

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF STATE
BUREAU OF SECURITIES REGULATION
CONCORD, NEW HAMPSHIRE**

IN THE MATTER OF:)

NEXT Financial Group, Inc. and)
Charles C. Kulch)

I-2011000023/I-2014000010

RESPONDENTS)
)
)
)

CONSENT ORDER

- I. For purposes of settling the above-referenced matter and in lieu of further administrative proceedings, NEXT Financial Group, Inc. ("NEXT", CRD # 46214) and Charles C. Kulch ("Kulch", CRD # 2371584), have submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (the "Bureau") has determined to accept. Accordingly, NEXT and Kulch, without admitting or denying the findings and conclusions herein, do hereby consent to the entry of this Order and the following undertakings and sanctions:

Findings

1. NEXT is incorporated in the State of Virginia and is a wholly-owned subsidiary of NEXT Financial Holdings, Inc.
2. According to its website, NEXT provides a range of investment products and services including "traditional brokerage and non-brokerage services, fee-based products, annuities, and other insurance-related products." NEXT's principal place of business is 2500 Wildcrest Drive, Suite 620, Houston, TX 77042.
3. NEXT is a licensed broker-dealer in the State of New Hampshire as well as a federal covered investment adviser.
4. Kulch is a registered representative and investment adviser representative of NEXT and is licensed in the State of New Hampshire.
5. Kulch is a registered principal of and offers securities and investment advisory services through NEXT.
6. From December 2010 to December 2011, Kulch, through his company Kulch Financial Services, Inc. ("Kulch Financial"), mailed seminar invitations (the "mailers") to New Hampshire residents that contained inaccurate information. The inaccurate information did not relate to any securities products or offerings.

7. Prior to the distribution of each mailer, every mailer went through an approval process. A direct marketing firm (the "Direct Marketing Firm") produced a proof of the mailer. The Direct Marketing Firm then sent the proof and a cover page to Kulch Financial. Kulch Financial's Director of Sales ("Director of Sales") then forwarded the proof and cover page to NEXT for approval. The cover page contained a prominent disclaimer stating "check everything" and that approving the proof "indicates that you are taking complete responsibility for any errors or omissions as reflected on this proof." Upon receipt of approval from NEXT, the Director of Sales forwarded that approval to the Direct Marketing Firm.
8. NEXT approved each of Kulch Financial's mailers prior to distribution but took no action to verify the accuracy of two designations that appeared on such mailers until Bureau informed NEXT that the designations were inaccurate in December 2011.

The Law

1. NEXT is a "broker-dealer" pursuant to N.H. RSA 421-B:2, III.
2. Kulch is an "agent" of NEXT pursuant to N.H. RSA 421-B:2, II.
3. NEXT and Mr. Kulch are "persons" pursuant to N.H. RSA 421-B:2, XVI.
4. N.H. RSA 421-B:26, III states that any person who "either knowingly or negligently, violates any provision of this chapter may, upon hearing, and in addition to any other penalty provide for by law, be subject to . . . an administrative fine not to exceed \$2,500, or both." N.H. RSA 421-B:26, III explains that "[e]ach of the acts specified shall constitute a separate violation." NEXT and Kulch are subject to this provision.
5. N.H. RSA 421-B:8, XII(a) states that "[e]very licensed broker-dealer and investment adviser shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the secretary of state prescribes by rule or order . . . All records so required, shall be true and accurate." NEXT is subject to this provision yet, by failing to ensure that the accuracy of the seminar invitations submitted for approval, the records of NEXT were not true and accurate.
6. NH RSA 421-B:10, I(b)(10) states that "[t]he secretary of state may by order deny, suspend, or revoke any license or application, or bar any person from licensure if he or she finds: (b) That the applicant or licensee or, in the case of a broker-dealer, issuer-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, issuer-dealer, or investment adviser: (10) Has failed reasonably to supervise his agents if he is a broker-dealer, issuer-dealer, or his employees if he is an investment adviser." Further, N.H. RSA 421-B:10, VI states that "[i]n lieu of, or in addition to, any such order to suspend or revoke any license or application, the secretary of state may, upon hearing, assess an administrative fine of not more than \$2,500 per violation." NEXT is subject to this provision yet failed to reasonably supervise Kulch Financial personnel ultimately resulting in the dissemination of inaccurate seminar invitations.

7. N.H. RSA 421-B:26, III-a states the following:

[e]very person who directly or indirectly controls a person liable under paragraph I, II, or III . . . every employee of such person who materially aids in the act or transaction constituting the violation . . . and every broker-dealer or agent who materially aids in the acts or transactions constituting the violation, either knowingly or negligently, may, upon hearing, and in addition to any other penalty provided for by law, be subject to such suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or an administrative fine not to exceed \$2,500, or both.

NEXT is subject to this provision and controls Kulch in his capacity as a registered representative and investment adviser representative of NEXT. Further, as an agent of NEXT, Kulch is subject to this provision and materially aided in the acts constituting the violations by failing to make and keep true and accurate records pursuant to N.H. RSA 421-B:8, XII(a) and failing reasonably to supervise the dissemination of mailers containing inaccurate information pursuant to N.H. RSA 421-B:10, I(b)(10).

II. In view of the foregoing, the Respondents agree to the following undertaking and sanctions:

1. Respondents agree that they have voluntarily consented to the entry of this Order and represent and aver that no employee or representative of the Bureau has made any promise, representation or threat to induce their execution.
2. Respondents agree to waive their right to an administrative hearing and any appeal therein under this chapter.
3. Respondents agree that this Order is entered into for purpose of resolving only the matter as described herein. This Order shall have no collateral estoppel, res judicata or evidentiary effect in any other lawsuit, proceeding, or action, not described herein. Likewise, this Order shall not be construed to restrict the Bureau's right to initiate an administrative investigation or proceeding relative to conduct by Respondents which the Bureau has no knowledge at the time of the date of final entry of this Order.
4. Respondents 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 Order or create the impression that the Order is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.
5. Respondents agree to cease and desist from further violations under this chapter pursuant to N.H. RSA 421-B:23.
6. Upon execution of this Order, Respondents NEXT and Kulch agree, jointly and severally, to pay to the State of New Hampshire an administrative fine of \$120,000 and the Bureau's cost of investigation in the amount of \$20,000 for a total of \$140,000 which will be applied to the settlement of the above-captioned matter. Payment of the first \$70,000 of the \$140,000 will be paid within 10 days of execution of this Order with the remaining \$70,000 to be paid on or before January 1, 2015. Payment 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,
03301.

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

1. Respondents cease and desist from further violations of the New Hampshire Securities Act pursuant to RSA 421-B:23.
2. Respondents establish procedures or modify existing procedures to ensure information in advertising material submitted for approval is properly vetted prior to such approval.
3. Respondents pay an administrative fine and the Bureau's cost of investigation in the amount of \$140,000, \$70,000 of which to be paid within 10 days of the execution of this Order with the remaining \$70,000 to be paid on or before January 1, 2015.
4. Respondents comply with the above-referenced undertakings.

Executed this 6 day of May, 2014.


on behalf of NEXT Financial Group, Inc.

Please print name below:

Gary Kleid

Executed this 5th day of MAY, 2014.

Charles C. Kulch
on behalf of Charles C. Kulch

Please print name below:

CHARLES C. KULCH

Entered this 7th day of May, 2014.

Barry J. Glennon
Barry J. Glennon, Director
N.H. Bureau of Securities Regulation