

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

IN THE MATTER OF:

J.D. Nicholas & Associates, Inc.

Respondent

I-201200030

CONSENT ORDER

- I. For the purposes of settling the above-referenced matter and in lieu of further administrative proceedings, J.D. Nicholas & Associates, Inc. (hereinafter referred to as "JDNA"), has submitted an offer of settlement, which the Bureau of Securities Regulation, Department of State, State of New Hampshire (hereinafter referred to as the "Bureau") has determined to accept. Accordingly, JDNA does hereby consent to the following findings, conclusions, undertakings, and sanctions:

The Facts

1. JDNA is a broker-dealer with a principal office located at 6901 Jericho Turnpike, Suite 217, Syosset, NY 11791. JDNA is licensed as a broker-dealer with the United States Securities and Exchange Commission ("SEC"), and has been licensed in the State of New Hampshire since March 8, 2007. JDNA's CRD number is 44791 and SEC number is 8-50822.
2. On August 27, 2012, the Bureau received a complaint from a New Hampshire resident (hereinafter referred to as the "Complainant") alleging that he had purchased stock over the telephone from a JDNA agent but wanted to back out of the transaction and was being told by the JDNA agent that it was too late to back out. The Complainant explained that he received an unexpected telephone solicitation from a JDNA agent and orally agreed to purchase about \$1,725 in stock. The Complainant then received an overnight package from JDNA with the required forms to complete his transaction. At that point the Complainant decided that he did not want to go through with the transaction so he called the JDNA agent and explained his decision. The Complainant alleges that the JDNA agent told him that he could not back out at this point and it would be better to go through with the transaction rather than quickly sell the stock to recoup his funds. The Complainant contacted our office and filed a complaint.

3. The Bureau verified that the Complainant's telephone number was registered on the National Do Not Call Registry managed by the Federal Trade Commission. Further investigation revealed that, from January 1, 2011 through September 10, 2012, JDNA placed approximately three thousand one hundred (3,100) telephone calls to New Hampshire residents whose numbers appear on the National Do Not Call Registry. JDNA asserts that further investigation into these potentially violative calls would show that some of the calls would be exempt and that not all three thousand one hundred (3,100) telephone calls were violations.
4. During the Bureau's investigation, and as a result of inquiries from other regulators and new industry rules being adopted, JDNA implemented significant improvements to their telephone systems in an attempt to ensure compliance with the National Do Not Call Registry. These upgrades included a blocking mechanism on JDNA telephones so that when an agent attempts to call a number that is registered on the National Do Not Call Registry, that call is blocked. The only method to avoid this automatic block is if the telephone system is manually overridden with certain telephone numbers that JDNA wishes to call and wishes to prevent the system from blocking. JDNA had a practice of purchasing lead lists where the lists were purportedly verified not to contain numbers on the National Do Not Call Registry. JDNA would manually override their telephone system with these lead lists. When a caller requested to not be called again, JDNA had a practice of making a notation on the lead card and updating that telephone number on JDNA's firm-specific Do Not Call List. After updating that number, the lead card with the notation was discarded.

The Law

1. JDNA is a broker-dealer within the meaning of RSA 421-B:2, III and a person under RSA 421-B:2, XVI.
2. Pursuant to RSA 421-B:8, X, persons licensed under RSA 421-B to conduct securities business shall abide by the rules of the Securities and Exchange Commission, National Association of Securities Dealers, national and regional stock exchanges, and other self-regulating organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. JDNA has violated this section for failing to abide by FINRA Rule 3230 (formerly FINRA 2212) regarding telemarketing.
3. Pursuant to RSA 421-B:10, VI, in 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. JDNA is subject to this provision.
4. Pursuant to RSA 421-B:26, III, any person who, either knowingly or negligently, violates any provision of this chapter 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, or an administrative fine not to exceed \$2,500, or both. Each of

these acts specified shall constitute a separate violation. JDNA is subject to a fine under RSA 421-B:10 and RSA 421-B:8. JDNA is subject to this section.

5. Pursuant to RSA 421-B:26, III-a, every person who directly or indirectly controls a person liable under RSA 421-B:26, III, every principal executive officer, or director of such person, every person occupying a similar status or performing a similar function, 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 by law, be subject to suspension, revocation, or denial of any registration or license, or administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties imposed pursuant to RSA 421-B:24 or civil liabilities imposed pursuant to RSA 421-B:25. JDNA is subject to this provision.

II. In view of the foregoing, JDNA agrees to the following undertakings and sanctions:

1. JDNA agrees that they have voluntarily consented to the entry of this Consent 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. JDNA agrees to waive their right to an administrative hearing and any appeal therein under this chapter.
3. JDNA agrees to cease and desist from further violations of the New Hampshire Securities Act RSA 421-B.
4. Upon execution of this Consent Order by JDNA, JDNA agrees to pay an administrative fine of forty thousand dollars (\$40,000) to the State of New Hampshire. Twenty thousand dollars (\$20,000) is due within ten (10) days of execution of this Consent Order and the final twenty thousand dollars (\$20,000) is due within sixty (60) days of execution of this Consent Order. Payment shall be made by United States postal money order, certified check, bank cashier's check, or bank money order. The funds shall be made payable to the State of New Hampshire and be hand delivered or mailed to the Bureau of Securities Regulation, Department of State, State House, Room 204, Concord, New Hampshire, 03301.
5. JDNA agrees not to make any telemarketing calls into the State of New Hampshire for a one-year period commencing upon the execution of this Consent Order. JDNA agrees to utilize their current telephone system to block all numbers with an area code of 603, except for current clients, with whom JDNA has an established business relationship, according to FINRA Rule 3230. JDNA undertakes to have a JDNA principal approve any new accounts of New Hampshire residents to ensure compliance with this Consent Order. If a new

JDNA agent is hired and that agent has New Hampshire clients at the time of hire, JDNA may call that client, provided JDNA complies with the requirements of FINRA Rule 3230.

6. JDNA agrees to maintain all lead cards of New Hampshire residents where a prospective client has requested to not be called again or be placed on the firm-specific Do Not Call List. These lead cards should include the telephone number called, the person called, and the date and time that the person requested not to be called again or be placed on the firm-specific Do Not Call Registry. These records shall be maintained for a period of six (6) years.
7. Within one year of the date of signing this Consent Order, JDNA shall submit a written report to the Bureau outlining JDNA's compliance with this Consent Order. This written report shall detail any updates made to compliance manuals or agent training, as well as a detailed description of any new policies or procedures with respect to maintaining the lead cards discussed in Undertaking number 6 above. This written report shall also include a list of any New Hampshire clients acquired in the past year and the method by which they became a client.
8. JDNA agrees that this Consent Order is entered into for the purpose of resolving only the matter currently described herein. This Consent Order shall have no collateral estoppel, res judicata, evidentiary, or other legal effect in any other law suit, 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 JDNA of which the Bureau has no knowledge of at the time of the date of final entry of this Consent Order.
9. JDNA 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 this Consent Order is without factual basis. Nothing in this provision affects JDNA's testimonial obligations or right to take legal positions in litigation in which the State of New Hampshire is not a party.

III. Based on the forgoing, 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. JDNA pay an administrative fine in the amount of forty thousand dollars (\$40,000). Twenty thousand dollars (\$20,000) is due within ten (10) days of execution of this Consent Order and the final twenty thousand dollars (\$20,000) is due within sixty (60) days of execution of this Consent Order. Payment shall be made by United States postal money order, certified check, bank cashier's check, or bank money order. The funds shall be made payable to the State of New Hampshire and be hand delivered or mailed to

the Bureau of Securities Regulation, Department of State, State House, Room 204,
Concord, New Hampshire, 03301.

2. JDNA cease and desist from further violations of the New Hampshire Securities Act,
RSA 421-B.
3. JDNA agrees not to make any telemarketing calls into the State of New Hampshire for a
one-year period commencing upon the execution of this Consent Order.
4. JDNA comply with the above referenced undertakings.

Executed this 17th day of June, 2013



On behalf of J.D. Nicholas & Associates

Please print name below:

JAMES DOLAN

Executed this 21st day of June, 2013



Barry Glennon, Director