsohn, wrote, "The client has 30% of his liquid net worth in annuities so has excellent other resources," in approving the transaction.
162. The next year, in July 2014, Zullo sold another Polaris Platinum annuity, this time *with* an income rider, to Client 4 and her husband, at a premium of \$925,000. To make this purchase, Zullo liquidated substantially all of the assets in a SAM account (which should have reduced Client 4 and her husband's liquid net worth by \$925,000).
163. Zullo and LPL received a commission of \$67,062.50 up front on this annuity sale.
164. Under the "other annuities" section on the order summary report in AOE system for this purchase, upon which LPL supervisors rely for suitability review, Zullo listed two Best of America annuities at investment amounts of \$340,000 and \$160,000. Zullo failed to list

¹³ Section 15a.

the \$765,000 Polaris Platinum annuity that he sold to Client 4 and her husband in the previous year. LPL did not notice this missing annuity.

165. For this purchase, Zullo submitted a figure of \$10,000,000 as Client 4 and her husband's liquid net worth. This figure was fictitious.
166. LPL relied on the \$10,000,000 liquid net worth figure in approving this annuity sale as suitable. Specifically, Zullo's supervisor for this purchase, Rochon, wrote as follows in approving the transaction:

Client is purchasing \$925,000 of Polaris Platinum III B share. Source of funds is a SAM account. Client is looking for a guaranteed withdrawal benefit and a guaranteed income benefit. Subaccount allocation is consistent with the client investment objective. Time horizon on this account is 10+ years which is consistent with a B share annuity. *Client liquid net worth is \$10,000,000. This annuity is approximately 10% of the client liquid net worth.* This order is approved.

(Emphasis added.)

167. Rochon did not ask Zullo to break down the clients' liquid net worth.
168. Neither Rochon nor anyone else at LPL noted that Client 4 and her husband's liquid net worth appeared to have increased from \$2,500,000 to \$10,000,000 since they were sold another Polaris Platinum annuity the prior year.
169. LPL does not require supervisors, in reviewing an annuity sale, to review liquid net worth, age, or other similar suitability information submitted by an advisor in connection with prior or concurrent annuity purchases.
170. Rochon testified that she would, in fact, never come across this type of information unless it was submitted in connection with the current annuity sale.
171. Also in July 2014, Zullo sold another Polaris Platinum annuity, with an income rider, to Client 4, at an estimated premium of \$550,000 (ultimately \$542,464.56 in paid premiums). The source of funds for this annuity sale was the surrender of two existing annuities, incurring a surrender charge of \$2,800, despite the facts that the annuities

would both be out of surrender as of November 2014 and that Zullo had already sold Client 4 and her husband two Polaris Platinum annuities.

172. For this purchase, Zullo again submitted the false figure of \$10,000,000 as Client 4 and her husband's liquid net worth.
173. Zullo and LPL received a commission up front of \$39,328.68 on this annuity sale.
174. LPL relied on the \$10,000,000 liquid net worth figure in approving this Polaris Platinum annuity sale as suitable. Specifically, Zullo's supervisor, Rochon, wrote as follows in approving the transaction:

Client is purchasing \$550,000 of American General Polaris Platinum III B share. Source of funds is the liquidation of a Nationwide Polaris Platinum for \$376,000. There is a surrender charge of \$2,800. The annuity will be free of surrender on November 2, 2014. Rep states that the client feels that the surrender charge can be made up by increases in market value or the step up in income base. The other source of funds is the liquidation of a Nationwide Achiever Annuity for \$174,000 which has no surrender charge. The client is purchasing a rider that cannot be added to the existing annuities. Client is looking for income and a higher risk/reward profile for this money. Subaccount allocation is consistent with client investment objective. Time horizon is 10+ years which is consistent with a B share annuity. *Liquid Net Worth is \$10,000,000. This order is approved.*

(Emphasis added.)

175. Under the "other annuities" section on the order summary report in the AOE system for this purchase, upon which LPL supervisors rely for suitability review, Zullo listed only the two Nationwide annuities being surrendered to fund the purchase. Zullo did not list the \$765,000 Polaris Platinum annuity sold to Client 4's husband in 2013 or the \$925,000 Polaris Platinum annuity he sold to Client 4 earlier in the month. Rochon and LPL failed to notice this discrepancy.
176. On information and belief, Rochon and LPL would have questioned this annuity sale had a supervisor noticed at this time that Client 4 and her husband would own three of the same annuity sold within two years, following this annuity switch.

177. In August and September 2015, Zullo sold another Polaris Platinum annuity to Client 4's husband, this time at an estimated premium of \$158,000 (ultimately \$152,511.50). As another annuity switch, the source of funds for this sale was the liquidation of an existing Nationwide Achiever Annuity, which resulted in a 2% surrender charge of \$2,581.12.
178. Zullo justified this annuity sale by explaining that the client "does not need costly income rider," and the annuity had to be switched because the income rider could not be dropped.
179. Zullo's supervisor for this transaction did not question this justification, despite the fact that Client 4 and her husband had in July 2014 been sold the same exact annuity *with* an income rider.
180. In this instance, Zullo actually submitted two different liquid net worth figures to LPL *for the same transaction*, and LPL and its supervisors did not notice. Zullo first submitted a figure of \$8,000,000 to LPL via LPL's AOE system, without submitting the Form F439 and Form F439-F1 ("Important Information Regarding your Variable Annuity Purchase"), which is required to be signed by clients. These forms reflected a liquid net worth figure of \$1,600,000 and were signed by Client 4 and her husband. The \$8,000,000 figure that Zullo submitted was fictitious, and inconsistent with prior figures of either \$2,500,000 or \$10,000,000, and the concurrently submitted figure of \$1,600,000.
181. LPL relied on the \$8,000,000 liquid net worth figure, rather than the \$1,600,000 figure ostensibly signed off on by the client, in approving this Polaris Platinum annuity switch as suitable. Specifically, Zullo's supervisor for this purchase, Derek Chalfant, wrote as follows in approving the transaction: "Age 66, source of funds - exchange, LNW - 8m, total annuity LNW % - 2% [*sic*] (non-qualified)." Yet LPL did not note the \$1,600,000

liquid net worth figure ostensibly signed off on by the client, or the inconsistency with prior figures.

182. At the time of this sale, LPL apparently no longer required advisors to list out other annuities owned by the client in the AOE system, as the Order Summary Report Form no longer contained Section 15a for the listing of specific annuities for this transaction.
183. Even still, Zullo still managed to misrepresent Client 4 and her husband's assets by indicating in Section 15 of the Order Summary Report Form that Client 4 and her husband had *no* other existing annuities. LPL and its supervisors failed to notice this false suitability information, despite the fact that Client 4 and her husband had been sold multiple Polaris Platinum annuities in the past two years that were reviewed by LPL compliance, and had owned other annuities (also sold by Zullo) prior to that.
184. For his part, Zullo testified as follows regarding Client 4 and her husband's inconsistent liquid net worth:

Q: So, why are these two figures eight million dollars different?

A: I don't know. I have no idea.

Q: You have no idea?

A: No.

Q: Did you write this?

A: I did.

Q: You have no recollection of why?

A: No.

Q: Does it matter to you that these two figures are eight million dollars apart?

A: Yes. Yeah, I really have -- I don't understand that.

Q: Is it important to you to be keeping accurate records about your clients' liquid net worth?

A: Yes, yeah.

Q: So, why would this have happened?

A: I don't know. I couldn't tell you.

Q: But you wrote this?

A: I did.

Q: So, why can't you tell me?

A: Because I don't remember. I don't know why there's a difference. I can't give you a good answer.

Q: Do you remember writing this?

A: I don't remember writing it, but it's my handwriting.

Q: So, this is in 2014, right?

A: Correct.

Q: And then, on Page 28, we were looking at 2015. You can go back and check if you need to.

A: Right.

Q: This wasn't that long ago, so why don't you remember anything?

A: I have a lot of clients. I wrote it. That's my handwriting. I don't remember writing that, but it is my handwriting.

Q: But on Page 28, that was just last year, and then on Page 39, that was just 2014 and you have an eight million dollar difference, and you have no recollection of why that might be?

A: I have no idea.

Q: How would you have gotten this information?

A: I don't know how I got that information.

Q: Did you ask the client?

A: To get the information, I ask the client. I don't know why there would be such a big difference. I couldn't tell you the difference, why.

Q: I mean, as a financial advisor, isn't it important to you to know how much money your clients have?

A No, it is. It's very important.

185. No one at LPL compliance questioned that Client 4 and her husband were sold the same annuity, with or without an income rider, on four separate occasions from 2013 to 2015.
186. In addition, no one at LPL noticed that Client 4 and her husband's liquid net worth was variously listed at differing figures for each annuity purchase in a span of only three years, even in one instance concurrently – for example, as being \$1,600,000, \$2,500,000, \$8,000,000, and \$10,000,000.
187. Currently, at least or approximately 75% of Client 4 and her husband's investment assets are held in Polaris Platinum annuities for which Zullo and LPL received a 7% commission.

v. **Client 5.**

188. Client 5, a retired nurse, has been a client of Zullo since June 2005. Client 5 is single and shares a condominium apartment with her sister.
189. Client 5 worked for 49 years to earn her retirement, and estimates that she her investments with LPL currently total approximately or less than \$1,000,000. Client 5 owns an LPL OMP account (\$406,020.51) and multiple annuities sold to her by Zullo.
190. Zullo is Client 5's only financial advisor, and Client 5 does not have any investment assets at any other brokers or financial firms.
191. Client 5 depends on Zullo for his financial expertise.
192. Zullo replaced most of Client 5's investment assets with Polaris Platinum annuities during the Relevant Time Period.
193. Specifically, Zullo sold Client 5 three Polaris Platinum annuities from November 2013 to present, first liquidating an investment account to fund the annuity sales, then surrendering existing annuities that were not yet out of their respective surrender periods.
194. Zullo first sold Client 5 a Polaris Platinum annuity in November 2013 at an estimated premium of approximately \$900,000 (ultimately \$861,784.77). The source of funds for the annuity sale was the liquidation of an entire LPL OMP investment account, which she had held since 2008.
195. Zullo and LPL received a commission of approximately \$62,479.40 on this annuity sale up front.
196. For this sale, Zullo submitted a liquid net worth figure of \$3,500,000, and described Client 5's liquid net worth as follows: "Liquid Net Worth: LPL NQ \$95,000, LPL Q \$880,000, BOA Annuity \$134,000, BOA Annuity \$52,000, Vanguard Managed Account \$2,200,000, Checking Account \$50,000."

197. The "Vanguard Managed Account" was a fabrication. On information and belief, so was the \$50,000 "Checking Account."
198. In addition, this breakdown failed to mention a Nationwide Achiever annuity that Zullo would later recommend that Client 5 surrender in order to purchase a third Polaris Platinum annuity.
199. Zullo's supervisor for this purchase, Rochon, approved this order on the basis that the client was "looking for guaranteres [*sic*] and an income stream."
200. LPL relied on the \$3,500,000 liquid net worth figure in approving this Polaris Platinum annuity sale as suitable. Specifically, Rochon wrote as follows in approving the transaction: "Total combined annuities is 31% of the client's liquid net worth of \$3,500,000. Subaccount allocation is consistent with the investment objectiver [*sic*]. This order is approved."
201. Rochon testified that she would "probably not" have approved this first of the three annuity sales if not for the (fabricated) Vanguard managed account and checking account, due to Client 5's age and liquidity.
202. Zullo sold Client 5 another Polaris Platinum annuity in February 2014 at an estimated premium of \$55,000 (ultimately \$54,852.17). The source of funds for this annuity sale was the surrender of an existing Nationwide Insurance Achiever Annuity, for which Client 5 paid a \$1,541.19 surrender charge.
203. Zullo and LPL received a commission of approximately \$3,976.78 on this annuity switch, up front.
204. For this switch, Zullo submitted inaccurate suitability information through the AOE system, indicating on Section 15a of the Order Summary Report Form that Client 5's

only other annuity was a \$750,000 SunAmerica annuity. In reality, Client 5 held other annuities apart from the SunAmerica annuity, and the Sun America annuity appears to be intended to reference the \$900,000 Polaris Platinum annuity discussed above.¹⁴ Rochon and LPL did not notice this discrepancy.

205. For this sale, Zullo submitted a liquid net worth figure of \$3,500,000. This liquid net worth figure was unchanged from the previous figure of \$3,500,000, despite the fact that \$900,000 of those funds had been used to purchase an illiquid annuity.
206. Zullo justified this annuity switch (with a surrender charge) on the grounds that “[m]ost of the clients monies are subject to the market and has very little monies guaranteed [sic] to ensure a steady source of income. Does not want to leave herself unprotected if market crash that cannot have a reliable source of monies.”
207. This justification was fabricated and internally inconsistent, and LPL was on notice of this inconsistency. Specifically, LPL and Rochon had only months earlier reviewed and approved a transaction wherein Client 5 had liquidated liquid securities “subject to the market” in order to purchase a much larger \$900,000 annuity. As such, most of the client’s “monies” at that time were “guaranteed” (sic) to ensure a steady source of income.
208. Prior to approving the transaction, Rochon even emailed Zullo questioning why an annuity switch was necessary, yet did not note or question the existence of the \$900,000 Polaris Platinum annuity with an income rider:

I am reviewing this order and the answer you provided to my question about the advantages of moving to the new product. You stated that the client wanted a reliable source of monies is [sic] there is a market crash. Wouldn't she have a reliable source of monies in the existing annuity? It looks like she is switching from a Nationwide Achiever Annuity to a Polaris Platinum III B share. Wouldn't there be

¹⁴ “SunAmerica” was a name for AIG at this time.

similar annuity guarantees from one annuity to the new annuity? I am not understanding why she has to switch to obtain downside protection. Isn't that feature available with the existing annuity?

209. Zullo responded by stating only that "I cannot add the income rider on the existing contract. The existing contract only offers death benefit protection which does not help on the income side." Zullo's response failed to mention, and Rochon failed to question, the existing \$900,000 Polaris Platinum annuity already sold to Client 5 that November.

210. LPL and Rochon adopted Zullo's nonsensical justification for the annuity switch (with a surrender charge) wholesale, and relied on the \$3,500,000 liquid net worth figure in approving the switch as suitable. Specifically, Rochon wrote as follows in approving the switch: "Client liquid net worth is \$3,500,000. Total annuity holdings are 23% of the client liquid net worth."

211. Rochon explained her approval of this switch during her testimony as follows:

Q: ... Mr. Zullo's explanation for the advantages of moving to the new product, is that the client has very little monies guaranteed to ensure a steady source of income.

A: Right.

Q: But you had just approved a transaction where he sold \$900,000 of the Polaris annuity for that reason.

A: Right.

Q: So, how is this a good justification for the sale if he just made that sale before, back in November?

A: Well, in comparison to the previous order, it doesn't appear to be a good justification.

Q: But you reviewed both transactions.

A: Correct, but I reviewed many annuity transactions at that point and the details of the previous order did not -- you know, I'm not remembering them to the point where I see a flag in that issue, in that statement.

Q: So, in general, you're reviewing so many annuities that you wouldn't remember an annuity transaction for the same client three months prior, the details of it anyway?

A: I wouldn't remember like a specific line like that, but the total annuity holdings are 23 percent of the client's liquid net worth. In my mind now, and we are at February 2014, the other annuity should have been represented either on the order form or the asset page of the account and would have been figured in on that in my mind.

Q: So, if it had been represented on the order form, would you have noticed it?

A: Oh, yes, because there's a separate question where you just line them up.

212. But the “other annuity” that, according to Rochon, “should have been represented” was represented on the Order Summary Report Form at Section 15a, at a value of \$750,000. Rochon would or should have seen this annuity as part of her review, per her testimony, and therefore should have known that Zullo’s justification for the purchase (“most of the clients [*sic*] monies” being “subject to the market”) was nonsensical.
213. Zullo sold Client 5 another Polaris Platinum annuity at an estimated premium of \$130,000 (ultimately \$138,301.77) in October 2014. The source of funds for this annuity switch was the surrender of a Jackson National annuity, which incurred a \$1,305.21 surrender fee.
214. For this switch, Zullo again entered inaccurate information into the AOE system indicating that Client 5 only possessed one Polaris Platinum annuity prior to the purchase. In reality, Zullo had sold two Polaris Platinum annuities to Client 5 in recent years. LPL did not make note of this inconsistency.
215. For this annuity sale, Zullo submitted a liquid net worth figure of \$2,500,000. LPL relied on this liquid net worth figure in approving the annuity transaction. Specifically, Zullo’s supervisor for this transaction, Charles Topp, wrote as follows in approving the transaction: “This purchase will represent 5.20% of client’s stated LNW of \$2,500k, and overall, known annuity exposure will be 48.00%.”
216. Topp did not notice that Client 5’s liquid net worth had fluctuated from the previously reported figure of \$3,500,000 in February 2014, when Zullo sold Client 5 a \$55,000 Polaris Platinum annuity.
217. Rochon testified before the Enforcement Section regarding Client 5 as follows:

Q: So, my question is this: drawing upon your experience at LPL as a supervisor of these transactions, why is no one noticing these different figures that are submitted by Zullo?

A: I really don’t know. I don’t know.

Q: If you had reviewed these transactions and you had been aware and remembered the prior liquid net worth figures that were submitted, would you have raised that question to Mr. Zullo?

A: Yes.

Q: And why would you raise that question to Mr. Zullo?

A: Because of the discrepancy in the liquid net worth figures. If there's a big discrepancy, it's a red flag. I would question it.

Q: And what is it a red flag for?

A: I just need more information. Tell me why there's a discrepancy and tell me what happened and what changed between then and now.

Q: And why is no one at LPL questioning why the client should surrender all of their existing annuities and liquidate all of their LPL investment assets to buy just one annuity product four¹⁵ different times?

A: I don't know the answer to that.

...

Q: Isn't a client's liquid net worth crucial in determining whether an annuity is suitable for them?

A: It would be, for me, if I was reviewing it.

Q: So, do you see any issue with a different figure being submitted on multiple occasions for the same client and no one at LPL raising a question about it?

THE WITNESS: Can we confer?

[WITNESS' ATTORNEY]: No, you've got a question. Just answer it.

THE WITNESS: Okay.

Q: Just to the best of your ability.

[WITNESS' ATTORNEY]: Can you just repeat? Yeah, can you repeat the question?

Q: My question is: do you see any issue with this?

A: Yes, I do see an issue with that. I do.

Q: And what's the issue?

A: Just continuity, continuity of approving the orders, which would include, you know, checking the liquid net worth figures and their continuity across the board for the orders.

vi. Client 6.

218. Client 6 has been a client of Zullo since at least August 2008, when Zullo sold her a Nationwide Achiever Variable Annuity.

219. On June 26, 2014, Client 6 emailed Zullo as follows:

I wanted to check with you about something regarding the money that I have invested through you. Long story short is that I lost my job back in October 2013. I was receiving [...] unemployment

¹⁵ The Enforcement Section inquired about four different annuity sales during testimony based on LPL's trade blotter, which listed sales by Client 5's surname, but subsequently determined that one such annuity sale was made to Client 5's sister.

checks, but those ended in May 2014. Unfortunately, since getting laid off, I have been very sick. I was actually sick during most of 2013 but went undiagnosed till spring of 2014.

[REDACTED] I have filed for Social Security Disability since the expectation is that I won't be able to return to work for at least the next 12 months. Between having significant medical expenses coupled with no income coming in, I may have to access the money I have with you. I have enough in savings to get me through the summer, and if my health improves to the point where I can actually get back to work, then I won't have a problem. However, my recovery is going slower than I would like, so no guarantees on when I will be able to start looking for another job.

Can you let me know your thoughts and what kind of penalty I would face if I pulled out some of that money?

220. Client 6 stated in this email that she had "no income coming in" at this time and "significant medical expenses," and that she therefore "may have to access the money I have with [Zullo]."
221. Client 6 inquired about the kind of penalty she would face if she pulled out some of the money invested with Zullo because Zullo had already invested her assets into an illiquid Nationwide Achiever Variable Annuity.
222. Client 6 did not have investments with LPL apart from the Nationwide annuity.
223. On information and belief, Client 6's only other assets are currently contained in a Fidelity retirement account.
224. Zullo responded to Client 6 by email, saying, in pertinent part: "I am very sorry to hear about your medical condition. I need to meet with you as we need to make some changes in your account and then we can address the below issues."
225. The changes that Zullo made in Client 6's account were antithetical to Client 6's stated needs.
226. After meeting with Client 6 for the purpose of discussing her medical expenses and liquidity needs, Zullo recommended that Client 6 surrender the Nationwide Achiever Variable Annuity (at a surrender charge of \$1,366.00), and roll over the *entire value* into a Polaris Platinum annuity with a fresh surrender schedule.

227. Specifically, Zullo sold Client 6 a Polaris Platinum annuity with an estimated premium of \$97,000 (ultimately \$94,640.21) in July 2014. For this transaction, Zullo submitted a liquid net worth figure of \$1,500,000 to LPL.
228. Zullo and LPL earned a commission of \$6,861.42 on this annuity switch.
229. On information and belief, Client 6 did not have a liquid net worth of \$1,500,000, and Zullo was aware of this.
230. Zullo listed Client 6's liquid net worth as \$1,500,000 on the annuity replacement and application forms for this transaction in July 2014, despite receiving this email from Client 6 less than a month prior, and meeting with Client 6 even more recently.
231. LPL approved the annuity switch, relying on Zullo's justification and the liquid net worth figure of \$1,500,000. Specifically, Rochon stated:

Client is surrendering policy prior to the surrender period ending. The rep discussed this with the client and she believes she can do better with the new contract, guaranteed income. Client is purchasing a GWLB and will need income from this contract in 10+ years. Subaccount allocation is consistent with the client investment objective. B share annuity is appropriate for a 10+ time horizon. Client liquid net worth is \$1,500,000. This annuity is 6% of the client liquid net worth. This order is approved.

232. Moreover, Client 6 may not have understood the surrender charge prior to the annuity switch. Client 6 sent the following emails to Zullo (at both his personal and LPL email address), in pertinent part:

October 18, 2014:

I was just catching up on some paperwork and wanted to ask about my ending balance on my last/final quarterly statement from Nationwide (\$96,282.20) for period July 1 - Sept 30, 2014 and my first quarterly statement with Polaris Platinum III (starting contribution of \$94,640.21) for the same time period. Why isn't the Polaris starting amount matching the ending balance from Nationwide Statement. Polaris is starting with \$1,641.99 less than I would have expected.

I am still waiting to hear on SS Disability Appeal. I had a recent set back that required having to spend several days in ICU at [redacted]. Recovery is still slow but my lawyer has updated them with my most recent issue so I am hoping that it may be enough for them to approve me. My case is definitely being reviewed so maybe I will hear their decision no later than November. Once I know my financial situation, I will circle back with you on next steps.

October 26, 2014:

I had dinner with family members today and both my Mom and my sister have loaned me money to help me through the coming months. They didn't want me dipping into any of my retirement funds - they were so generous I can't believe it. So I am going to hold off on the 7% payout option you mentioned but would ask for you to look into the issue of the discrepancy between ending balance at Nationwide and beginning balance with new account. I thought they would have been the same amount but the statements I received did not reflect that.

November 7, 2016:

Wanted to see if you've looked into the ending/starting balance I had inquired about.

233. Zullo ultimately responded by email indicating that “[t]he difference in the balances relate [*sic*] to the surrender charges of the old plan.”
234. Accordingly, Zullo’s solution to Client 6’s expense and liquidity issues was to place the entire value of Client 6’s investments with Zullo into another variable annuity, lie to LPL about Client 6’s needs and assets in order to push the transaction through, fail to adequately explain the surrender charge to Client 6, and lock up Client 6’s investments for several more years, despite Client 6’s express need for liquidity in light of her termination from employment and medical condition.
235. Following the Polaris Platinum annuity switch, Client 6 continued to experience financial and liquidity difficulty, emailing Zullo as follows:

October 10, 2015:

I just received my Q3-2015 Statement and once again I have lost money. This time it was almost 5K in a 3 month period. In light of my financial situation, is there a less risky place to put my remaining balance. I would prefer to make little to no money than to forfeit thousands each quarter.

Please advise.

August 8, 2015:

Difficult to watch it go down every quarter but I'll hang tight for awhile and see how it goes. Was hoping to break \$100k when we moved the monies to a less risky portfolio but it has dropped almost every quarter since then. I think this quarter was one of the biggest drops I've seen....depressing to say the least, especially in my circumstance.

vii. Client 7.

236. Client 7 is a retired healthcare worker. Client 7 has been a client of Zullo since 2004.

237. Currently, according to Client 7, Client 7 has four annuities through Zullo – a Polaris Platinum annuity currently worth approximately \$1,090,000, and three smaller annuities ranging from approximately \$10,000 to \$25,000 each. Client 7 also maintains a bank account currently holding approximately \$22,000 in cash.
238. Client 7 has no other investable assets; only annuities.
239. Client 7 does not own any real estate, and rents her current residence.
240. Client 7 had previously owned liquid investments in SAM and OMP accounts with LPL. But these accounts were closed out by Zullo in November 2013 and December 2014 in order to fund the purchase of additional annuities.
241. Specifically, Zullo liquidated all \$1,200,000 of Client 7's SAM account in order to fund the purchase of a Polaris Platinum annuity with an income rider at a premium of \$1,239,544.75.
242. For this annuity sale, Zullo submitted a liquid net worth figure of \$4,000,000 to LPL.
243. LPL relied on the \$4,000,000 liquid net worth figure in reviewing and approving the sale for suitability.
244. Zullo's written justification for this sale was that "client looking to guarantee income with income rider," which was substantially the same justification for many of Zullo's annuity sales in 2014 and 2015.
245. In reviewing this transaction for suitability, Rochon noted that the client's liquid net worth did not match the liquid net worth indicated on previous account documentation, and requested the reason why Client 7 was using *all* of her liquid SAM account to purchase an annuity, writing as follows:

Please provide the following information: 1. Please provide a breakdown of the client's liquid net worth and the location of these assets. 2. Client's SAM account is being liquidated 6946-6354. *Please discuss the reason that the client is using all of these assets for the annuity.* The LNW on this account

is \$750-\$999,999. Please either update this account or provide an explanation of the discrepancy between the \$4,000,000 outlined in this order vs. the lnw on the account. 3. Please provide a discussion of the net investment advantage for the client to move all of the assets from a SAM account to a Variable Annuity. What is the disadvantage in going from SAM to an annuity and have you discussed this with the client.

(Emphasis added.)

246. Zullo responded by fabricating a Vanguard account,¹⁶ as he did with Client 2's account, lying about the client's liquid net worth, and lying about communications with the client:

60K Jackson National Annuity, 20K Nationwide Annuity, 160K Citizens Bank MM account, 1,200,000 in 2 LPL accounts, 2,400,000 Vanguard Account, 2) Using money to guaranty [sic] income stream for client in retirement, LNW to be updated, 3) Advantage to client is to get guaranteed income for client and not worry about income production for life. Client does not want to touch Vanguard as low expenses for growth versus SAM higher expenses. Disadvantage is higher expenses in annuity versus SAM account but gets guaranteed income.

(Emphasis added.)

247. Despite noticing that Zullo was liquidating all of Client 7's liquid assets at LPL to fund the account, and despite noticing that the client's net worth had quadrupled from the last time its range was reported, Rochon did not question Zullo further on the appearance of at least \$3,000,000 in liquid net worth that Zullo stated was held outside of LPL, nor did she question whether the figure may have been improperly recorded to begin with, or ask Zullo why the number had increased to that extent.
248. Instead, Rochon requested and accepted that the liquid net worth information be "updated," then approved the transaction on the basis that "[t]his annuity will be 30% of the client liquid net worth of \$4,00,000 [sic]. Client has sufficient liquid assets for emergency funds. Rep has provided a discussion of the net investment advantage to the client in his notes."

¹⁶ On information and belief, the "160k Citizens Bank MM account" was also fictitious. Further, the "20 K Nationwide Annuity" mentioned here was not disclosed via Section 15a of Order Summary Report in the AOE system for this very transaction, which Rochon did not notice.

249. Nor did Rochon ask Zullo why he recommended that the client liquidate all of her liquid assets at LPL rather than any liquid assets held anywhere else in order to fund the annuity purchase (for example the "160k Citizens Bank MM account"), apparently accepting Zullo's explanation that Vanguard accounts are better than LPL's SAM account for "growth" ("Client does not want to touch Vanguard as low expenses for growth versus SAM higher expenses.").
250. As noted, this sale left Client 7 without any investments apart from annuities.
251. Zullo and LPL received a commission of approximately \$89,866.99 on this sale up front.

viii. Client 8.

252. Client 8, a nurse, has been a client of Zullo since approximately 2009, when she was referred to Zullo by a co-worker.
253. Client 8 owns two Polaris Platinum annuities, an OMP IRA (\$16,164.64 as of August 2016), and an OMP investment account (\$214,325.83 as of August 2016) with LPL and Zullo. Client 8 also has two pensions worth approximately \$300,000. Client 8 estimates that her total investments and retirement plans amount to approximately \$500,000.
254. Client 8 does not have another broker or any other investment assets.
255. In August and September 2015, Zullo recommended that Client 8 surrender two existing Nationwide annuities in order to sell her two Polaris Platinum annuities, at a total premium of \$69,444.69. Client 8 incurred surrender charges of 2% on both surrenders.
256. According to Zullo, the reason for the switch of one annuity was that:
- Clients [sic] investment portfolio has grown very well over the last 5 years so she feels secure in not needing this feature with the associated cost. There is a cost savings that will offset part of the surrender charge and will free up the asset allocation which will hopefully yield greater returns which we spoke about through telephone conversation.
257. According to Zullo, the reason for other switch was that:

Clients [*sic*] husband is firefighter with pension income and other assets have grown with market conditions over the last 6 years. With exchange she saves on expenses on feature which she does not need and frees up portfolio flexibility to improve performance. 3) Performance is under 7% while market has grown by more. Performance for new product based on American Funds which she already owns for many years and is happy with performance. She is expecting around 60% of market gains in the future.

258. Both of these justifications were fabricated, at least as they were described by Zullo.
259. Specifically, as of October 2016, Client 8 believed that her Nationwide annuity was “taken over” by AIG, and did not understand even that she had purchased a new annuity by surrendering her old annuity.
260. Client 8 did not express to Zullo any wish to transfer to a new annuity, and did not even understand that she was electing to purchase a different product. Instead, she trusted Zullo, and signed the paperwork that he sent her.
261. Indeed, it is unclear whether Client 8 currently understands that her money is not accessible to be withdrawn from these annuities, as Client 8 currently believes that that she can take money out of her annuity “any time” in order to pay for her son’s college tuition.
262. Zullo falsely reported to LPL through the AOE system and on annuity purchase documentation for these transactions that Client 8’s liquid net worth was \$1,600,000. Client 8’s liquid net worth has never been \$1,600,000, and Client 8 has never told Zullo that it has been that amount.
263. Moreover, Zullo was aware of all of Client 8’s existing assets when he made this misrepresentation, as Client 8 disclosed all of them to him.
264. LPL relied on the \$1,600,000 liquid net worth figure in approving the transactions as suitable for Client 8. Specifically, Hope Lorick, Zullo’s supervisor, stated, “Transaction

is 3% of 1.6mil LNW. Total exposure 4% with 1 other VA,” and “Transaction is 1% of 1.6mil LNW. Total exposure 4% with 1 other VA.”

ix. Client 9.

265. Client 9, a semi-retired adjunct professor, has been a client of Zullo since June 2007.

266. According to Client 9, Client 9’s current investments with Zullo comprise a \$450,000 annuity, purchased in 2014, and a SAM retirement account with under \$150,000. Client 9 also owns a small investment retirement account not managed by Zullo from prior employment with an approximate value of \$25,000.

267. Client 9 has not had another broker or any other investment assets since engaging Zullo, and has never told Zullo that he has.

268. Nevertheless, Zullo testified under oath as follows:

Q: And of this 1.8 million, approximately, how much are you managing or how much is invested with you?

A: He’s got some advisory and this. I’d say about a million.

Q: Do you know where that other 800,000 is?

A: I don’t.

Q: Did you ask him?

A: Initially, he had different investments. I don’t know where it is now. No, I didn’t ask him when I took the application where it was.

Q: Is that held at a different broker, or do you just not know?

A: I don’t know.

Q: So, you asked him, but you have no recollection of the answer.

A: I asked him what his net worth was and received that amount. I don’t know where the other money is invested.

269. Client 9’s liquid net worth has never been \$1,800,000, and Client 9 has never told Zullo that it has been.

270. Zullo sold Client 9 a Polaris Platinum annuity with a premium of \$450,000 in February 2014. Zullo liquidated funds from Client 9’s SAM account in order to fund the annuity

purchase. Zullo falsely reported to LPL on annuity purchase documentation that Client 9's liquid net worth was \$1,800,000.

271. Zullo and LPL received a commission of \$32,625.00 on this annuity sale up front.
272. LPL relied on the \$1,800,000 liquid net worth figure in approving the transaction as suitable for Client 9. Specifically, Rochon stated in approving the transaction, "Client liquid net worth if [*sic*] \$1,800,000. This annuity is 25% of the client's liquid net worth. This order is approved."
273. When asked how she knew that Client 9's liquid net worth was \$1,800,000, Rochon testified, "I didn't. I assumed that Roger was giving me correct information."
274. Following the annuity sale, Client 9's only liquid assets consisted in the amount left in the SAM account (\$147,325.63 as of August 2016) and the investment retirement account from a prior employer with an approximate value of \$25,000.

x. Client 10.

275. Client 10 and his wife, a scientist and human resources professional respectively, have been clients of Zullo since at least 2007, and opened accounts with Zullo in 2007, 2010, 2014, and 2015.
276. Currently, according to Client 10, Client 10 and his wife have two investment retirement accounts and two Polaris Platinum annuities with Zullo and LPL.
277. Client 10's wife estimates that the total current value of their investments with LPL is under \$400,000.
278. Client 10 and his wife do not have another broker or any other investment assets besides what is held by Zullo and LPL, and have never told Zullo that they have.

279. Zullo sold Client 10's wife a Polaris Platinum annuity at an estimated premium of \$107,000 (ultimately \$110,464.84) in October 2014. The source of funds for this sale was the surrender of a Nationwide Achiever annuity, resulting in a surrender charge of \$974.52. For this switch, Zullo reported to LPL on annuity purchase documentation that Client 10 and his wife's liquid net worth was \$1,500,000.
280. LPL relied on the \$1,500,000 liquid net worth figure in approving the switch as suitable for Client 10 and his wife. Specifically, Topp, Zullo's supervisor for this transaction, stated in approving the sale, "This purchase will represent 7.13% of client's stated LNW of 1,500k, and overall, known annuity exposure will be 11.76%."
281. Zullo sold Client 10 and his wife another Polaris Platinum annuity with an estimated premium of \$115,000 (ultimately \$215,217.07) in May 2015. The source of funds for this switch was the surrender of a Nationwide Achiever annuity, resulting in a surrender charge of \$2,236. For this transaction, Zullo submitted a liquid net worth figure of \$2,200,000 to LPL.
282. Zullo and LPL received commission of \$15,603.24 on this annuity switch up front.
283. LPL relied on the \$2,200,000 liquid net worth figure in approving the transaction as suitable for Client 10 and his wife. Specifically, Lorick, Zullo's CSU analyst for this transaction, stated in approving the sale, "As per Rep, client has riskier investments with another advisor and wants added protection of LB with income guarantee for this portion of his assets. No change in VA exposure. Transaction is 5% of client's stated 2.2mil LNW; 10% total exposure."
284. However, Client 10 and his wife had no "riskier investments with another advisor," which was a fabrication, and had no other liquid investments at all. In reality, their liquid

net worth was limited to the investments held at LPL, and neither Client 10 nor his wife has ever told Zullo otherwise.

285. Lorick did not notice the differing liquid net worth figures from the two Polaris Platinum annuity purchases, and did not compare this purchase with previous purchases for Client 10 and his wife.

xi. Client 11.

286. Client 11, a retired Boston hospital coordinator, and her husband have been clients of Zullo since June 2010.

287. Client 11's current investments with Zullo comprise a \$100,000 annuity, as of 2014, and a SAM account (\$66,351.09 as of August 2016). Client 11's husband also owns a \$574,000 annuity, as of 2010, and a SAM IRA (\$871,296.28 as of July 2016).

288. Client 11 and her husband do not have another broker or other investment assets.

289. Zullo sold Client 11 a Polaris Platinum annuity at a premium of \$100,000 in May 2014. Zullo rolled over Client 11's 403(b) retirement plan in order to fund the annuity purchase. Zullo reported to LPL that Client 11's liquid net worth was \$4,000,000.

290. Zullo and LPL received a commission of \$7,082.02 on this annuity sale.

291. LPL relied on the \$4,000,000 liquid net worth figure in approving the transaction as suitable for Client 11. Specifically, Rochon, Zullo's supervisor, stated, "Liquid net worth is \$4,000,000. This annuity is 2.5% of the client liquid net worth. This order is approved."

292. Client 11's liquid net worth has never been \$4,000,000, whether considered jointly with her husband or not. Rather, Client 11's liquid assets were all housed at or networked to LPL.

C. LPL's Policies and Procedures Failed to Prevent, Detect, Deter, or Mitigate Zullo's Fraud.

293. Broadly speaking, LPL relies on information entered by an advisor into the AOE system or submitted manually by the advisor on physical applications in order to determine whether an annuity sale is suitable for a client.
294. Client signatures or acknowledgements were not required for suitability information entered by the advisor into the AOE system.
295. LPL's sole check on an advisor submitting false information as Zullo did here is to send a "negative consent" letter to clients upon account opening and once every three years.
296. However, this correspondence does not require assent or action by the client, and does not highlight any suitability information.
297. Nor does it provide the specific liquid net worth figure that Zullo submits to LPL in connection with an actual annuity sale.
298. The negative consent letters were ineffective at notifying Zullo's clients of the false information Zullo had submitted to LPL.
299. Once a purchase is entered into the AOE system by the agent, it is reviewed by an LPL supervisory principal or analyst for suitability. However, the review is limited to and relies on the information presented on the form by the advisor for each separate transaction, together with information "on file" for the client in the review tool. The review does not verify any of the information so presented by the advisor, and is incompetent to detect information falsely submitted by the advisor, such as information regarding liquid net worth or age, in the examples above.
300. As described above, Zullo fabricated fictitious investment accounts and liquid assets, and LPL accepted his fabrications at face value, even when internally inconsistent with

information reported in prior suitability reviews and with information contained in account opening documentation, all of which was possessed and processed by LPL, sometimes even by the same supervisory personnel.

301. For example, Client 4 and her husband's liquid net worth is stated as \$2,400,000 in March 2013, \$10,000,000 in July 2014, \$8,000,000 in August 2015, and \$1,600,000 in November 2015. As noted, neither Zullo nor Rochon could explain these differences in amount during their respective testimonies.
302. For another example, Client 1's age was on file with LPL and accessible to LPL supervisory personnel as 80, yet Zullo's supervisor accepted Zullo's revised figure of 70, when it came time for Zullo to sell another annuity, without cross-referencing or verifying this figure, even after becoming aware of the potential misreporting via the customer's complaint.
303. No supervisory principal or analyst ever noticed these discrepancies, nor raised them as issues with Zullo or with the client(s), despite repeatedly relying on Zullo's representations to justify the suitability of Zullo's various annuity purchases for Zullo's clients each time the annuity purchases were reviewed by a supervisory principal.
304. As noted, LPL account opening documentation, which LPL supervisors used to review transaction suitability with their review tools, does not require a client's liquid net worth to be listed as a dollar amount. This information is instead recorded as a letter representing a dollar range. The liquid net worth of clients reported to be holding anything more than \$1 million (for example, all of Zullo's clients described above and all of Zullo's annuity clients in 2015) in liquid net worth is designated as the letter "H."

305. LPL has no means of verifying whether a client possesses \$1,000,000 in liquid assets prior to an annuity purchase, or \$10,000,000. Even when an account application is filled out honestly by an advisor for a high net worth client, LPL supervisors have no way of verifying through their review tools whether a purchase represents 90% or 9% of a client's liquid assets, and rely solely on the representations of the advisor for each separate annuity transaction.
306. This means that, for almost all of Zullo's clients, LPL supervisors were unable to compare the client's liquid net worth submitted with an annuity application with information previously on file for the client, and were constrained to rely on whatever Zullo represented. On the occasion described above where a supervisor actually inquired about a client's liquid net worth quadrupling from a lower range, rather than specific figure, Zullo simply fabricated an investment account with another brokerage firm, and the supervisor accepted the fabrication without inquiring why the number had changed or was incorrectly reported to begin with.¹⁷
307. LPL supervisors failed to notice discrepancies in client suitability information during the course of their suitability reviews in part because they relied on information not seen or approved by Zullo's clients.
308. The information relied upon by LPL supervisors during the Relevant Time Period was the information entered by the advisor through the AOE system, which the client never sees and does not approve or otherwise sign off on.

¹⁷ Client 5.

309. As a result, LPL did not notice and had no way of noticing inconsistent figures under its existing annuity order review system, even when Zullo carelessly submitted inconsistent information *for the same transaction* through the AOE system and in physical form.¹⁸
310. As such, there was no check at LPL on an advisor's ability to simply submit whatever liquid net worth information was required to sell an unsuitably large and inappropriate annuity to a client.
311. LPL failed to notice various red flags and discrepancies also because it reviews and approves each annuity transaction in total isolation. LPL CSU supervisors and analysts consistently failed to notice patterns in Zullo's annuity sales when such patterns should have been obvious to a reasonably competent individual supervisor.¹⁹ More specifically, LPL supervisors and analysts failed to notice the various discrepancies in information presented by Zullo's annuity sales, such as a client's net worth fluctuating without explanation. Such discrepancies should have been apparent to a supervisor with direct contact with Zullo, knowledge of Zullo's clients, or the ability to view transactions and transaction histories together.
312. As an example of this problem: since each annuity transaction is considered in total isolation by LPL supervisors, LPL supervisors failed to raise any questions or notice any red flags even when the same supervisor reviewed two annuity sales for the same client with opposite, nonsensical suitability justifications just three months apart.²⁰

¹⁸ Client 4 and her husband.

¹⁹ Zullo's direct supervisor attempted to elevate her concerns regarding certain patterns to her manager and a CSU manager. The results of this escalation attempt are discussed below.

²⁰ Client 7.

313. Zullo's supervisor, Rochon, testified that she would never come across inconsistent information previously submitted by an advisor in connection with a different annuity sale:

Q: So, in the course of your regular review of an annuity transaction, you wouldn't come across the listed liquid net worth from a prior annuity transaction.

A: Correct.

Q: So, do you have any way to compare numbers that are submitted on different occasions for different annuity transactions in terms of client liquid net worth?

A: Only in the way I've discussed. You go back into another order.

Q: Would you ever have reason to do that?

A: Perhaps.

Q: Did you ever do that?

A: No.

Q: Did you ever do that for any client?

A: No.

314. Rochon also testified that when she was reviewing annuity sales, she and other LPL supervisors did not review the physical paperwork actually signed by a client and submitted in connection with the sale, or concurrent or prior annuity sales. Instead, Rochon and other supervisors relied on information entered by the advisor in the AOE system.

315. For example and as noted, LPL did not detect when paperwork actually signed by Zullo's client listed a liquid net worth figure of \$1,600,000, yet the information entered by the advisor into the AOE system in connection with the same purchase listed a significantly larger liquid net worth figure of \$8,000,000.

316. Rochon testified that when she was reviewing annuity sales, she was not aware of any way anyone at LPL could become aware of this discrepancy:

Q: So, at least in this instance, the client signed off that they had a liquid net worth of 1.6 million dollars, but then the designated principal, or the person responsible for reviewing the annuity transaction, would be relying on the eight million dollar figure which the client did not sign off on.

A: Yes.

Q: Do you see any problem with that?

A: Yes.

Q: What problem is that?

A: The discrepancy needs to be vetted. Why is it here one way, and why is it there the other way? You'd have to go back to the advisor and ask him why the two are different.

Q: Do you see any problem with the actual suitability analysis if the client hasn't signed off that they have a liquid net worth of, in this case, eight million dollars?

A: Yes.

Q: And what problem is that?

A: Well, you're looking at the overall picture, and if they only have -- what was it?

Q: One point six million.

A: One point six versus eight, that's a totally different picture in terms of the percentage of the annuity towards the client's liquid net worth, how many annuities he holds as a whole, you know, the number of annuities and the value of them and how much of his money is liquid, and it changes everything.

Q: So, to your knowledge, did anyone at LPL ever question Zullo on these two different figures?

A: Not to my knowledge.

Q: Have you ever heard of anyone at LPL ever questioning Zullo on the difference in figures and liquid net worth for any client?

A: No. I've never heard of it.

Q: Is there any other way that maybe we haven't discussed yet for a designated principal at LPL to become aware that an agent could be submitting inconsistent liquid net worth figures for the same transaction or even at the same time, as here, roughly the same time anyway?

A: You know, I really don't know at this point what kind of reports you can run on the AOE system or back office reports. I do know that, when I approved alternative investments, they did have a system that specifically listed the liquid net worth so that you could compare from order to order if there had been any significant changes and go back to the advisor with questions if you needed to. I do not know if anything like that exists for variable annuities.

Q: Did anything like that exist when you were reviewing annuity transactions?

A: No.

Q: When you were reviewing annuity transactions, was there any other way that maybe we haven't discussed yet for an LPL designated principal to notice this kind of discrepancy?

A: No.

D. LPL Failed to Notice Other Red Flags.

317. LPL supervisors ignored or failed to notice a variety of other red flags with respect to Zullo's annuity purchases.
318. For example, it is unclear whether any supervisor or individual at LPL compliance read or cross-referenced information actually entered by Zullo into the AOE system that should have raised red flags for LPL compliance.

319. For example, in one instance Zullo indicated in the AOE system, in connection with their fourth consecutive Polaris Platinum annuity purchase during the Relevant Time Period, that Client 4 and her husband held no other annuities.
320. Even when Zullo submitted this false information regarding the clients' other annuity holdings, no one at LPL noticed or questioned the information so entered by the advisor into the AOE system, even though this information is supposed to be reviewed by LPL compliance as part of a suitability determination.
321. On information and belief, no supervisor or other individual at LPL compliance has ever questioned Zullo regarding any instance in which he reported a client's existing annuities through the AOE system in connection with an annuity sale, properly or improperly.
322. In addition, LPL did not take note of or question the fact that all of Zullo's annuity sales in the year 2015 were made to clients with a listed liquid net worth, at the time of the sale, in excess of \$1,000,000; specifically, that every client of Zullo that was sold an annuity in the year 2015 had a listed liquid net worth of over one million dollars on their annuity applications, ranging from one to several million dollars, depending in part on the size of the annuity being sold.
323. One CSU analyst, Lorick, reviewed the majority of the 2015 annuity sales, and repeatedly noted, in the process of approving each transaction, that the annuity represented a small fraction of the client's liquid net worth, *e.g.*, "Transaction is 18% of client's stated 2 mil LNW," "Single VA is 30% of 2.4mil LNW," and, "Transaction is 10% of client's stated 2 mil LNW."
324. Rochon emailed Lorick on March 30, 2015, stating:

I will be visiting this rep in two weeks. He does a lot of annuity business and it appears that he does the same thing for every client. He purchased AIG and most of his orders also include a surrender charge for the client.

Is there anyone in your department I can speak to about Roger and his patterns?

325. Yet Lorick, and other CSU team members at LPL, apparently failed to question that every annuity sale in the year 2015 was made to a client with a liquid net worth that easily accommodated whatever annuity sale Zullo sought to make.
326. LPL did not take note of or question that most of the clients to whom Zullo sold an annuity are retired from or currently working in professions unlikely to result in seven figures of liquid net worth and savings (especially after accounting for previous sales of illiquid annuities that Zullo made to those clients).
327. In addition, Zullo has sold substantially the same product to large numbers of his clients with substantially the same justifications, and LPL has never required Zullo to change or effectively addressed this practice.
328. For example, LPL either ignored or failed to take action with respect to the fact that Zullo sold the same annuity product, the Polaris Platinum III (B Shares) annuity, often with an income rider, to the vast majority of his annuity clients during the Relevant Time Period.
329. Moreover, Zullo provided substantially similar justifications for almost all of the clients to whom he sold a Polaris Platinum annuity during the Relevant Time Period. Zullo stated that his clients replaced or purchased annuities either because the client was looking for higher risk/reward potential or the client was looking for guaranteed income and wished to add an income rider.

E. Zullo's History of Discipline and Patterns of Annuity Sales were Known to LPL.

330. LPL has known or been on notice of compliance and ethics problems with Zullo for at least eight years.

331. For example, in September 2008, LPL assessed Zullo a \$100 fine for failure to submit an attestation form.
332. In October 2009, LPL issued a letter of caution to Zullo regarding possible violations of LPL's variable annuity policy, and imposed a fine of \$250.00.
333. In October 2011, LPL issued a reminder letter to Zullo regarding his use of unapproved marketing materials.
334. In 2013, a customer complained to LPL, specifically regarding Zullo's unsuitable transfer of the client's assets from a Guardian annuity to a Nationwide annuity.²¹
335. On April 15, 2015, Rochon conducted a supervisory visit of Zullo's office. Rochon's notes for the visit do not address any of her annuity suitability concerns.
336. Rochon emailed Zullo a "closeout letter" for the supervisory office visit on July 28, 2015, indicating that:

Some items of significance were as follows:

- Your product choice of almost exclusively AIG annuities, switching and incurring surrender charges for your clients. Updated product choices with income riders to guarantee income.
- Senior Issues

...

337. Rochon's closeout letter did not instruct Zullo to make any changes to his annuity sales practices, and indicated that the only item that required Zullo's "attention" was "terminating your involvement in selling disability insurance as an outside business activities [sic]."
338. On April 22, 2015, one week after Rochon's supervisory office visit, an LPL examiner conducted an examination of Zullo's office.

²¹ This customer complaint was not reported by LPL on Zullo's Form U-4.

339. The branch examination revealed “serious” violations, specifically of LPL’s document signature policy, the use of an unapproved email address to conduct business, and other operational deficiencies.
340. During the examination, the LPL examiner noticed that Zullo obtained and maintained a blank form signed by a client.
341. The LPL examiner also noticed that Zullo accepted a post-dated check, an undated check, and a “starter” check.
342. LPL imposed a fine of \$500.00 for these violations.
343. The LPL examiner noted that Zullo was not maintaining annuity purchase and replacement forms for certain clients to whom he had sold an annuity.
344. The LPL examiner also noticed that Zullo conducted business with clients over a personal email address.
345. When asked by the Enforcement Section about his use of a personal email address to conduct business, Zullo testified that the use of his personal email address was a “one time” occurrence wherein a personal friend had emailed Zullo to discuss business.
346. This testimony was false. In 2010, LPL conducted a branch examination of Zullo’s office and noted that Zullo was using a personal email address to conduct business at that time as well.
347. In addition, Zullo has used his personal email address to send “blast” emails to all of his LPL clients. For example, on June 24, 2016, Zullo emailed his clients from an MSN email address:

In an ongoing effort to keep you informed of all the latest trends in the financial markets, we have attached the most recent issue of the Weekly Market Commentary, a weekly newsletter from LPL Financial that offers insights into domestic and global financial market events, policy actions, and geopolitical impacts.

My affiliation with LPL Financial allows me access to objective, unbiased research through the LPL Financial Research team and we invite you to contact us at (781) 237-4200 x14 to discuss any of the Research team's views, as well as ways we can incorporate new strategies into your overall plan to help you take advantage of market opportunities.

348. Zullo neglected to mention during testimony that he has used his personal email address to send "blast" emails to all of his LPL clients, until presented with this email:

Q: Was this an email that you sent to all of your clients at this time?

A: I do. I do. I sent this out weekly.

Q: And why did you use the MSN email account?

A: Yeah, it must have been in an old -- I don't know why it was set up or is set up that way. I think it's been changed, but I'd have to -- I don't know. I couldn't give you -- yeah.

Q: So, earlier you had testified that there were one or two instances where you had communicated through your personal email address with clients.

A: Right.

Q: Was that your testimony?

A: It was, yeah.

Q: And is that inaccurate?

A: Yeah. Yeah, because now I'm sending out weekly commentary, and I don't know why in MSN because I don't use that. It's an old, again, account, so.

349. On information and belief, and in light of Zullo's inconsistent testimony, Zullo likely used his personal email address to conduct additional business with his LPL clients.²²

350. The letter of caution issued following the 2015 branch examination stated that "LPL Financial takes these oversights very seriously and we are confident that with this letter, the importance of adherence to LPL Financial policy and all regulatory rules will be of primary concern for you."

351. Yet the importance of adherence to LPL Financial policy and all regulatory rules was not of "primary concern" to Zullo; when questioned by the Enforcement Section, Zullo testified that he did not remember "any issues" from his April 2015 branch examination, and that he did not believe there were any negative results from the branch examination.

²² For example, Zullo had conducted email correspondence with Client 6 through a personal email address, as noted above and not disclosed during testimony.

Then, when presented with LPL's cautionary letter and fine, Zullo revised his answer to "any major issues:"

Q: And what were the results of the most recent branch exam?

A: I don't remember finding anything outstanding that was an issue.

Q: You don't remember any issues?

A: Any issues, no.

Q: So, there were no negative results from the branch exam?

A: I don't believe. If there were, they were minor in nature.

Q: Were there any consequences for any branch exams or, sorry, for the last branch exam, such that you had to change a business practice or anything like that?

A: No, haven't changed my --

MR. ENTWISTLE: Would you please mark this and give it to the witness. (WHEREUPON, Exhibit No. 12, LPL letter to Zullo, dated May 20, 2015, Zullo OTR 140-144, marked for identification.)

Q: For the record, this is a letter dated May 20, 2015, addressed to Roger Zullo, Bates numbered Zullo OTR 140 to 144. So, is this the branch exam letter from the latest exam?

A: Yes.

Q: Because I know you had just indicated that you didn't think there were issues identified during the exam.

A: Any major issues, yeah.

Q: So, on Page 142 here, 143 and 144, there's a number of deficiencies listed.

A: Yup.

Q: Do you remember these deficiencies?

A: I do.

352. Needless to say, LPL's \$500 fine and letter of caution did not impress upon Zullo the seriousness of his violations, as he appeared during testimony to forget about the fine's existence, and considered the various deficiencies from the exam not to be worth mentioning. Nor did the fine and letter deter Zullo from continuing to sell unsuitable products and fabricate suitability information.
353. Further, as noted, LPL has been aware that Zullo failed to report a customer complaint from December 2015, and, on information and belief, has not taken any punitive action.

354. Most pertinently, Zullo was placed on LPL's third quarter supervisory surveillance log as an LPL "Top Producer" on December 30, 2014, for switching clients from Nationwide to AIG annuities, frequently causing surrender charges.
355. At that time, a member of Governance, Risk & Compliance reached out to John Peters, a manager of LPL's CSU, about Zullo's patterns in switching annuities.
356. However, according to Rochon, no one at LPL, including Peters, appears to have reached out to Zullo regarding these switches at that time.
357. Despite these warning signs over the years and during the 2015 branch examination, LPL did not uncover Zullo's fraud on clients, or Zullo's numerous false filings with LPL.
358. LPL has not, as a result of this history of non-compliance, at any time investigated Zullo further, communicated with any of Zullo's clients to verify information provided by Zullo, or otherwise verified any false information provided to it by Zullo regarding annuity sales.
359. In addition to this history of non-compliance, LPL was also aware of serious suitability concerns with Zullo's annuity sales throughout the Relevant Time Period, but has done nothing to affirmatively and effectively address these concerns.
360. Rochon noted concerns with Zullo's suitability sales in an email to Zullo on April 4, 2014, stating:

I noticed that you always use the Polaris Platinum III B share for your clients. Is this product suitable for all of your clients? Do you ever choose a product from a different annuity product [*issuer*]. I am concerned that there is no diversity in your product choices. Please advise.

361. Zullo responded to this concern by stating only the following:

Prior to 2013 I used Nationwide and Jackson National as they had the best income riders in the market. Starting in 2013 Sun America has the best income riders so I use them. I diversify their holdings by other products they own with me and outside and within Sun America there are varying investment portfolios to use.

362. However, as has been noted herein, Zullo's clients did not generally own material investment assets outside of LPL, and certain of those clients did not have any liquid assets even at LPL.

363. On March 18, 2015, Rochon raised the issue of Zullo's annuity sales patterns with a manager at LPL Governance, Risk, and Compliance, stating:

I've got a rep, Roger Zullo, 1NXB, who sells a lot of AIG annuities. Many times there is a surrender charge on the old contracts as he seems to sell annuities to his clients and then flip them right before the surrender period is done. Is this something you can look into?

364. In response, the manager wrote:

It appears that Roger did appear on our Top Producer in the Q3 2014 review period and that you were contacted about his use of AIG annuities on 12/30/2014 by Joy Eng. I think another group you might also want to look into is Centralized Supervision Unit (CSU); Joy spoke with CSU manager John Peters about the concentrated pattern as well. Also considering this pattern appears to be a concern to you, have you ever brought this up to your Manager? If you don't feel comfortable with the pattern I would strongly suggest that you talk with him.

365. On the same day, Rochon again raised the same issue of her concerns with patterns in Zullo's product choices with John Peters, a manager at LPL's CSU, by forwarding her exchange with the manager.

366. On the same day, Rochon emailed Krause, her direct manager, stating:

I have scheduled a visit to see Roger Zullo, 1NXB. Roger sells a lot of annuities, all AIG, to existing clients. There is usually a CDSC [contingent deferred sales charge]. He also has sold the original annuity and it looks like he waits just about until the surrender period is over and moves them into a new annuities.

I have concerns about his business. I have emailed CSU manager John Peters and his analyst Hope Lorick and have forwarded you the response I got from the manager. I think this issue needs to be escalated.

Please advise.

367. The March 18, 2015 email to Krause also included attachments indicating that Zullo's annuity business was ten times greater than the average LPL representative's.

368. Kraus and Rochon exchanged additional emails on March 18, 2016, as follows:

KRAUS:

Has anyone discussed the concerns with the advisor why he does all of the switches?

ROCHON:

That's a good question. I spoke to him early last year about why he sells the same annuity to all of his clients. He said he likes to use the best product on the market and he thinks the AIG annuity is the best product.

Now I am prepping for my SOV [*supervisory office visit*] and looking for information on him so that I can discuss this issue with him during the visit. I have sent an email to his relationship manager, Geff Daly, and am waiting to see his response.

KRAUS:

There were several attachments, etc. and I did not thoroughly read all of them, but is there a concern from the Annuity CSU Dep.?

ROCHON:

I talked to Coreen Chang in Surveillance and she said that Roger came up on a report last year in the third quarter. *This information was researched and it looked like no one reached out to him.* The summary of the report is an excel spreadsheet attached to one of the emails I forwarded to you.

It also appears that he has been passed around a little bit from analyst to analyst.

(Emphasis added.)

369. On July 21, 2015, Lorick emailed Rochon, asking, "Did you ever have a conversation with this Rep about his patterns?"
370. On July 23, 2015, Rochon responded to Lorick, stating:

I did speak to the rep regarding his use of AIG and incurring surrender charges. He said that he likes the income riders that AIG has available. He also stated that he likes Jackson for the same reason. He said he was surrendering contracts that had a CDSC on them because the market was good and he didn't want to wait for the surrender to end because of this. Roger is only series 6 licensed. His clients are very similar to one another in age and goals. It does seem that he is switching clients out of the current annuities that he sold them 6 or 7 years ago when the current riders were not available. It did very much seem to me that he had a pattern of switching everybody out of their annuities every 6 or 7 years and that he was getting commissions over and over again from the same clients.

I just visited Roger this spring in his office so my recollection of what we talked about is still pretty good.

I have included two screen shots from the BRM Call log. They document the concern with his annuity business throughout the years.

371. The screenshots included in Rochon's response to Lorick include the following call notes which highlight concerns of various supervisors and compliance personnel over the years with respect to Zullo. Specifically, the call notes indicate that Rochon raised the issue of

the frequency of AIG Polaris Platinum suitability and frequency with her manager as early as 2013, that another supervisor questioned Zullo on the increase in his variable annuity business in 2013, and that a third supervisor noticed that Zullo had previously switched out many of his clients from Guardian annuities to Nationwide annuities in 2010:

June 15, 2010 (Weemhoff):

Spoke to broker about several annuity switches being made between old Guardian annuities and Nationwide. Broker used to work with Guardian and most of his clients have Guardian annuities. Advised broker that he cannot submit paperwork to the carriers until approval has been given on the orders also.

July 24, 2013 (Josephsohn):

Discussed his business practice and what accounts for this year's increase along with the upward change in percentage of VA business. Rogers says he's working with employees of five area companies experiencing layoffs, and investing their rollovers. Many of them want to gain income guarantees so are using VA's [sic] to achieve that.

December 12, 2013 (Rochon):

Roger is using AIG Polaris Platinum III for all annuities since 9/13. The clients are usually about 70 and they are looking for income. In touch with Surveillance to see if he comes up on any of their reports for a cookie cutter approach to his annuities. Have discussed with manager. Will wait to hear from Surveillance.

372. On July 24, 2015, Peters emailed Rochon regarding certain "proactive reporting" he had done on "top producing" variable annuities advisors, indicating that:

We recently did some proactive reporting (in anticipation of surveillance or potential FINRA audits) on top producing VA advisors where I was hoping to get as much background as possible for Roger. Would you have any time today (2:00 est or after) for a quick call together for me to get as much Supervision background as possible (any BPRs, surveillance history, transaction review history, any previous disciplinary actions, etc. and I can also give you more background on the data we looked at)?

373. On July 31, 2015, Rochon emailed Krause, stating:

I was contacted last week by John Peters, a manager in the annuity group CSU about having a meeting about Roger Zullo. He is a big annuity guy and he has a very cookie cutter approach to his annuities. They are switches, they incur surrender and he was the original rep who sold the previous product. He uses only AIG because he likes the income riders and apparently he uses the same subaccount allocations.

We tried to set up a meeting for today but it fell through. I have forwarded some of the information I gathered for John and sent it to you. Currently, John and a few others in the annuity department, and Geff Daly, who is his relationship manager, and a few people from his side of the business are planning to set up a meeting for next week.

John's position is that they ran a report and Roger came up on it. This is a proactive meeting with Roger to discuss the parts of his business that may be a red flag for regulators, sort of an educational meeting.

John and I did speak about ABC later on down the road, if Roger does not make some changes to his business.

374. Rochon testified that she took leave from LPL in August 2015 with the understanding that a conference call was to be set up between Peters, Geff Daley (Zullo's "relationship manager" with LPL home office), Zullo and (probably) Krause regarding Zullo's annuity switches and product choice, and that she provided Peters' information to Zullo and left it in Peters' hands.

375. On August 5, 2015, a call was ultimately held between Peters, Zullo, and Daly, but not Krause or Rochon, to discuss Zullo's:

VA business and share [the] Central Supervision perspective to help identify any specific areas we may help with in terms of client situations/specific information, documentation through the AOE system & pre-approval requirements, regulatory environments, product considerations, other LPL VA sales populations, etc.

376. Peters emailed Daly following the call:

I wanted to follow up and see if you had any questions or feedback after our call with Roger today? Hopefully the call was a positive one all around and please let me know if you feel any additional focus areas could be included or omitted for future reference. Or if you feel this type of pro-active review and collaboration call would be helpful for some of our other larger VA producers or internal teams please do not hesitate to reach out to me.

377. According to Daly's reply email, "the call went really well and it seems Roger thought it was productive. I think this proactive approach would be very helpful for other large VA producers."

378. Despite these positive sentiments, the call did not effectively address any of the concerns that Rochon had attempted to escalate.

379. Specifically, Zullo did not appear during testimony to remember the conference call, or the name of his direct supervisor, or specifically having received Rochon's email, and

testified that no one else at LPL had expressed the concerns raised to him in Rochon's email:

Q: And when she [Rochon's email] says, "Do you ever choose a product from a different annuity product?" I assume she means issuer, but did you have an answer to that?

A: I'm sure I answered this, and I probably mentioned to her -- I don't know. It's speculative -- that I've used Nationwide. I've used a number of Jackson National. So, I don't have the email in front of me, but I'm sure I mentioned that to her, because I have.

Q: Did anyone else at LPL express a similar concern to you?

A: No.

Q: Did anyone at LPL speak to you about the net worth of your clients?

A: No.

Q: Did anyone at LPL speak to you about the ages of your clients?

A: What do you mean, questioning the age, whether I got the correct age or not?

Q: With respect to annuity sales.

A: You mean being too old versus too young?

Q: Either.

A: No, not specifically age...

380. Zullo has not made any changes to his business practices as a result of Rochon's concerns or the conference call, and has continued purchasing only the Polaris Platinum annuity for all of his clients to present.
381. Specifically, since the conference call that Zullo apparently "thought was productive," but did not remember during testimony, through March 2016,²³ Zullo has sold only the Polaris Platinum annuity to his clients (except a single client to whom he sold a Jackson National annuity, also carrying a 7% commission, in January 2016).
382. Lorick has continued to review and approve all of these transactions without further inquiry.
383. LPL has not taken any other steps to discipline Zullo, address this lack of diversity in product choice, or investigate Zullo's annuity sales for potential advisor misconduct.

²³ The latest date reflected by LPL's commission log produced to the Division.

F. LPL's Customer Complaint Resolution Procedure is a Pretense.

384. Even when Zullo's fraudulent misrepresentations were affirmatively pointed out to LPL in a customer complaint made on behalf of a cognitively impaired senior citizen, LPL ignored them.
385. Specifically, LPL was in possession of Client 1's sister's one-page complaint letter – which stated both that “[Client 1] would have to be *88 years old* to access these funds,” and that Zullo “recommended this purchase earlier this year, despite knowing [Client 1] personally for many years and being aware that she is dealing with *medical issues* and is single with *no other resources* at her disposal” – since December 2015. (Emphasis added.)
386. LPL was also in possession of call notes from FINRA's senior helpline indicating similar information, as well as the fact that Client 1 may have been cognitively impaired.
387. As discussed in more detail with respect to Client 1 above, LPL failed to take any of the following actions, all of which could have put LPL on notice of Zullo's potential advisory fraud. LPL did not:
- a. contact Client 1 or Client 1's sister directly in order to resolve the complaint or address their concerns;
 - b. review three of the four account applications for Client 1 from 2004, 2008, and 2010;
 - c. conduct a review of any communications on LPL email servers between Zullo and Client 1 or her sister;
 - d. take any other steps to resolve conflicting factual accounts presented by the complaint and Zullo regarding verifiable²⁴ statements about Client 1's liquid net worth and age;

²⁴ For example, age information was verifiable in the form of both prior account applications and a driver's license on file with LPL.

- e. follow up on verifying Client 1's actual age after Lorick, Rochon, and Krause were put on notice of this potential discrepancy in December 2014;
 - f. provide Zullo with any written documentation of the complaint (according to Zullo);
 - g. request any documentation from Zullo;
 - h. call Zullo to ask any questions; or
 - i. review any client notes taken by Zullo (to the extent that any existed).
388. Accordingly, even after failing to adequately supervise Zullo and his annuity transactions for (at least) three years, LPL was presented with the opportunity to resolve the customer complaint, unravel Zullo's systematic fraud, and make Zullo's clients whole, prior to any regulatory intervention. LPL has failed in its responsibility to do so.
389. Then on September 28, 2016, after receiving and responding to several inquiry letters and subpoenas from the Enforcement Section, LPL contacted Client 1 directly by letter stating that "[i]t has recently come to our attention that the incorrect date of birth, August 27, 1944, was inadvertently used on your Polaris Annuity application," and requesting that Client 1 assist in re-issuing the Polaris Platinum annuity contract, as well as schedule a telephone call to review Client 1's personal and financial information. This letter did not acknowledge any of the concerns and issues Client 1's sister had raised in the December 2015 complaint letter.
390. On November 29, 2016 (two days prior to the date of this Complaint), LPL emailed Client 1's sister, offering, "solely as an accommodation" to Client 1, a settlement proposal, while nonetheless maintaining that, "It appears that Mr. Zullo's investment recommendation for [Client 1's] purchase of the AIG annuity was both suitable and appropriate, and that the recommended investment was intended to meet her stated needs

and objectives and to provide her with features for income and income base value protections.”

G. Conclusion.

391. As a result of Zullo’s fraud and LPL’s failure to detect, deter, mitigate, or investigate it, Zullo was able to sell unsuitable and disproportionately large Polaris Platinum variable annuities to his clients, benefitting Zullo and LPL with substantially larger commissions than would have been possible for an advisor in compliance with LPL procedures, fiduciary duty, and basic suitability requirements.
392. Zullo stated during his testimony that he understood why over-concentrating a client in a variable annuity could be unsuitable, yet his interactions with clients demonstrate greed for commissions and a callous disregard not just for fiduciary duty and suitability, but for the well-being of his clients.
393. On information and belief, Zullo is likely to have defrauded and lied regarding other clients to whom he sold a variable annuity.
394. Meanwhile, Zullo and LPL have enriched themselves with generous upfront commissions on every fraudulent and unsuitable annuity sale.

VII. VIOLATIONS OF LAW.

A. Zullo’s Violations of MASS. GEN. LAWS ch. 110A, § 101.

395. Section 101 of the Act provides:

It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly

- (1) to employ any device, scheme, or artifice to defraud,
- (2) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

- (3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

MASS. GEN. LAWS ch. 110A, § 101.

396. The conduct of Zullo, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 101.

B. Zullo's Violations of MASS. GEN. LAWS ch. 110A, § 102.

397. Section 102 of the Act provides:

It is unlawful for any person who receives, directly or indirectly, any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise

- (1) to employ any device, scheme, or artifice to defraud the other person, or
- (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

MASS. GEN. LAWS ch. 110A, § 102.

398. The conduct of Zullo, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 102.

C. Zullo's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

399. Section 204(a)(2)(G) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

- (G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(G).

400. The conduct of Zullo, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, §204(a)(2)(G).

D. LPL's Violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

401. Section 204(a)(2)(J) of the Act provides:

The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(J) has failed reasonably to supervise agents, investment adviser representatives or other employees to assure compliance with this chapter.

MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

402. The conduct of LPL, as described above, constitutes violations of MASS. GEN. LAWS ch. 110A, § 204(a)(2)(J).

E. LPL's Violations of MASS. GEN. LAWS ch. 110A, § 203.

403. Section 203(a) of the Act provides:

Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the secretary prescribes by rule or order, except as limited by section 15 of the Securities Exchange Act of 1934, in the case of a broker-dealer, and by section 222 of the Investment Advisers Act of 1940, in the case of an investment adviser. All records so required, with respect to an investment adviser, shall be preserved for such period as the secretary prescribes by rule or order.

MASS. GEN. LAWS ch. 110A, §203(a).

404. Section 12.203(5) of the Regulations provides:

Duty to Amend Information Previously Filed.

(a) If the information contained in any application or amended application for registration as a broker-dealer, agent, or issuer-agent changes in a material way, or is or becomes inaccurate or incomplete in any material respect, an amendment shall be filed at the time of knowledge of such change. Such amendments shall be filed with the CRD or directly

with the Division. Events considered material include, but are not necessarily limited to, the following:

...

12. Any affirmative answers to Disclosure Questions in Section 14 of Form U-4.

...

Events requiring such a filing shall include, but are not limited to, those set forth in 950 CMR 12.203(5)(a).

(d) The Division regards the filing of amendments to update the records of agents within the supervisory responsibilities of the broker-dealer. A broker-dealer must have established procedures to ensure compliance with 950 CMR 12.203(5).

MASS. CODE REGS. 12.203(5).

405. The conduct of LPL, as described above, constitutes violations of MASS. CODE REGS. 12.203(5) and MASS. GEN. LAWS ch. 110A, § 203.

VIII. STATUTORY BASIS FOR RELIEF.

Section 407A(a) of the Act provides, in pertinent part:

If the secretary determines, after notice and opportunity for hearing, that any person has engaged in or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order issued thereunder, he may order such person to cease and desist from such unlawful act or practice and may take such affirmative action, including the imposition of an administrative fine, the issuance of an order for an accounting, disgorgement or rescission or any other such relief as in his judgment may be necessary to carry out the purposes of [the Act].

MASS. GEN. LAWS ch. 110A, § 407A(a).

IX. PUBLIC INTEREST.

For any and all of the reasons set forth above, it is in the public interest and will protect Massachusetts investors for the Director to enter an order finding that such "action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter [MASS. GEN. LAWS ch. 110A]."

X. RELIEF REQUESTED.

The Enforcement Section of the Division requests that an order be entered:

- A. Finding as fact all allegations set forth in Sections III to VII, inclusive, of the Complaint.
- B. Requiring Zullo to permanently cease and desist from violation of Sections 101, 102, and 204(a)(2)(G) of the Act, and the attendant Regulations, in the Commonwealth.
- C. Requiring LPL to permanently cease and desist from violation of Section 204(a)(2)(J) and Section 203 of the Act, and the attendant Regulations, in the Commonwealth.
- D. Censuring Respondents.
- E. Revoking Zullo's registrations as an investment adviser representative and broker-dealer agent in the Commonwealth.
- F. Permanently barring Zullo from registering in the Commonwealth as, or associating in the Commonwealth with, an investment adviser, investment adviser representative, broker-dealer, broker-dealer agent, Securities and Exchange Commission registered investment adviser, investment adviser excluded from the definition of investment adviser, issuer, issuer agent, or a partner, officer, director, or control person of any of the above.
- G. Requiring Respondents to disgorge all profits and other direct or indirect remuneration received from the alleged wrongdoing.
- H. Requiring Respondents to provide an accounting of losses attributable to the alleged wrongdoing and to provide restitution to fairly compensate investors for those losses and harm attributable to the alleged wrongdoing, including, but not limited to:
 - a. Requiring Respondents to make written offers to pay all surrender charges associated with all current variable annuities held by former and current clients of Zullo and sold by Zullo during the Relevant Time Period.

- b. Requiring Respondents to return to all former and current clients of Zullo all surrender charges incurred on all annuity sales made by Zullo during the Relevant Time Period.
- I. Requiring LPL to retain an independent third party investigator and compliance consultant (“Independent Compliance Consultant”).
- a. The Independence Compliance Consultant shall, based upon and informed by the allegations contained in this Complaint, at a minimum:
 - 1. Conduct an investigation of all of Zullo’s annuity sales during the Relevant Time Period.
 - 2. Identify key weaknesses in and recommend improvements to LPL’s annuity transaction supervisory review process.
 - 3. Identify key weaknesses in and recommend improvements to LPL’s client complaint resolution procedure.
 - b. The Independent Compliance Consultant shall not be unacceptable to the Presiding Officer, and the Enforcement Section shall have reasonable opportunity to object thereto.
 - c. LPL shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to books, records, files, and personnel as requested for the review.
 - d. LPL shall submit a report of the findings of the Independent Compliance Consultant to the Presiding Officer and the Enforcement Section, which shall address the issues identified in Section X(I)(a), and shall include a description of the review performed, the findings and/or conclusions reached, recommendations for changes in or

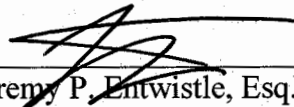
- improvements to the policies and procedures of LPL, and a procedure for implementing the recommended changes in or improvements to those policies and procedures.
- e. The Presiding Officer and the Enforcement Section shall have a reasonable opportunity to review the Independent Compliance Consultant's report and raise any objections thereto.
 - f. If the Presiding Officer and the Enforcement Section raise no objections, LPL shall adopt all recommendations contained in the report of the Independent Compliance Consultant.
 - g. LPL shall not have the authority to terminate the Independent Compliance Consultant without the prior written approval by the Presiding Officer, and a reasonable opportunity of the Enforcement Section to raise any objections regarding termination.
 - h. LPL shall be exclusively responsible for compensating the Independent Compliance Consultant and persons engaged to assist the Independent Compliance Consultant, for expenses and services rendered at reasonable and customary rates.
 - i. LPL shall not at any time have an attorney-client relationship with the Independent Compliance Consultant, and LPL shall not seek to invoke the attorney-client privilege or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Presiding Officer and the Enforcement Section.
 - j. Without prior written consent from the Presiding Officer, and a reasonable opportunity for the Enforcement Section to raise any objections, the Independent Compliance Consultant shall not have had a relationship with LPL for two years preceding the date a Final Order is entered, including, but not limited to, any employment, consultant,

attorney-client, auditing, or other professional relationship with LPL or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such.

- k. LPL, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with the Independent Compliance Consultant for a period of two years from completion of the engagement.
- J. Imposing administrative fines on Respondents in amounts and upon such terms and conditions as the Director or Presiding Officer may determine.
- K. Taking any such further action which may be in the public interest and necessary and appropriate for the protection of Massachusetts investors.
- L. Finding that all the sanctions and remedies detailed herein are in the public interest and necessary for the protection of Massachusetts investors.

**MASSACHUSETTS SECURITIES DIVISION
ENFORCEMENT SECTION**

By its attorneys,



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Dated: December 1, 2016.