

STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
25 CAPITOL STREET
CONCORD, NH 03301

CONSENT ORDER

IN THE MATTER OF:

Next Financial Group, Inc. (CRD # 46214)

C-2020000015

- i. For the purposes of settling the above-referenced matter, and in lieu of administrative proceedings, NEXT Financial Group, Inc. (“NEXT”) has submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (the “Bureau”) has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, NEXT consents to the entry of this Consent Order (the “Consent Order”) and to the following undertakings and sanctions:

STATEMENTS OF FACTS

i. Background and Regulatory History

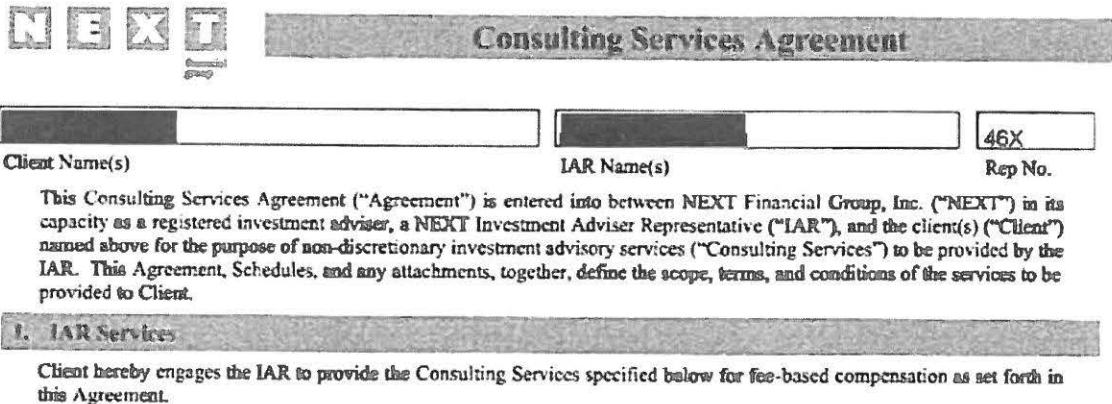
1. NEXT is incorporated in the State of Virginia and is a wholly-owned subsidiary of NEXT Financial Holdings, Inc. NEXT’s principal place of business is 11740 Katy Freeway, Suite 600, Houston, TX 77079. Additionally, NEXT is a licensed broker-dealer in the State of New Hampshire as well as a federal covered investment adviser.
2. In 2014, the Bureau found that an investment advisor representative (“IAR”) of NEXT mailed seminar invitations (“mailers”) to New Hampshire residents which contained inaccurate information. The Bureau, NEXT, and the IAR entered into a consent order in early May of 2014 which required NEXT to cease and desist from further violations of N.H. RSA 421-B, establish procedures or modify existing procedures to ensure information in advertising material submitted for approval is properly vetted prior to approval, and pay an administrative fine and cost of Bureau’s investigation in the amount of \$140,000, among other undertakings.
3. In 2019, after an investigation (case no. I-2017000030), the Bureau alleged that, between 2009 and 2016, NEXT failed to reasonably supervise the sale of certain alternative investments to a number of clients. Specifically, the Bureau alleged that the sales were unsuitable because they exceeded NEXT’s concentration guidelines of non-traded REITs, did not comply with income thresholds as defined in the prospectus, contained errors on purchase-related documents, or constituted sales to clients over the age of 80 in contradiction to NEXT’s written policies. On December 31, 2019, the Bureau entered into a consent order with NEXT which ordered NEXT to cease and desist from further

violations of N.H. RSA 421-B, to make remediation offers to clients, and place the IAR on heightened supervision pending the Bureau's investigation of the IAR, among other stated undertakings.

4. This matter relates to the alleged failure by NEXT to supervise the investment advisory activities of a former IAR of NEXT with respect to consulting services that the IAR provided through NEXT from January 2014 through June 2020 and the fees associated with those services.

ii. **The Bureau's Investigation in the Above-Captioned Matter**

5. In 2020, the Bureau commenced an investigation into NEXT and the IAR regarding certain "consulting services" fees that the IAR and NEXT charged many clients over several years via Consulting Services Agreements ("CSAs"), as depicted, in part, in the images below. During the course of the Bureau's investigation, the Bureau alleged that the IAR engaged in several violations of the New Hampshire securities law, including misrepresenting the nature of CSA fees he charged to those clients. Additionally, from January 2014 to May 2020, the IAR engaged in a practice which caused a number of clients to pay both advisory fees and separate, quarterly CSA fees, sometimes on multiple accounts, for services nearly indistinguishable from what clients were supposed to be receiving from the advisory relationship.
6. Every CSA document had the NEXT logo in the top left corner of the first page and stated that the agreement was "entered into between NEXT Financial Group, Inc. ("NEXT") in its capacity as a registered investment adviser, a NEXT Investment Adviser Representative ("IAR"), and the client(s) ("Client")."



7. The first section of the CSA was titled "IAR Services." In this section, the client was instructed to pick one or more of the listed services in the section by checking one or more boxes. The services available included investment portfolio monitoring, financial consulting, business or estate planning, financial planning, complex planning services, and other (to be disclosed in detail directly below and in the same section). Each option

included a short, written description of what that service entails. Directly below the listed service options, the agreement stated “[t]he IAR agrees to perform the following non-discretionary Consulting Services for Client” and included lines for said services to be specifically written in.

I. IAR Services

Client hereby engages the IAR to provide the Consulting Services specified below for fee-based compensation as set forth in this Agreement.

Client must select the desired services by checking one or more boxes below:

- Investment Portfolio Monitoring:** The IAR agrees to monitor Client’s portfolio(s) and provide investment advice on a non-discretionary basis to Client. Investment advice may be provided regarding asset allocation, investment portfolio construction, investment selection, or any other services as agreed upon by the parties.
- Financial Counseling:** The IAR agrees to review financial topics chosen by Client. For example, the IAR may assist Client in designing personal financial goals and objectives and recommendations as to the allocation of present financial resources among different types of assets.
- Business or Estate Planning:** The IAR agrees to provide Client with a one-time financial plan that will include a review of Client’s business or estate circumstances, financial goals, and a written report of recommendations.
- Financial Planning:** The IAR agrees to provide Client with a one-time financial plan that will include a review of Client’s financial circumstances, financial goals, and a written report of recommendations.
- Complex Planning Services:** The IAR agrees to provide services to Client that will either be complex in nature and/or will require a significant amount of time to complete. A plan proposal outlining the services to be provided is attached to and made a part of this Agreement. Any fees for services in excess of \$10,000 is considered complex and requires a plan proposal.
- Other:** Services are agreed to and outlined below (Must be disclosed in detail below):

The IAR agrees to perform the following non-discretionary Consulting Services for Client:

Quarterly meetings with clients.
Clients will be given Performance Reports on Non-Discretion Assets.
Meetings will consist of review of assets, any recommendations made at this time. World events and market discussion and any questions or concerns of the client.
Meetings are kept in the calendar and we have a procedure to contact clients for their review or the meeting is scheduled at the time of the last review.

Client acknowledges that the services covered by this Agreement are consultative in nature and neither NEXT nor the IAR are granted investment authority (“discretion”) or responsibility over any Client assets regardless of how and where such assets are held. Throughout the term of this Agreement, Client retains full responsibility to direct transactions, to supervise, and to manage investments.

8. The Bureau focused on clients who had a CSA with the first two boxes, “Investment Portfolio Monitoring” and “Financial Counselling,” checked; verbatim, the same description of “non-discretionary Consulting Services” in their CSA, (stating “[q]uarterly meetings with clients. Clients will be given Performance Reports and Non-Discretion Assets. Meetings will consist of review of assets, any recommendations made at this time. World events and market discussion and any questions or concerns of the client. Meetings are kept in the calendar and we have a procedure to contact clients of their review or the meeting is scheduled at the time of last review”); and who also paid a separate advisory fee in addition to the CSA fee.
9. In the course of the Bureau’s investigation, the Bureau learned that NEXT introduced the CSA program to the IAR in the first instance. The Bureau also learned that NEXT audited the IAR’s office on multiple occasions, including a review of the CSA program specifically on September 15, 2016, and failed to detect signs of the IAR’s violative conduct. Specifically, NEXT failed to note that nearly all CSAs had the exact same non-

discretionary consulting services despite different client backgrounds. Further, NEXT failed to notice that the calculation and assessment of consulting fees violated its own procedures. Additionally, NEXT failed to notice that nearly all of the IAR's clients (regardless of objectives, risk tolerance, age, etc.) were paying CSA fees, which were paid directly from clients to NEXT and processed through NEXT. Finally, in receiving payment from clients, NEXT would check to make sure they had executed their annual agreement prior to processing the check.

10. As part of the Bureau's investigation, the Bureau reached out to clients who had the first two boxes checked in section 1 of their CSA. The Bureau also sent a survey to all clients whose CSAs the Bureau was investigating. Each survey contained room under the questions and even an additional lined sheet to encourage former clients to explain their answers or provide any extra information they deemed relevant. When asked if the IAR stated that payment of the Consulting Services Agreement fees were required, 72 of the 104 clients surveyed said yes, despite the fact that payment of CSA fees were not required to have an advisory relationship with NEXT. Additionally, when asked if the client believed that it was mandatory to sign the Consulting Services Agreement in order to continue to work with the IAR, 92 of the 104 clients indicated yes, that they believed they needed a CSA in order to continue to have the IAR as their advisor. One client wrote that "[the IAR] told me [that] if I wanted him to manage my portfolio that quarterly fees were required." A different customer stated that "[w]e never requested additional services nor understood that we were paying for additional services." Another customer noted, in reference to whether payment of CSAs were required, that "[n]o other options were presented." In fact, one customer noted that "[i]f they didn't sign the agreement, [they] were under the impression [that they] would not be advised . . . it was presented to [them] as there was no other option and all brokers within the industry had to do this."
11. Further, when asked if the services they received from the IAR changed after they signed the Consulting Services Agreement, 92 of the 104 clients answered no, indicating that the services they received before signing the CSA did not change and were no different than what they were receiving before. One client noted that they "didn't meet [with the IAR] more often & the meetings were the same before and after [they] started paying \$170 a quarter."
12. In surveys and in interviews, nearly a dozen former clients noted that the IAR told them that "regulations" or "laws" had changed that required financial advisors to collect CSA fees in addition to advisory fees. Furthermore, some former clients stated that the IAR told them "Obama changed the rules" about fees, resulting in the IAR needing to use the CSA-fee approach. Another former client, as noted above, wrote that they were "under the impression . . . [that] all brokers within the industry had to do this."
13. The Bureau also spoke with former employees of the IAR who worked with him from 2016 to 2020. One former employee, a licensed financial professional, stated that she didn't see the IAR provide any additional services to clients after they entered into CSAs with NEXT and the IAR. Further, this former employee noted that after a client would be removed from the CSA program that the services provided by the IAR would not change.

14. After thoroughly reviewing all survey responses, interviewing former clients, interviewing former employees, and reviewing all NEXT policies and procedures, the Bureau alleged that most of the CSA fees investigated were unlawfully charged. Additionally, the Bureau alleged that NEXT failed to supervise the IAR's CSA usage with clients.

STATEMENTS OF LAW

- II. The staff of the Bureau make the following statements of law under N.H. RSA 421-B, and regulations thereunder:
 1. NEXT is a "broker dealer" pursuant to N.H. RSA 421-B:1-102(6) and a "federal covered investment adviser" pursuant to N.H. RSA 421-B:1-102(13).
 2. NEXT is a "person" pursuant to N.H. RSA 421-B:1-102(39).
 3. Pursuant to N.H. RSA 421-B:4-412(d)(9), a person may be disciplined under subsection (a) through (c) if the person "has failed to reasonably supervise an agent, investment advisor representative, or other individual, if the agent investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter . . ." NEXT is subject to this provision because NEXT failed to supervise the IAR, an agent subject to NEXT's supervision who committed a violation of N.H. RSA 421-B.
 4. Pursuant to N.H. RSA 421-B:4-412(c), "[i]f the secretary of state finds that the order is in the public interest and subsection (d) other than subsection (d)(7), (d)(11) or (d)(14) authorizes the action, an order issued under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$2,500 for each violation on a registrant and if the registrant is (i) a broker dealer or investment advisor, (ii) any partner, officer, or director, any person having similar functions, or (iii) any person directly or indirectly controlling the broker-dealer or investment advisor." NEXT is subject to this provision.
 5. Pursuant to N.H. RSA 421-B:6-604(a), if the secretary of state determines that a person has engaged, is engaging, or is about to engage, in an act, practice, or course of business constituting a violation of this chapter, he shall have the power to issue and cause to be served an order directing the person to cease and desist from engaging in the act, practice, or course of business. NEXT is subject to this provision.
 6. Pursuant to N.H. RSA 421-B:6-604(d), the secretary of state may impose a civil penalty up to a maximum of \$2,500 for a single violation. NEXT is subject to this provision and the Bureau asserts that each annual execution of a CSA described above with each client constitutes a single violation.
 7. Pursuant to N.H. RSA 421-B:6-604(e), the secretary of state may recover restitution of losses incurred. NEXT is subject to this provision.

8. Pursuant to N.H. RSA 421-B:6-604(g), the secretary of state may recover investigative costs. NEXT is subject to this provision.

UNDERTAKINGS

- III. In view of the foregoing, NEXT agrees to the following undertakings and sanctions:
 1. NEXT agrees that it voluntarily consented to the entry of this Consent Order and represents and avers that no employee or representative of the Bureau has made any promise, representation, or threat to induce their execution.
 2. NEXT agrees to waive its right to an administrative hearing and any appeal thereof under N.H. RSA 421-B.
 3. NEXT agrees that this Consent Order is entered into for purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Consent Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by NEXT which the Bureau has no knowledge at the time of the date or final entry of this Consent Order.
 4. NEXT may not take any action or make or permit to be made any public statement including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this Consent Order or create the impression that the Consent Order is without factual basis. Nothing in this provision affects NEXT's testimonial obligations or right to take legal positions in litigation in which the Bureau is not a party.
 5. NEXT agrees to permanently cease and desist from further violations of N.H. RSA 421-B:4-412(d)(9) by failing to reasonably supervise an IAR's use of CSAs.
 6. NEXT agrees to be held jointly and severally liable with the IAR for payment of restitution, penalties, and costs of investigation as described in this Consent Order. The IAR also agrees to be held jointly and severally liable with NEXT under cover of a separate consent order, incorporated herein by reference, executed between the IAR and the Bureau.
 7. Upon execution of this Consent Order, NEXT agrees, jointly and severally with the IAR, to pay restitution to affected clients in the amount of six hundred sixty-three thousand three hundred and fifty-eight dollars and twenty-two cents (\$663,358.22).
 8. NEXT agrees to pay the refunds by check, make commercially reasonable efforts to ensure that the funds are received and complete the refunds as soon as practicable but no later than forty-five (45) days from the execution of this Consent Order, absent any inability to locate a former client. If any refund is undeliverable for any reason after forty-five (45) days, NEXT shall provide the Bureau with the last known contact

information of the client in question and provide the Bureau a reasonable period of time to locate the client or the client's heir, issue, or assigns, if applicable, contact the client (or the client's heir, issue, or assigns, if applicable), and to forward updated contact information to NEXT. Upon receipt of updated client and/or other payee contact information, NEXT shall make reasonable efforts to ensure that any such refunds are sent to the new address.

9. Upon execution of this Consent Order, NEXT agrees, jointly and severally with the IAR, to pay the State of New Hampshire an administrative fine of three hundred twenty-five thousand dollars (\$325,000) and the Bureau's cost of investigation in the amount of one hundred thousand dollars (\$100,000). Payments must be made by 1) certified check; 2) payable to the State of New Hampshire; and 3) mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire.
10. NEXT agrees that all fines, penalties, and/or monies paid pursuant to remediation offers by NEXT pursuant to this Consent Order are intended by NEXT and the Bureau to be a contemporaneous exchange for new value given to NEXT pursuant to 11 U.S.C. §547(c)(1)(A) and are, in fact, a substantially contemporaneous exchange pursuant to 11 U.S.C. §547(c)(1)(B).
11. This Consent Order is not intended to subject NEXT to disqualification under federal securities laws, rules, or regulations thereunder, or the rules or regulations of any self-regulatory agency, nor the laws, rules, or regulations of the various states and U.S. Territories, including without limitation, any disqualification from relying upon the registration exemption or safe harbor provisions. In addition, this Consent Order is not intended to be the basis for any such disqualification.

IV. Based on the foregoing, the Bureau deems it appropriate and in the public interest to accept and enter into this Consent Order. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. NEXT pay restitution, jointly and severally with the IAR, to afflicted clients in the amount of six hundred sixty-three thousand three hundred fifty-eight dollars and twenty-two cents (\$663,358.22).
2. NEXT pay, jointly and severally with the IAR, an administrative fine of three hundred twenty-five thousand dollars (\$325,000) and the Bureau's cost of investigation of one hundred thousand dollars (\$100,000).
3. NEXT cease and desist from further violations of N.H. RSA 421-B:4-412(d)(9) by failing to reasonably supervise an IAR's use of CSAs.
4. NEXT comply with all above-referenced undertakings.

SO ORDERED.

Executed this 4th day of January, 2024.

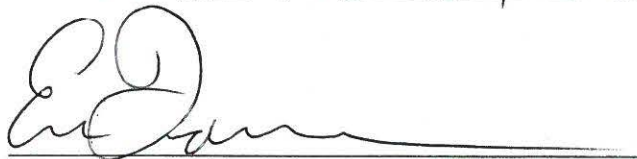


On behalf of NEXT Financial Group, Inc.

Please print name below:

Barry G. Knight, President

Executed this 21st day of February, 2024.



Eric Forcier, Deputy Secretary