

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)**

**I-2017000030**

- I. For purposes of settling the above-captioned matter, and in lieu of further administrative proceedings, NEXT Financial Group, Inc. (hereinafter "NEXT") has submitted an offer of settlement which the State of New Hampshire, Department of State, Bureau of Securities Regulation (hereinafter "Bureau") has determined to accept. Accordingly, without admitting or denying the facts or allegations contained herein, NEXT hereby consents to the following undertakings and sanctions:

**THE FACTS**

1. NEXT is a broker-dealer and investment adviser with its principal place of business at 2500 Wilcrest Drive, Suite 620, Houston, Texas 77042. According to the Financial Industry Regulatory Authority's ("FINRA") Central Registration Depository ("CRD"), NEXT has been registered with the U.S. Securities and Exchange Commission ("SEC") and the State of New Hampshire since June 3, 1999.
2. In spring 2017, the Bureau received a complaint from a Massachusetts resident alleging, in part, that a registered representative of NEXT, Charles Chester Kulch (CRD # 2371584) (hereinafter "Kulch"), had sold him securities that were not suitable. Based on the allegations in the complaint, the Bureau initiated a formal investigation.
3. As part of its investigation, the Bureau obtained and reviewed brokerage records from NEXT, including the complainant, as well as other documents related to other clients.
4. During the course of its investigation, the Bureau determined that, primarily between 2009 and 2016, NEXT failed to reasonably supervise the sale of certain alternative investments to a number of clients. Specifically, the factors contributing to the unsuitable sales related to exceeding concentration guidelines of non-traded real estate investment trusts, not complying with income thresholds as defined by each prospectus, errors apparent on purchase-related documents, and sales made to clients over the age of 80.

5. By way of background, NEXT agents are permitted to offer and sell alternative investments (“AIs”) to their clients, although the circumstances of such sales must, according to NEXT’s policies and procedures, meet certain criteria. AIs include products such as limited partnership interests, membership interests in limited liability companies, hedge funds, managed futures, business trusts, and real estate investment trusts (“REITs”). REITs can be further separated into two distinct sub-categories: REITs that are traded on a national securities exchange and those that are not. REITs that fall into this latter category are referred to as non-exchange traded REITs, or non-traded REITs for short.
6. Non-traded REITs have certain characteristics that differ from exchange-traded REITs. The secondary market for non-traded REITs is limited and redemption offers may be priced below the purchase price. Second, the front-end fees associated with the sale of non-traded REITs can be as high as 15% of the per share price and include selling compensation and expenses. Finally, investors in non-traded REITs may seek income from distributions over a period of years but distributions are not guaranteed and whether distributions are paid is often within the sole discretion of the non-traded REIT’s Board of Directors.
7. In the process of selling non-traded REITs to clients, agents of NEXT fill out forms that include a client’s financial information, risk tolerance, investment objectives, and information about the product being sold to the client. The primary purpose of these forms is to assist the agent, and ultimately NEXT, to determine whether the proposed sale would result in a concentration of non-traded REITs beyond specific guidelines established by NEXT.
8. NEXT’s policies and procedures regarding the offer and sale of non-traded REITs include guidelines regarding when and to whom such products should be offered and sold. Specifically, these guidelines outline the percentage of a client’s liquid net worth (“LNW”) that may be invested in AIs (“AI Concentration”). Determining what AI Concentration is appropriate for a particular client depends on several different factors including: 1) the client’s age at the time of investment; 2) the client’s LNW at the time of investment; and 3) the client’s investment objective.
9. The following examples highlight the issues that the Bureau found during its investigation:
  - a. NEXT sold non-traded REITs to a number of clients over the age of 80 when NEXT’s policies and procedures discourage such sales.
  - b. NEXT sold non-traded REITs to a number of clients in excess of concentration guidelines for aggregate AI holdings outlined in NEXT’s policies and procedures without any substantive explanation or analysis of why such sales would be suitable for the clients in question.

- c. NEXT sold non-traded REITs to a number of clients in excess of product-specific concentration guidelines outlined in NEXT's policies and procedures without any substantive explanation or analysis of why such sales would be suitable for the clients in question.
  - d. NEXT sold non-traded REITs to a number of clients that did not have the annual income required by each REIT's prospectus.
  - e. NEXT sold non-traded REITs to a number of clients that did not have the requisite risk profile for such a product as outlined in NEXT's policies and procedures
10. The Bureau also determined that NEXT failed to reasonably supervise the sale of non-traded REITs, as outlined above, over a period of several years.

### **THE LAW**

- II. The Bureau hereby makes the following statements of law under the New Hampshire Revised Statutes Annotated, N.H. RSA 421-B, and regulations thereunder:
- 1. During the time period relevant to the allegations herein, NEXT was a "person" within the meaning of N.H. RSA 421-B:2, XVI and a "broker-dealer" within the meaning of N.H. RSA 421-B:2, III.
  - 2. Pursuant to N.H. RSA 421-B:3-a, I, the law in effect during the violations alleged herein, in recommending to a customer the purchase, sale, or exchange of a security, a broker-dealer or broker-dealer agent must have reasonable grounds for believing that the recommendation is suitable for the customer upon the basis of the facts, if any, disclosed by the customer after reasonable inquiry as to his or her other security holdings and as to his or her financial situation and needs. NEXT is subject to and violated this provision when the firm allowed unsuitable non-traded REITs to be sold to certain clients of NEXT as outlined herein.
  - 3. Pursuant to N.H. RSA 421-B:10, I, the law in effect during the violations alleged herein, the secretary of state may take action and issue an appropriate order for relief if he finds that the order is in the public interest and if the person has failed to reasonably supervise his or her agents. NEXT is subject to this provision and failed to reasonably supervise the sale of non-traded REITs.
  - 4. Pursuant to N.H. RSA 421-B:10, VI, the law in effect during the violations alleged herein, in addition to other relief that may be ordered pursuant to N.H. RSA 421-B:10, the secretary of state may assess an administrative fine. NEXT is subject to this provision.
  - 5. Pursuant to N.H. RSA 421-B:6, V(c)(2), the law in effect during the violations alleged herein, each broker-dealer and investment adviser shall establish and maintain supervisory

procedures that are reasonably designed to achieve compliance with all applicable securities laws and statutes. NEXT is subject to this provision.

6. Pursuant to N.H. RSA 421-B:8, XII(b), the law in effect during the violations alleged herein, each broker-dealer shall make, maintain and preserve books and records in compliance with Securities and Exchange Commission rules 17a-3 (17 C.F.R. 240.17a-3), 17a-4 (17 C.F.R. 240.17a-4), 15c2-6 (17 C.F.R. 240.15c2-6), and 15c2-11 (17 C.F.R. 240.15c2-11). NEXT is subject to this provision.
7. Pursuant to N.H. RSA 421-B:6-604(e), the secretary of state may enter an order of rescission, restitution, or disgorgement directed to a person who has violated N.H. RSA 421-B, or a rule or order thereunder. NEXT is subject to this provision.
8. Pursuant to N.H. RSA 421-B:6-604(g), the secretary of state may charge the actual cost of an investigation or proceeding for a violation of N.H. RSA 421-B or an order issued thereunder. NEXT is subject to this provision.

III. In view of the foregoing, NEXT agrees to the following undertakings and sanctions:

1. NEXT agrees that this Consent Order is entered into for the purpose of resolving only the matter as described herein. This Consent Order shall have no collateral estoppel 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 of at the time of the date of final entry of this Consent Order including but not limited to allegations in the form of a complaint.
2. NEXT agrees that it has had an opportunity to consult legal counsel regarding the terms of this Consent Order and that, after such opportunity for consultation, NEXT executes this Consent Order knowingly and voluntarily.
3. NEXT agrees not to 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 any legal positions in litigation in which the State of New Hampshire is not a party.
4. Within thirty (30) days of execution of this Consent Order, NEXT agrees to offer remediation to the clients and in the amounts outlined in Exhibit A to this Consent Order in a form not unacceptable to the Bureau if the client in question is still a client of the firm. Any remediation offer made pursuant to this order shall stay open for ninety (90) days. If any remediation offer made or check sent to a client or former client pursuant to this order is returned undeliverable and NEXT is unable to find a current address, NEXT agrees to


provide the Bureau thirty (30) days to find an alternative address for that client. If the Bureau finds an alternative address for a client, NEXT shall send the remediation offer or payment to the client at the new address and, in the case of a remediation offer, provide the client ninety (90) days to accept or reject the offer.

5. Within thirty (30) days of execution of this Consent Order, NEXT agrees to notify all clients in Exhibit A who are no longer clients of the firm that they may be eligible for a remediation offer. NEXT further agrees that such notice shall request information sufficient to determine whether the client still holds the product in question and the proceeds from any sale of such product, if applicable. Upon receipt of a response to such request, NEXT shall notify the Bureau of the response. If, based on the response provided, the Bureau determines that the client is still eligible for remediation, NEXT, shall make a remediation offer or payment to such client, as outlined in Paragraph 4 of this Section.
6. Upon execution of this Consent Order, NEXT shall:
  - a. Place Kulch on heightened supervision in a manner not unacceptable to the Bureau pending the outcome of the Bureau's investigation of Kulch, and if Kulch is ordered, by consent or otherwise, to be placed on heightened supervision, NEXT shall impose such terms of heightened supervision as reasonably ordered by the Bureau.. Heightened supervision of Kulch shall, at a minimum, include the following:
    - i. At least monthly, the compliance department shall obtain a written statement signed by Kulch affirming that Kulch has not received any oral or written customer complaints concerning Kulch's conduct in the securities business or, if Kulch has received an oral or written customer complaint concerning Kulch's conduct in the securities business, that he promptly notified NEXT of such customer complaints;
  - b. Not permit Kulch to solicit the purchase or exchange of any AI, including but not limited to non-traded REITs, Business Developments Companies ("BDCs"), Direct Participation Programs ("DPPs"), oil & gas partnerships, and Tenancies in Common ("TICs"), without prior written approval of the Bureau;
  - c. Establish procedures to ensure that any alternative investment purchase, including but not limited to, non-traded REITs, BDCs, DPPs, oil & gas partnerships, and TICs made by Kulch on a unsolicited basis is in fact unsolicited;
  - d. Establish procedures not unacceptable to the Bureau to ensure Kulch does not violate any of the undertaking or sanctions contained herein;
  - e. NEXT agrees to notify the Bureau, in writing, independent of the CRD, within ten (10) business days of notice of any event that requires amending Kulch's Form U4. Such notification shall reference the docket number of these proceedings;

- f. NEXT agrees to notify the Bureau, in writing, independent of the CRD, within ten (10) business days of Kulch's resignation, termination, or departure from NEXT and shall provide an explanation of the circumstances surrounding his resignation, termination, or departure. Such notification shall reference the docket number of these proceedings;
  - g. NEXT agrees that, if it learns that Kulch is the subject of a written or oral customer complaint concerning Kulch's conduct in the securities business, NEXT shall notify the Bureau, in writing, independent of any Form U4 reporting requirements, within (10) business days of NEXT's receipt of such complaint. Such notification shall also include a copy of the complaint, if written, and shall reference the docket number of the proceedings; and
  - h. NEXT agrees that, if it learns that Kulch is the subject of any regulatory investigation, internal investigation, arbitration proceeding, or securities-related litigation concerning allegations arising from Kulch's conduct in the securities industry, NEXT shall notify the Bureau, in writing, within ten (10) business days of notice of the investigation, proceeding, or litigation. Such notification shall also include a copy of the document notifying NEXT and/or Kulch of such regulatory investigation, internal investigation, arbitration proceeding, or securities-related litigation and shall reference the docket number of the proceedings.
7. Within five (5) business days of execution of this Consent Order, NEXT agrees to pay an administrative fine in the amount of \$235,000.00 and the Bureau's costs in the amount of \$90,000.00, for a total amount of \$325,000.00 to the Bureau. Payment must be made by 1) business check, certified check, or postal money order; 2) made 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.
8. 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).
9. If NEXT is the subject of a voluntary or involuntary petition in bankruptcy under 11 U.S.C. §§ 101, et seq., within three-hundred sixty-five (365) days of the entry of a signed order pursuant to this Consent Order, NEXT shall notify the Bureau, in a signed writing, within five (5) days of the date of the petition.
10. NEXT agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any amounts that NEXT shall pay pursuant to this Consent Order.

11. NEXT agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including but not limited to any payments made pursuant to an insurance policy, with regard to any amount that NEXT shall pay pursuant to this Consent Order.
  12. If any provision of this signed Consent Order is held to be invalid, illegal, or unenforceable, all other terms and provisions of the signed Consent Order shall nevertheless remain in full force and effect.
  13. If any provision of this signed Consent Order is held to be invalid, illegal, or unenforceable, all other terms and provisions of the signed Consent Order shall nevertheless remain in full force and effect.
  14. This Consent Order is not intended to be a final order based upon violations of the New Hampshire Uniform Securities Act, RSA 421-B, and regulations thereunder, that prohibit fraudulent, manipulative, or deceptive conduct.
- 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 shall make remediation offers to the clients in the amounts outlined in Exhibit A within 30 days of this Consent Order.
  2. NEXT shall place Kulch on heightened supervision pending the outcome of the Bureau's investigation of Kulch, and if Kulch is ordered, by consent or otherwise, to be placed on heightened supervision, NEXT shall impose such terms of heightened supervision as reasonably ordered by the Bureau.
  3. NEXT shall promptly notify the Bureau in writing upon the receipt of any complaint against Kulch or of any regulatory investigation, action, or reportable event regarding Kulch as outlined herein.
  4. NEXT shall cease and desist from further violations of RSA chapter 421-B.
  5. NEXT shall comply with all other undertakings and sanctions outlined herein.

Executed this 19<sup>th</sup> day of December 2019.

  
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on behalf of NEXT Financial Group, Inc.

(Please print name below)

Barry G. Knight, President

Entered this 31<sup>st</sup> day of December 2019.

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



# Exhibit A

Consent Order  
In the Matter of NEXT Financial Group, Inc. (CRD#46214)  
I-2017000030

<u>INVESTOR</u>	REMUNERATION TO BE OFFERED
1	\$ 6,600.42
2	TBD
3	TBD
4	TBD
5	\$ 15,238.75
6	\$ 6,906.31
7	\$ 33,732.74
8	\$ 28,645.18
9	\$ 21,078.62
10	\$ 8,749.64
11	\$ 415.89
12	\$ 26,584.01
13	\$ 3,283.40
14	\$ 12.76
15	\$ -
16	\$ 228.02
17	\$ 8,048.50
18	\$ 8,055.75
19	\$ 7,944.70
20	\$ 13,613.95
21	\$ 11,558.85
22	\$ 7,427.40
23	\$ 10,068.11
24	\$ 12,940.26
25	\$ 4,257.56
26	TBD
27	\$ 9,002.70
28	\$ 4,456.57
29	\$ 6,611.99
30	\$ 6,469.05
31	\$ 35,190.89
32	\$ 23,173.24
33	\$ 23,205.80
34	\$ 263.55
35	TBD
36	TBD
37	\$ 3,109.10
38	\$ 6,657.64
39	TBD
40	\$ 14,077.36
41	\$ 15,784.49
42	\$ 744.10
43	\$ 1,238.81

## Exhibit A

Consent Order  
In the Matter of NEXT Financial Group, Inc. (CRD#46214)  
1-2017000030

44	\$	1,830.74
45	\$	2,929.74
46	\$	20,320.70
47	\$	117.74
48	TBD	
49	TBD	
50	\$	32,559.35
51	\$	8,031.17
52	\$	9,488.77
53	\$	4,611.98
54	TBD	
55	TBD	
56	\$	1,101.15
57	\$	2,104.02
58	\$	8,951.85
59	\$	1,594.26
60	\$	916.83
61	\$	28,007.85
62	\$	645.96
63	\$	9,766.05
64	TBD	
65	\$	11,640.56
66	\$	7,580.43
67	\$	7,552.38
68	\$	2,503.90
69	\$	1,012.80
70	\$	297.93
71	\$	9,611.81
72	TBD	
73	\$	1,251.30
74	TBD	
75	TBD	
76	\$	5,553.53
77	\$	8,855.14