PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of

Louisiana Real Estate Appraisers Board,
Respondent

Docket No. 9374

ANSWER OF RESPONDENT LOUISIANA REAL ESTATE APPRAISERS BOARD TO THE COMPLAINT

Respondent Louisiana Real Estate Appraisers Board ("LREAB" or the "Board"), through its undersigned counsel, hereby answers the Complaint (the "Complaint") filed by the Federal Trade Commission ("FTC"). LREAB denies that it has engaged in conduct that violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Except to the extent specifically admitted herein, LREAB denies each and every allegation in the Complaint, including all allegations contained in headings or otherwise not contained in one of the Complaint's 1-55 numbered paragraphs.

GENERAL RESPONSE TO THE COMMISSION'S ALLEGATIONS

To shore up the integrity of the residential mortgage appraisal process and, thereby, help to avert a recurrence of the real estate-fueled financial crisis of 2007-2009, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") requires States to empower their real estate licensing agency, *inter alia*, to ensure that Appraisal Management Companies ("AMCs") pay residential appraisers "customary and reasonable" fees for residential appraisal services. This requirement ensures the integrity and quality of residential mortgage appraisals.

Louisiana is one of the first States to implement these requirements of the Dodd-Frank Act by empowering the LREAB— a state board consisting of experts in mortgage lending, commercial real estate appraisal, and residential real estate appraisal, with no one constituency comprising a majority—to promulgate a "customary and reasonable" fee rule.

After receiving input from all stakeholders in various public meetings, hearings, and through written comments, the LREAB unanimously promulgated a rule regarding the AMCs' payment of "customary and reasonable" fees ("Rule 31101"). Rule 31101 not only follows the mandates of the Dodd-Frank Act in requiring AMCs to pay appraisers a "customary and reasonable" fee for appraisals, but also in providing AMCs multiple methods of compliance with the "customary and reasonable" residential appraisal fee requirement. As part of that guidance, the Board commissioned independent studies to identify, on an annual basis, the median fees paid by lenders for five different types of appraisal services in nine geographic regions. Where the Board has received credible complaints of AMCs offering fees below "customary and reasonable" levels, it has investigated. The majority of these investigations closed with no action. In two instances involving repeated violations, the AMCs proposed or accepted, as a temporary compliance method, to pay the applicable median fee as shown by the annual independent study.

The FTC's Complaint now asserts that, by fulfilling their duties to follow and enforce Dodd-Frank's mandate for "customary and reasonable" residential appraisal fees, LREAB members "conspired" to raise appraisal prices. The LREAB categorically and vociferously denies these allegations as factually false and politically wrong-headed. The State of Louisiana and the LREAB diligently implemented and followed the Dodd-Frank federal mandates so as to protect the greater public interest in a financially sound home real estate market. Other States

extent the allegations in paragraph 3 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 3. Specifically, LREAB denies that the "Board's fee regulation unreasonably restrains competition by displacing a marketplace determination of appraisal fees."

4. LREAB admits that it commissioned the SLU Center to survey fees paid by lenders to appraisers in response to AMC concerns that state and local fee survey data was not readily available for their use in complying with the "customary and reasonable" requirement. LREAB further admits that the SLU Center conducted annual independent appraisal fee studies, in 2013, 2014, 2015, and 2016, and produced reports on appraisal fees paid in 2012, 2013, 2014, and 2015, respectively. LREAB admits that the SLU Center reports identify the median fees paid by lenders for five types of appraisals in nine geographic regions in Louisiana, stated separately for urban, suburban, and rural settings. LREAB admits that it provided AMCs with notice of the SLU Center independent appraisal fee studies and posted the studies on its website, indicating that the independent appraisal fee study was "a courtesy to all licensees; **however, its use is not mandatory**." LREAB denies that it "unlawfully restrained price competition." LREAB denies that it effectively required "AMCs to match or exceed appraisal rates listed in a published survey." To the extent any further response is required, LREAB denies all other allegations in paragraph 4.

5. To the extent the allegations in paragraph 5 are legal conclusions, no response is required. LREAB admits that it initiated two enforcement actions against AMCs. LREAB denies all other allegations in paragraph 5. Specifically, LREAB denies that the "Board has effectively required AMCs to pay appraisal fees that equal or exceed the median fees identified in the SLU Center reports."

6. To the extent the allegations in paragraph 6 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 6.

7. To the extent the allegations in paragraph 7 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 7.

RESPONDENT

8. LREAB admits the allegations in paragraph 8.

9. LREAB admits that the Louisiana Legislature has tasked the Board with implementing and enforcing certain statutes and regulations regarding the conduct of AMCs. LREAB does not have sufficient knowledge or information to admit or deny the other allegations in paragraph 9.

10. To the extent paragraph 10 purports to describe Louisiana Revised Statute Section 37:3394(B), the statute is the best evidence of its contents. Additionally, LREAB denies that "by statute, the Board consists of eight licensed appraisers." Louisiana Revised Statute Section 37:3394(B) requires that at least four Board members are "general appraisers" and "at least two of the ten members shall be residential appraisers."

11. To the extent the allegations in paragraph 11 are legal conclusions, no response is required. LREAB denies all other allegations in paragraph 11. Specifically, LREAB denies that all appraiser members of the Board are active participants in the residential appraisal market.

JURISDICTION

12. LREAB admits the allegations in paragraph 12.

13. To the extent the allegations in paragraph 13 contain legal conclusions, no response is required. LREAB lacks sufficient knowledge to admit or deny the remaining allegations in paragraph 13.

THE PROVISION OF APPRAISAL SERVICES THROUGH APPRAISAL MANAGEMENT COMPANIES

14. LREAB does not have sufficient knowledge or information to admit or deny the allegations in paragraph 14.

15. LREAB denies that AMCs have the ability to "edit" appraisal reports. LREAB does not have sufficient knowledge or information to admit or deny the other allegations in paragraph 15.

Federal Law Regarding AMCs

16. LREAB does not have sufficient information concerning the perceptions of policy makers to admit or deny the allegations in paragraph 16.

17. LREAB admits the allegations in paragraph 17.

18. To the extent the allegations in paragraph 18 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. LREAB admits the remaining allegations in paragraph 18.

19. To the extent the allegations in paragraph 19 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary.

20. To the extent the allegations in paragraph 20 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. To the extent the allegations in paragraph 20 contain legal conclusions, no response is necessary.

21. To the extent the allegations in paragraph 21 purport to describe the Dodd-Frank Act and the rules issued by the Governors of the Federal Reserve System on behalf of the Federal Reserve and other federal banking agencies, the Dodd-Frank Act and those issued rules are the best evidence of their content, and no response is necessary.

22. To the extent the allegations in paragraph 22 purport to describe the Federal Reserve's October 2010 Interim Rules or commentary on Dodd-Frank, that commentary is the

best evidence of its contents and no response is necessary. To the extent the allegations in paragraph 22 contain legal conclusions, no response is necessary.

23. To the extent the allegations in paragraph 23 purport to describe the Federal Reserve's October 2010 Interim Rules, those rules are the best evidence of their contents and no response is necessary. To the extent the allegations in paragraph 23 contain legal conclusions, no response is necessary.

24. To the extent the allegations in paragraph 24 purport to describe the Federal Reserve's October 2010 Interim Rules or commentary on Dodd-Frank, that commentary and those rules are the best evidence of their contents and no response is necessary. To the extent the allegations in paragraph 24 contain legal conclusions, no response is necessary.

25. To the extent the allegations in paragraph 25 purport to describe the Dodd-Frank Act, the Dodd-Frank Act is the best evidence of its contents, and no response is necessary. To the extent the allegations in paragraph 25 are legal conclusions, no response is necessary. LREAB admits that Dodd-Frank mandated that state licensing agencies tasked with regulating appraisers must also regulate AMCs.

26. To the extent the allegations in paragraph 26 purport to describe the Dodd-Frank Act or the rules implementing Dodd-Frank, the Dodd-Frank Act and/or those rules are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 26 are legal conclusions, no response is necessary.

Louisiana Statutes Regarding AMCs

27. To the extent the allegations in paragraph 27 purport to describe Louisiana laws, those laws are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 27 are legal conclusions, no response is necessary.

28. To the extent the allegations in paragraph 28 purport to describe Louisiana laws, those laws are the best evidence of their contents, and no response is necessary. To the extent the allegations in paragraph 28 are legal conclusions, no response is necessary.

THE BOARD'S ACTIONS TO SUPPRESS COMPETITION

29. To the extent the allegations in paragraph 29 are legal conclusions, no response is necessary. LREAB denies that the Board "suppresses competition among appraisers and displaces market forces." LREAB admits the remaining allegations of paragraph 29.

30. To the extent the allegations in paragraph 30 are legal conclusions, no response is necessary. LREAB admits that it promulgated Rule 31101 on November 20, 2013. LREAB denies all other allegations in paragraph 30. Specifically, LREAB denies that its decision to comply with a federal mandate by implementing Rule 31101 was "driven by its apparent dissatisfaction with the free market."

31. To the extent paragraph 31 purports to describe Rule 31101, that Rule is the best evidence of its contents and no response is required. LREAB denies all other allegations in paragraph 31. Specifically, LREAB denies that "[b]ecause Rule 31101 identifies these methods as the exclusive ways for arriving at customary and reasonable fees, it precludes AMCs from arriving at appraisal fees through the operation of the free market."

32. To the extent paragraph 32 contains legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 32.

33. LREAB admits that it commissioned the SLU Center to conduct an independent appraisal fee study of fees paid by lenders in Louisiana and that the SLU Center surveyed both

34. LREAB admits that it encouraged both appraisers and lenders to participate in the SLU survey. LREAB denies all other allegations in paragraph 34.

35. LREAB admits the allegations in paragraph 35.

36. LREAB admits that its executive director said that the SLU Center survey "sets out our expectations regardless of what presumption might be used, regardless of what analytics and magic formulas an AMC might have, this is our expectation." LREAB denies the remaining allegations in paragraph 36. Specifically, LREAB denies that the SLU Center survey sets a "floor" for appraisal fees.

37. LREAB admits that it conducted an investigation against Coester and that Coester proposed (and the Board agreed to) a stipulated order to resolve the matter. To the extent paragraph 37 purports to describe the stipulated order, that order is the best evidence of its contents, and no response is necessary. LREAB denies all other allegations in paragraph 37.

38. LREAB does not have sufficient knowledge or information to admit or deny that "[t]he settlement was closely followed within the industry." LREAB admits that "[t]rade press reported that the Board had 'made history' with its enforcement against an AMC of the customary and reasonable fee requirement." LREAB denies all other allegations in paragraph 38.

39. LREAB admits that it conducted an investigation into allegations that iMortgage failed to compensate appraisers at "customary and reasonable" rates. LREAB denies the remaining allegations in paragraph 39.

40. LREAB admits that after a lengthy hearing, and a full and fair opportunity for

48. LREAB admits that AMCs in Louisiana may choose to use the SLU Center survey to determine "customary and reasonable" appraisal fees and as a means of compliance with the mandates of Dodd-Frank, as implemented through the Board's Rule 31101. LREAB denies all other allegations in paragraph 48.

VIOLATION OF THE FTC ACT

55. To the extent the allegations in paragraph 55 are legal conclusions, no response is necessary. LREAB denies all other allegations in paragraph 55.

AFFIRMATIVE DEFENSES

LREAB asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45.

2. The Complaint fails adequately to allege a plausible relevant services market.

3. The Complaint fails adequately to allege that the Board has a controlling number of active participants in the relevant **residential** appraisal market.

4. LREAB has acted in good faith to comply with a federal regulatory mandates.

5. The Complaint fails to allege any plausible harm to competition.

6. The Complaint fails to allege any plausible harm to consumers or consumer welfare.

7. The alleged potential harm to competition is not actionable.

8. Neither the filing of this administrative action nor the contemplated relief are in the public interest, pursuant to 15 U.S.C. § 45.

9. LREAB is immune from federal antitrust liability under *Parker v. Brown*, 317 U.S. 341 (1943).

10. LREAB has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or

apparent throughout the course of the action. LREAB reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

LREAB respectfully requests that the Administrative Law Judge (i) deny the FTC's contemplated relief, (ii) dismiss the Complaint in its entirety with prejudice, (iii) pursuant to 16 C.F.R. § 3.81, award LREAB its fees and expenses of defending this action, and (iv) award such other and further relief as the Administrative Law Judge may deem proper.

Dated: June 19, 2017

Respectfully submitted,

/s/ W. Stephen Cannon

W. Stephen Cannon
Seth D. Greenstein
Richard O. Levine
James J. Kovacs
Kristen Ward Broz
Constantine Cannon LLP
1001 Pennsylvania Avenue, NW
Suite 1300 N
Washington, DC 20004
Phone: 202-204-3500
scannon@constantinecannon.com

Counsel for Respondent, the Louisiana Board of Real Estate Appraisers