

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.

Pursuant to RSA 421-B:23, the Secretary of State has the authority to issue and cause to be served an order requiring any person appearing to him to be engaged or about to be engaged in any act or practice constituting a violation of RSA 421-B or any rule or order thereunder, to cease and desist from violations of RSA 421-B.

Pursuant to RSA 421-B:24, I, any person who willfully violates a cease and desist order issued pursuant to RSA 421-B:23 shall be guilty of a class B felony.

Pursuant to RSA 421-B:26, the Secretary of State has the authority to impose administrative penalties of up to \$2,500.00 for each violation of the securities laws and rules of New Hampshire.

NOTICE OF RIGHT TO REQUEST A HEARING

The above-named Respondent has the right to request a hearing on this order to cease and desist and to show cause, as well as the right to be represented by counsel. Any such request for a hearing shall be in writing, shall be signed by the Respondent, or by the duly authorized agent of the above-named Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Bureau of Securities Regulation, Department of State, 25 Capitol Street, Concord, New Hampshire 03301.

Under the provisions of RSA 421-B:10, III, if Respondent fails to request a hearing on the show cause order within 30 calendar days of receipt of this order,

Respondent shall be deemed in default, and the penalties requested will be imposed by default.

Under the provisions of RSA 421-B:23, I, if Respondent fails to request a hearing on this order within 30 calendar days of receipt of this order, Respondent shall be deemed in default, and this order shall, on the thirty-first day, become permanent.

Upon request for a hearing being received by the Bureau of Securities Regulation, in the manner and form indicated above, a hearing shall be held not later than ten days after such request is received by the Bureau, after which hearing, and within 20 days of the date of the hearing, the Secretary of State, or such other person authorized by statute, shall issue a further order vacating or modifying this order, or making it permanent, as the circumstance require.

STATEMENT OF ALLEGATIONS

The allegations contained in the Staff Petition for Relief dated April 11, 2013 (a copy of which is attached hereto) are incorporated by reference hereto.

ORDER

WHEREAS, finding it necessary and appropriate and in the public interest, and for the protection of investors and consistent with the intent and purposes of the New Hampshire securities laws, and

WHEREAS, finding that the allegations in the Staff Petition, if proved true and correct, form the legal basis of the relief requested.

It is hereby ORDERED, that:

1. The Respondent is hereby ordered to show cause why its license in the State of New Hampshire should not be suspended;
2. The Respondent is hereby ordered to immediately cease and desist from the above indicated acts and from in any other way violating RSA 421-B in accordance with RSA 421-B:23;
3. The Respondent shall, in accordance with RSA 421-B:10, VI and RSA 421-B:26, II, be liable for administrative penalties of up to three million dollars (\$3,000,000), such amount to be determined by the hearing officer;
4. The Respondent shall, in accordance with RSA 421-B:22, IV, pay for the cost of the investigation into this matter in an amount to be determined by the hearing officer;
5. The Respondent shall comply with undertakings for compliance and report back to the Bureau with changes sufficient to establish compliance; and

6. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered, including imposition of fines and penalties upon the defaulting Respondent.

WILLIAM M. GARDNER
SECRETARY OF STATE
BY HIS DESIGNEE:

Dated: 4-11-13



Barry J. Glennon, Director
Bureau of Securities Regulation

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

**STAFF PETITION FOR RELIEF
IN THE MATTER OF:**

Edward Jones, CRD # 250

C-201200002

STATEMENT OF FACTS

- I. The staff of the Bureau of Securities Regulation, Department of State, State of New Hampshire (the "Bureau") hereby petitions the Director, and makes the following statements of fact:

Introduction

1. This is an action to curtail telemarketing abuses in the State of New Hampshire ("New Hampshire") and the potential danger such abuses pose to New Hampshire investors. The relevant time period for the Bureau's investigation in this matter is January 1, 2011 to the present.
2. The Federal Trade Commission ("FTC") manages a registry of telephone numbers referred to as the National Do Not Call Registry, which was created in 2003. The National Do Not Call Registry is enforced by the FTC, the Federal Communications Commission ("FCC"), and state law enforcement officials. The National Do Not Call Registry was created to offer consumers the ability to essentially opt-out of general telemarketing calls by placing their telephone numbers on the registry. The FTC's decision to create the National Do Not Call Registry was the culmination of a comprehensive, three-year review of the Telemarketing Sales Rule ("TSR"), as well as the FTC's extensive experience enforcing the TSR.
3. During the legislative and rulemaking processes leading to the development of the National Do Not Call Registry, the FCC explained that, historically, the impact of telemarketing on consumers was not insignificant despite contrary rhetoric. "Although some industry commenters attempt to characterize unwanted solicitation calls as petty annoyances and suggest that consumers purchase certain technologies to block unwanted

calls, the evidence in this record leads us to believe the cumulative effect of these disruptions in the lives of millions of Americans each day is significant . . . Consumer frustration with telemarketing practices has reached a point in which many consumers no longer answer their telephones while others disconnect their phones during some hours of the day to maintain their privacy.” 68 Fed. Reg. 44,145 (2003) (to be codified at 47 CFR pts. 64 and 68) (effective Aug. 25, 2003). Echoing the concerns of securities regulators across the country, the FCC has further explained that telemarketing has the most significant impact on the elderly and the disabled as these groups are often the most accessible to telemarketers and are often the most susceptible to deceptive sales practices. *See id.*

4. Since the inception of the National Do Not Call Registry, according to the FTC’s 2012 National Do Not Call Registry Data Book, approximately 1,147,000 New Hampshire telephone numbers have been placed on the registry. This ranks New Hampshire number one in active registrations per capita in the nation, considering New Hampshire has 87,035 registrations for every 100,000 New Hampshire residents. The number of New Hampshire numbers registered on the National Do Not Call Registry is even more staggering considering the current population of New Hampshire is just over 1.3 million. New Hampshire also ranks eleventh in the number of yearly do-not-call complaints lodged per capita with the FTC. These statistics are a clear indication that New Hampshire residents generally prefer not to be contacted for telemarketing purposes.
5. In order to facilitate enforcement of the National Do Not Call Registry, the FTC also maintains an online database for law enforcement personnel called the Consumer Sentinel Network. The Consumer Sentinel Network is a secure and confidential network that allows individuals to file complaints with the FTC related to various activities including violations of the National Do Not Call Registry. Law enforcement personnel may access and utilize information found in the Consumer Sentinel Network to investigate and prosecute suspected violators.
6. Edward Jones (“EJ”) is a national broker-dealer serving individuals and businesses across the United States. EJ has its principal place of business at 12555 Manchester Road, St. Louis, Missouri 63131 with, according to the Central Registration Depository (“CRD”), fifty-eight (58) branch offices within New Hampshire and thousands of branch offices across the country. As a broker-dealer, EJ has been registered with the Securities and Exchange Commission (“SEC”) since April 26, 1941 and has been registered with New Hampshire since July 15, 1986. EJ is also a member of the Financial Industry Regulatory Authority (“FINRA”) and thus subject to FINRA rules and requirements that apply to broker-dealers.

7. Since January 1, 2010, according to the Consumer Sentinel Network, the FTC has received over two hundred complaints regarding EJ telemarketing practices. These complaints detail questionable telemarketing practices of EJ financial advisors not only in New Hampshire but across the country.

Applicable Telemarketing Rules

8. The FTC initially adopted its rules prohibiting deceptive and other abusive telemarketing acts and practices (the “Telemarketing Sales Rule,” codified at 16 CFR 310.1-9) in 1995 under the Telemarketing and Consumer Fraud and Abuse Prevention Act (“Prevention Act”) codified at 15 U.S.C. 6101-6108. *See* FTC, Telemarketing Sales Rule, 60 FR 43842 (Aug. 23, 1995).
9. In 1997, the SEC determined that telemarketing rules to be promulgated by self-regulatory organizations, together with other applicable telemarketing rules, satisfied the requirements of the Prevention Act because, at that time, the applicable provisions of those laws and rules were substantially similar to the Telemarketing Sales Rule. *See* Securities Exchange Act Release No. 34-38480 (Apr. 16, 1997). Since that time, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology. *See* Telemarketing Sales Rule; Final Rule, 68 Fed. Reg. 4,580 (2003) (effective March 31, 2003).
10. On March 11, 2003, Congress passed the Do-Not-Call Implementation Act, 108 P.L. 10, 117 Stat. 557. This Act required the FTC and the FCC to promulgate rules to effectuate the concept of a national do-not-call database. Ultimately, both agencies enacted rules to implement and monitor the National Do Not Call Registry as it exists today. The rules enacted by the FTC and FCC prevented any person or entity from initiating any telephone solicitation to a residential telephone subscriber whose number was registered on the National Do Not Call Registry. *See* 47 CFR § 64.1200(c)(2) (2013).
11. However, the FCC and FTC rules did and still do provide exceptions to do-not-call restrictions. Specifically, the rules provide, in addition to a procedural safe harbor, that a caller could contact a number on the National Do Not Call Registry if: 1) the caller has obtained written express permission from the recipient prior to making the call; or 2) a personal relationship exists between the caller and recipient. 47 CFR 64.1200(c)(2)(ii) and (iii). The rules further exempt telemarketing calls made to individuals with whom the caller has a preexisting business relationship. “No person or entity may . . . [i]nitiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call . . . [i]s made to any person with whom the caller has an established business relationship at the time the call is made.” 47 CFR § 64.1200(a)(2)(iv).

12. On January 14, 2004, the SEC approved NASD Rule 2212 (the predecessor to FINRA Rule 3230). On March 31, 2004, the NASD published Notice to Members 04-15 outlining Rule 2212 generally and highlighting the reasons for its adoption:

In 2003, the FTC and the Federal Communications Commission (FCC) established requirements for sellers and telemarketers to participate in a national do-not-call registry. Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's rules are directly applicable to broker/dealers.

In July 2003, the SEC requested that NASD amend its telemarketing rules to include a requirement for its members to participate in the national do-not-call registry. *Because broker/dealers are subject to the FCC's jurisdiction, NASD modeled its rules after those of the FCC, with minor modifications tailoring the rules to broker/dealer activities and the securities industry.* Members, however, have an independent obligation to comply with both the FCC's and NASD's telemarketing rules. (emphasis added)

13. NASD Rule 2212 (currently FINRA Rule 3230) outlined general telemarketing requirements and restrictions for FINRA member broker-dealers, such as EJ, and although broader than FCC rules in certain respects, utilized similar analytical approaches in determining violative conduct.
14. The telemarketing practices for broker-dealers are currently governed by FINRA Rule 3230 of the FINRA Consolidated Rulebook (formerly NASD Rule 2212). FINRA Rule 3230 generally outlines certain restrictions placed on the telemarketing activities of broker-dealers. More specifically, in addition to the National Do Not Call Registry, FINRA Rule 3230 creates a requirement that broker-dealers that engage in telemarketing maintain a firm-specific do-not-call list. This requires any broker-dealer to place on its firm-specific do-not-call list "[a]ny person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member." FINRA Rule 3230(a)(2) and (3) state that "[n]o member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to" any person on the National Do Not Call Registry or a member's firm-specific do-not-call list.
15. FINRA Rule 3230 also requires that broker-dealers establish certain minimum compliance-related requirements including the requirement to maintain both an up-to-date copy of the

National Do Not Call Registry as well as any firm-specific do-not-call list. More specifically, FINRA Rule 3230(d)(3) and (6) outline the obligations of FINRA members related to the adding of numbers to firm-specific do-not-call lists. FINRA Rule 3230(d)(3) states that “[i]f a member receives a request from a person not to receive calls from that member, the member *must record the request and place the person’s name, if provided, and telephone number on the firm’s do-not-call list* at the time the request is made.” (emphasis added) Additionally, FINRA Rule 3230(d)(6) states “[a] member making outbound telephone calls must maintain a record of a person’s request not to receive further calls.”

16. Pursuant to FINRA Rule 3230, there are no exceptions to the restriction outlined in FINRA Rule 3230(a)(2) preventing any FINRA member from placing outbound telephone calls to any person that has previously stated he or she does not wish to receive an outbound telephone call made by or on behalf of the FINRA member. Further, FINRA Rule 3230(b)(1) states that “[a] person’s request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member.” Thus, an individual with whom EJ has a preexisting business relationship, upon request, cannot be called again by EJ for telemarketing purposes, even if the individual continues to do business with EJ.
17. FINRA Rule 3230(b) (as amended) outlines three exceptions to FINRA Rule 3230(a)(3), relating to calls to telephone numbers on the National Do Not Call Registry:

[a] member making telephone solicitations will not be liable for violating paragraph (a)(3) if:

(1) Established Business Relationship Exception

The member has an established business relationship with the recipient of the call. A person’s request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member;

(2) Prior Express Written Consent Exception

The member has obtained the person’s prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or

(3) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

18. In addition to the specific requirements and restrictions outlined in FINRA Rule 3230, the rule also contains the following supplementary material:

This Rule does not affect the obligation of any member or person associated with a member that engages in telemarketing to comply with relevant state and federal laws and rules, including but not limited to the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101–6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200. (emphasis added)

19. 47 CFR 64.1200 codifies certain FCC telemarketing rules and outlines various restrictions placed on telemarketers when making outbound calls. Although many of the provisions of this FCC rule are similar to those of FINRA Rule 3230, there is one notable distinction. Specifically, section (b)(2) of the FCC rule explains that registrations on the National Do Not Call registry are to “be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.”

Inadequate Record Keeping

20. FTC, FCC, and FINRA rules and regulations pertaining to telemarketing practices rely heavily on record keeping to support adequate supervision of telemarketers and compliance with applicable restrictions on the calls being made. Not only do FTC, FCC, and FINRA rules and regulations require telemarketers to keep up-to-date copies of the National Do Not Call Registry, but, as mentioned above, FINRA Rule 3230(a)(2) requires FINRA member broker-dealers, like EJ, to maintain a firm-specific do-not-call list of the telephone numbers of individuals who have requested no further contact. FINRA Rule 3230(d)(3) requires the following:

If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person’s name, if provided, and telephone number on the firm’s do-not-call list at the time the request is made. Members must honor a person’s do-not-call request within a reasonable time from the date such request is made. This period may not exceed 30 days from the date of such request. If such requests are recorded or maintained by a party other than the member on whose behalf the outbound telephone call is made, the member on whose behalf the

outbound telephone call is made will be liable for any failures to honor the do-not-call request. (emphasis added)

21. The requirement of a broker-dealer to maintain a firm-specific do-not-call list is critical for several reasons. First, FINRA Rule 3230(a)(2) outlines that an individual's request not to be contacted creates a complete prohibition on calling that particular individual for telemarketing purposes, regardless of whether the individual is a customer of that particular broker-dealer. This requirement not only protects individuals wishing not to be contacted but also provides those broker-dealer agents engaged in telemarketing with a list of numbers that may not be called for telemarketing purposes. Second, FINRA Rule 3230(d)(3) requires that broker-dealers maintain records of all requests not to receive a call from the broker-dealer. Maintaining records of such requests is essential not only in preventing further calls to certain individuals but also in providing broker-dealers with materials with which to ensure compliance with such requests and to satisfy relevant regulatory inquiries. Finally, FINRA Rule 3230(a)(2) requires that a broker-dealer maintain its firm-specific do-not-call list separate from its copy of the National Do Not Call Registry. This requirement allows telemarketers to easily determine what telephone numbers to avoid while also providing broker-dealers engaged in telemarketing with a mechanism with which to automatically prevent calls to numbers on the firm-specific do-not-call list, and to avoid direct violations of FINRA Rule 3230. Failure to properly log an individual's request not to be contacted not only violates FINRA Rule 3230(a)(2) and (d)(3), but creates a much more significant compliance-related issue. Such a failure taints the results of any regulatory inquiry as any evidence supporting an applicable FINRA Rule 3230(b) exception would be meaningless if the number called should have been subject to a complete telemarketing prohibition.
22. The initial complainant in this case is an 80-year old woman from Somersworth, NH who received an unsolicited call or "cold call" on November 7, 2011 from an EJ financial advisor. During the call, the EJ financial advisor attempted to sell the complainant a tax-free municipal bond of the Port Authority of NY/NJ offering a 4.5% return. The EJ financial advisor allegedly told the complainant that the return would be "good until 2031." During the call the EJ financial advisor did not ask for any information to determine suitability. The complainant informed the Bureau that she had been an EJ client but that she had not transacted any business through EJ since a purchase of stock approximately ten (10) years prior and never through the EJ financial advisor who initiated the call.
23. On March 19, 2012, in response to the above complaint, the Bureau sent a document request to EJ asking for, among other things, a list of all New Hampshire numbers called for telemarketing or sales purposes during the relevant time period. In response to this request, EJ produced a call list of over 130,000 calls made to New Hampshire numbers

during the relevant time period, originating both from EJ headquarters in St. Louis, Missouri as well as New Hampshire EJ branch offices.

24. Based on the information provided in response to the Bureau's March 19, 2012 request and in an attempt to efficiently investigate EJ's compliance based on the breadth of the information provided, the Bureau sent a first supplemental document request on June 21, 2012 requesting specific information about each call made. This request was refined after discussions with EJ and was based on several assertions made by EJ. These assertions included: 1) EJ agents are not required to maintain logs of telemarketing calls made to prospective clients; 2) EJ does not record calls made by EJ agents for telemarketing sales purposes; 3) EJ does not permit the use of auto-calling devices for telemarketing sales purposes; and 4) EJ agents only obtain verbal permission, except in New Jersey and California, prior to calling numbers on the national do-not-call list.
25. The Bureau's June 21, 2012 request sought to obtain from EJ supplemental information about each call made by EJ for telemarketing or sales purposes during the relevant time period. Specifically, the Bureau asked that EJ provide the following information relating to each call made:
 - a. The name of the person called;
 - b. Whether the number called, at the time of the call, appeared on EJ's firm do-not-call list, the national do-not-call list, or any state specific do-not-call list;
 - c. Whether the prospective client notified EJ that they were on a do-not-call list or had requested to be put on EJ's firm-specific do-not-call list;
 - d. Whether the phone number called was the phone number of an EJ client who had an established business relationship with the EJ representative placing the call;
 - e. Whether any person at the number called gave any EJ representative permission to call the phone number listed;
 - f. Whether the person called had a personal relationship with the EJ representative making the call, and if so, the nature of that personal relationship;
 - g. Whether the call resulted in the number being put on the firm-specific do-not-call list;
 - h. Whether an EJ representative visited the physical location of the number listed, and the date of that visit;
 - i. Whether a home visit to the physical location of the number called took place subsequent to the call; and
 - j. All documents or communications regarding visits by EJ representatives to the homes of prospective clients.

26. Based on the information provided by EJ in response to the Bureau's March 19, 2012 and June 21, 2012 requests, the Bureau was able to determine, based only on the information provided by EJ regarding each call made during the relevant time period, that approximately four thousand seven hundred eighty-five (4785) telemarketing or sales calls were made to New Hampshire residents whose telephone numbers appeared on the National Do Not Call Registry at the time of the call.

- a. Based on information provided by EJ in response to these document requests, the Bureau was able to determine that during the relevant time period, according to EJ, nine hundred ten (910) calls were made for telemarketing or sales purposes from EJ headquarters to prospective clients in New Hampshire whose numbers appeared on the National Do Not Call Registry. Based on this same information, the Bureau was able to determine that during the relevant time period, according to EJ, three thousand eight hundred seventy five (3875) calls were made for telemarketing or sales purposes from New Hampshire EJ branch offices to prospective clients in New Hampshire whose numbers appeared on the National Do Not Call Registry. Thus, the number of facially violative telemarketing calls made by EJ during the relevant time period totaled four thousand seven hundred eighty-five (4785).
- b. Of the four thousand seven hundred eighty-five (4785) telemarketing or sales calls made by EJ agents to New Hampshire residents, all of the numbers called, according to EJ, appeared in EJ's "do not call database." Also, although requested by the Bureau, no further information was provided at this time regarding the FINRA Rule 3230 exception being asserted for each potentially violative call.
- c. Of the four thousand seven hundred eighty-five (4785) telemarketing or sales calls made by EJ to New Hampshire telephone numbers on the National Do Not Call Registry, according to EJ, none of the calls were authorized by written express consent of the person called.
- d. Of the four thousand seven hundred eighty-five (4785) telemarketing or sales calls made by EJ to New Hampshire residents on the National Do Not Call Registry, according to EJ, none of the calls were made to current clients of EJ.

27. As a core tenet of compliance with applicable telemarketing rules and restrictions, including FINRA Rule 3230, all telemarketers must maintain up-to-date versions of the National Do Not Call Registry as maintained by the FTC. In fact, FINRA Rule 3230 provides a safe harbor for telemarketers who establish and maintain certain minimal requirements. FINRA Rule 3230(c) states the following:

A member or person associated with a member making outbound telephone calls will not be liable for violating paragraph (a)(3) if the member or person associated with a member demonstrates that the violation is the

result of an error and that as part of the member's routine business practice, it meets the following standards:

- (1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;
- (2) Training of personnel. The member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;
- (3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and
- (4) Accessing the national do-not-call database. The member uses a process to prevent outbound telephone calls to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

28. According to EJ's response to the Bureau's June 21, 2012 document request, approximately 287,000 New Hampshire telephone numbers appeared in the EJ "do not call database." As mentioned above, this is directly contrary to the approximately 1,147,000 New Hampshire telephone numbers registered on the National Do Not Call Registry as of the end of fiscal year 2012. This indicates a discrepancy between EJ's "do not call database" and the National Do Not Call Registry, for New Hampshire alone, of approximately 860,000 registered numbers. This discrepancy indicates that EJ has not maintained an up-to-date version of the National Do Not Call Registry, thus creating a significant procedural problem for EJ. Regardless of the violative nature of EJ's failure to maintain an up-to-date version of the National Do Not Call Registry, there is a direct correlation between such a failure and the violative telemarketing calls made by EJ agents. If agents are not provided with an up-to-date National Do Not Call Registry to check telephone against prior to initiating telemarketing calls, regardless of whether those numbers are in fact being checked, the results of such queries will be flawed and will provide agents with inaccurate information about what numbers may not be called. Further, because of EJ's failure to maintain an up-to-date version of the National Do Not Call Registry, not only has EJ failed to meet its obligation under applicable telemarketing rules and restrictions, but EJ has precluded itself from claiming the safe harbor under FINRA Rule 3230(c).

29. On November 9, 2012, EJ restated information provided in response to the Bureau's June 21, 2012 request claiming that the EJ "do not call database" included, not 287,000 New Hampshire telephone numbers as previously stated, but instead contained more than 1.1

million New Hampshire telephone numbers as of the date of EJ's response. Regardless of the fact that this assertion is in direct conflict with prior assertions made by EJ regarding the accuracy of its "do not call database," this inconsistency raises concerns about how EJ's "do not call database" is managed and the accuracy of the results that would be obtained by EJ financial advisors if those advisors were to run telephone numbers to be called for telemarketing purposes against those present in the EJ "do not call database."

30. Based on EJ's inconsistent responses to the Bureau's inquiries and EJ's apparent failure to maintain an up-to-date version of the National Do Not Call Registry, the Bureau engaged in a supplemental analysis of the call information provided by EJ for the relevant time period. Again, based on EJ's prior assertions regarding pertinent call information and what telemarketing calls were made to New Hampshire numbers on the National Do Not Call Registry, the Bureau was able to determine four thousand seven hundred eighty five (4785) such calls were made by EJ agents to such numbers. As a means of determining the actual number of violative calls made by EJ agents to New Hampshire telephone numbers registered on the National Do Not Call Registry, the Bureau cross-referenced each number called by EJ during the relevant time period with an accurate and up-to-date copy of the National Do Not Call Registry provided by the FTC. Although, based on EJ's assertions, EJ agents had placed approximately four thousand seven hundred eighty-five (4785) calls to New Hampshire telephone numbers registered on the National Do Not Call Registry, the Bureau was able to determine that EJ, in reality, placed over twenty thousand (20,000) calls to registered New Hampshire telephone numbers during the relevant time period. The pure scale of this disparity indicates a record keeping failure on the part of EJ as well as a level of violative behavior far beyond that previously made known to the Bureau.

31. In addition to EJ's failure to maintain an up-to-date copy of the National Do Not Call Registry, in response to the Bureau's June 21, 2012 request related to whether the numbers called appeared on the EJ firm-specific do-not-call list at the time of the call, EJ provided the following response:

The firm has manually reviewed all telephone numbers submitted by financial advisors for addition to the firm's do-not-call list during the relevant period and has not identified any telephone numbers from New Hampshire area code 603.

Based on this specific response and EJ's previous references to EJ's "do not call database," the Bureau sent a second supplemental document request to EJ on October 22, 2012 requesting that EJ provide a copy of all New Hampshire numbers that appeared on the EJ firm-specific do-not-call list at the time of the request. In response to this request, EJ explained that EJ maintained a single list, and that there was no way to determine whether

a number was in the database because it appeared on the National Do Not Call Registry or because the number was added at the request of the New Hampshire resident being called.

32. The Bureau's investigation revealed that the EJ "do not call database" did, in fact, include an identifier for each number in the database regarding whether the number was added because it appeared on the National Do Not Call Registry or by request. The Bureau determined that numbers added by request, or numbers that should be added to a firm-specific do-not-call list, were identified with an "I." Numbers added because they appear on the National Do Not Call Registry were identified with an "N." However, the Bureau's investigation further revealed that if a number appeared in the EJ "do not call database" with the identifier "N," meaning it would be subject to the exceptions within FINRA Rule 3230, upon request of the person called to be placed on the EJ firm-specific do-not-call list, this identifier would not be appropriately changed from "N" to "I" indicating no telemarketing calls were to be placed to that number. Further, according to EJ, since 2007 only two (2) New Hampshire numbers have been added to the EJ "do not call database" by request. EJ's failure to properly place telephone numbers on the EJ firm-specific do-not-call list, or at the very least identify such numbers appropriately, indicates a clear violation of FINRA 3230(a)(2) and (d)(3). More importantly, however, this failure calls into question all supplemental information provided by EJ regarding FINRA Rule 3230 compliance as numbers in EJ's single "do-not-call database" identified with an "N" may be incorrectly identified leading to the misapplication of FINRA Rule 3230 exceptions when many of those telephone numbers may be subject to a complete telemarketing prohibition.
33. A single do-not-call database, similar to the one utilized by EJ, is confusing and problematic for several reasons. First, numbers that appear on both the National Do Not Call Registry and the EJ firm-specific do-not-call list may only appear once in such a database. This is confusing when the "N" or "I" designation changes or when an individual removes his or her telephone number from only one of the do-not-call lists because the nature and extent of a telemarketing prohibition for that particular number may no longer be properly represented and thus not appropriately complied with. Second, it is unclear to the Bureau that the "N" or "I" designations effect the information provided to an EJ financial advisor if that financial advisor has chosen to check a particular number against the single EJ "do not call database." This is problematic because telephone numbers found in the database with an "N" designation may be subject to FINRA Rule 3230 exceptions while telephone numbers in the database with the "I" designation are subject to a complete telemarketing prohibition. Finally, EJ does not employ an automated system for checking every telephone number being called for telemarketing purposes against applicable do-not-call lists. This is problematic because regardless of the software or other mechanism in place to screen telephone numbers, if a financial advisor is able to

make telemarketing calls to telephone numbers that should not be called for telemarketing purposes, there is always a possibility of non-compliance.

34. Based generally on the nature and scale of erroneous data previously provided by EJ, on December 19, 2012, the Bureau sent EJ another supplemental document request tailored specifically to determine the adequacy of EJ's record keeping procedures as they pertain to telemarketing practices. Upon review of the information provided by EJ in response to the Bureau's request, the Bureau determined that EJ's record keeping was not only inadequate but that EJ would be unable to justify the vast majority of violative telemarketing calls due to a lack of accurate and adequate supporting documentation.
35. First, EJ was unable to provide accurate records regarding whether certain telephone numbers were registered on the National Do Not Call Registry prior to receiving a telemarketing call from an EJ financial advisor. In fact, as mentioned above, many of the telephone numbers EJ had previously claimed were not registered on the National Do Not Call Registry, according to the Consumer Sentinel Network, had been registered for several years prior to receiving a telemarketing call from EJ.
36. Second, EJ was unable to provide any information regarding the past telemarketing activities of EJ financial advisors that had since left the firm. Further, EJ was unable to provide documentation regarding certain telemarketing calls because the EJ financial advisors making the calls had chosen not to log the call at all. As outlined above, since the burden rests with EJ to present sufficient evidence to justify any FINRA Rule 3230(b) exception being asserted, insufficient evidence exists regarding such calls sufficient to support such an exception. Thus, violative calls made without supporting documentation are violations of FINRA Rule 3230 and thus violations of New Hampshire securities law. More importantly, however, the fact that EJ is unable to produce any documentary evidence supporting FINRA Rule 3230 compliance related to former EJ financial advisors indicates a clear record keeping issue. Without ready access to the records of each financial advisor's telemarketing activities, current or former, EJ cannot easily claim FINRA Rule 3230 compliance.
37. Finally, upon further review of the information EJ was able to provide in response to the Bureau's tailored request, it became apparent to the Bureau that the record keeping practices of EJ related to the telemarketing activities of EJ financial advisors are out of compliance. EJ has claimed that certain calls made fell within the FINRA Rule 3230(b)(1) preexisting business relationship exception as the recipient of these calls had requested information from the EJ financial advisor making the call prior to the call being placed. When the Bureau spoke to some of these individuals called by EJ, several claimed they had never requested such information. EJ claimed other calls fell within the FINRA

3230(b)(3) personal relationship exception, as a personal relationship had been established prior to the EJ financial advisor making the call. For some of these calls, EJ even provided notes generated by the financial advisor purportedly evidencing such a relationship had been formed. When the Bureau spoke with some of these individuals called by EJ, several claimed they had not previously met or spoken with the EJ financial advisor who called and did not believe that any type of relationship had been formed. Further, certain individuals who received a call from EJ claimed that an EJ financial advisor had visited their homes and were told that the individual was not interested and to go away. Several of these individuals, despite informing the EJ financial advisor of a desire to be left alone, received a follow-up phone call from the advisor.

38. However, despite EJ's failure to adequately record the circumstances of the above calls, another compliance failure arose during the Bureau's review of the data provided by EJ. Several individuals who received a telemarketing call from EJ and who were subsequently contacted by the Bureau explained that they had told the EJ financial advisor they spoke with that they did not wish to be contacted again, yet explained that they nonetheless received subsequent calls from an EJ financial advisor. Under FINRA Rule 3230(a)(2) and (d)(3), the telephone numbers of these individuals should have been added to the EJ firm-specific do-not call list. Clearly they were not. This is further supported by EJ's assertion that only two (2) New Hampshire telephone numbers have been added to the EJ firm-specific do-not-call list since 2007.

Inadequate Training of New EJ Agents

39. EJ's responses to the Bureau's various requests indicate that EJ places the primary burden of compliance with applicable telemarketing rules on the individual EJ financial advisor. Regardless of whether this is the proper compliance hierarchy, an EJ financial advisor's understanding of applicable telemarketing rules and restrictions is derived, at least in part, from the training he or she receives from EJ.
40. To become an EJ financial advisor, EJ requires that prospective financial advisors attend a training center located in either St. Louis, Missouri, or Tempe, Arizona.
41. For a prospective EJ financial advisor to complete his or her training and be hired by EJ, the prospective financial advisor must, in addition to other requirements, accumulate three hundred (300) prospective clients (or clients with whom the prospective financial advisor has no preexisting business relationship) and obtain "permission to call" each. Until a prospective EJ financial advisor accumulates the required three hundred (300) prospective clients and "permission to call" each prospective client, they cannot complete the required training. "Permission to call" in this context, according to EJ's general partner responsible for delivery of new EJ financial advisor training, means verbal permission and not written

express permission as required by FINRA Rule 3230(b)(2). Further, according to the same EJ general partner, EJ agents are not required to check a number versus applicable do not call lists if verbal “permission to call” has been obtained regardless of the fact that EJ financial advisors are not required to keep any type of document evidencing such permission and that such permission does not, by itself, meet the requirements of any FINRA Rule 3230 exception.

42. Training materials distributed to EJ financial advisors state, “[a]s a firm, Edward Jones has decided to get permission to call *all* prospective clients, instead of trying to distinguish between people on the ‘Do-Not Call’ list and those who are not on the list. We feel this is the right thing to do.” (Exhibit 1) (emphasis added) Further, EJ training materials distributed to new EJ financial advisors essentially outline an honor system for checking whether numbers to be called by EJ agents for telemarketing purposes are on the National Do Not Call Registry, the EJ firm-specific do-not-call list, or any state-sponsored do-not-call list. EJ training materials even preface the procedures for checking numbers against applicable do-not-call lists with the statement “[i]f for some reason you want to check a number versus the No Call List, you can access an automated No Call List database,” indicating that checking numbers to be called is permissive and not mandatory. (Exhibit 2)
43. Information and guidance related to the making of “sales calls” is available to EJ financial advisors and financial advisors in training but, according to EJ’s own training materials, “[i]f you are asking for permission and getting a phone number from the prospective client, this should not be an issue. *The popularity of the no call lists really emphasizes the importance of asking for a phone number on your face-to-face contacts.*” (Exhibit 2) (emphasis added) The materials further explain that “[t]here are added considerations for those of you from New Jersey or California. In addition to asking for permission, you are also required to get the signature of the prospective client, indicating their consent.” This tactic, as employed by EJ, flies in the face of rule-making history in which the FTC justified a “personal relationship” exception to telemarketing restrictions by outlining such an exception’s narrow application and likely infrequent use. *See Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991; Final Rule, 68 Fed. Reg. 44,149 (2003) (to be codified at 47 CFR pts. 64 and 68) (effective Aug. 25, 2003).*
44. EJ also provides both its financial advisors and prospective financial advisors with recommended responses to scenarios that, according to EJ, may arise during telemarketing calls. For example, in response to “[d]on’t call me, I’m on the Do Not Call List,” EJ recommends the financial advisor “let them know you will respect their decision” and that the financial advisor “[t]ell them when you see something you think they may be interested in, *you’ll be sure to stop by.*” (Exhibit 3) (emphasis added) In response to “[p]ut me on the

Do Not Call list,” EJ recommends the financial advisor “[l]et them know you will respect their decision and will put them on Edward Jones Do Not Call list” and that the financial advisor “tell them when you see something you think they may be interested in, *you’ll be sure to stop by.*” (Exhibit 3) (emphasis added) Despite the flaws in EJ’s maintenance of its firm-specific do-not-call list, and regardless of the fact that EJ does not properly maintain a firm-specific do-not-call list, EJ also encourages financial advisors to visit the homes of prospective clients despite the prospective client having clearly expressed a desire not to be contacted.

45. Upon completion of EJ’s new financial advisor training, EJ financial advisors are expected to make twenty-five (25) new contacts per day and one hundred twenty-five (125) per week. Additionally, new EJ financial advisors are provided with materials that state that if the advisor fails to maintain sufficient contacts or fails to reach certain levels of cumulative commissions, the EJ financial advisor will be put on a form of probation or possibly terminated. These quotas present possible compliance issues in a state like New Hampshire where per capita registrations on the National Do Not Call Registry are the highest in the nation.
46. Based on the above information, the Bureau has determined there is a connection between the questionable training of EJ financial advisors and non-compliance with applicable telemarketing restrictions. Further, the pressure placed on new EJ financial advisors to make new contacts and to generate new business only enhances the likelihood of non-compliance. More importantly, however, the Bureau has determined that these factors indicate a direct correlation between EJ’s training of new financial advisors and the lack of a properly maintained EJ firm-specific do-not-call list. Without proper training and with improper motivation, EJ financial advisors are not incentivized nor are they inclined to add telephone numbers to a firm-specific do-not-call list that would wholly exclude those numbers from being contacted for telemarketing purposes.

Inadequate Supervision of EJ Agents Engaged in Telemarketing

47. In conjunction with training, N.H. RSA 421-B:10, I(b)(10) permits the secretary of state to take action against any broker-dealer that does not reasonably supervise its agents. In addition, FINRA Rule 3010(b)(1) requires that EJ “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.” (emphasis added) FINRA Rule 3010(c)(1) requires that EJ “conduct a review, at least annually, of the businesses in which it engages, *which review shall be reasonably designed to assist in detecting and preventing*

violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.” (emphasis added)

48. Although not outlined in EJ’s training materials, EJ’s supervisory procedures as they pertain to telemarketing appear to be not only insufficient but almost nonexistent. In fact, of approximately 1700 pages of EJ supervisory procedures, two (2) are dedicated to telephone solicitations and no call lists. The procedures contained within these two (2) pages state that the responsibility for compliance in the area of telephone solicitations and no call lists rests with the Office of Regulatory Counsel.
49. Regarding the adding of telephone numbers to the EJ firm-specific do-not-call list, EJ’s supervisory procedures state “[b]ranches *may* send a [request] for individuals wishing to be placed on the firm’s internal no call list.” (emphasis added) FINRA Rule 3230(a)(2) *requires* a broker-dealer to add to the broker-dealer’s firm-specific do-not-call list the telephone number of any individual wishing not to be contacted. This provision of FINRA Rule 3230 is not permissive, as EJ’s supervisory procedures imply, but mandatory.
50. EJ’s supervisory procedures further state that, “[a]n associate in the Office of Regulatory Counsel updates the firm’s internal no call list on a weekly basis.” According to EJ, only two (2) New Hampshire telephone numbers have been added to the EJ firm-specific do-not-call list since 2007. As these supervisory procedures claim EJ’s firm-specific do-not-call list is updated weekly, the EJ Office of Regulatory Counsel should have flagged the fact that very few if any New Hampshire branch offices were submitting such requests and had not for many years despite EJ’s high volume of telemarketing calls.
51. EJ’s supervisory procedures contain no procedure concerning review of the telemarketing activities of New Hampshire EJ branch office. The only mechanism for review states that “[o]n a quarterly basis the principal responsible for the Office of Regulatory Counsel reviews a minimum of 10 requests received from individuals requesting to be placed on the firm’s ‘no call’ list.” However, if no requests are being submitted to the Office of Regulatory Counsel by EJ financial advisors, there are no such requests available for review. This overall supervisory system is not reasonably designed to achieve compliance with applicable telemarketing rules and restrictions.
52. The failure of EJ to establish supervisory procedures sufficient to determine compliance with applicable telemarketing rules ultimately ignores a prevalent problem at EJ. EJ financial advisors conduct telemarketing activities with insufficient training to provide them a clear understanding of applicable restrictions. In addition, these same financial

advisors are left without proper supervision to root out and remedy problematic behavior. Finally, inadequate record keeping aggravates the problem when only inadequate documentation exists to attempt to establish compliance in the face of allegations of violative telemarketing calls.

STATEMENTS OF LAW

- II. The staff of the Bureau hereby petitions the Director and makes the following statements of law under the New Hampshire Revised Statutes Annotated, RSA 421-B, and regulations thereunder:
1. EJ is a “person” within the meaning of N.H. RSA 421-B:2, XVI and is a “broker-dealer” within the meaning of RSA 421-B:2, III and is a registered member of FINRA.
 2. FINRA Rule 3230(a)(2) and (3) state that “no member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to . . . *[a]ny person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member;* or . . . *[a]ny person who has registered his or her telephone number on the Federal Trade Commission’s national do-not-call registry.”* (emphasis added) FINRA Rule 3230(m)(17) defines the term “person” as “any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.”
 3. FINRA Rule 3230(a)(2) states, specifically, that “no member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to . . . *[a]ny person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member. . . .*” Thus, FINRA Rule 3230(a)(2) requires that FINRA members keep a distinct firm-specific do-not-call list and place on that list individuals called who request not to be contacted again. EJ is subject to this provision, but despite this requirement, according to EJ, only two (2) New Hampshire numbers have been added to EJ’s firm-specific do-not-call list since 2007. Under FCC and FINRA Rules, this means that, since 2007, only two (2) New Hampshire residents contacted by EJ for telemarketing purposes have asked not to be called again. This assertion is directly contrary to facts obtained from individuals with whom the Bureau spoke personally. Several of these individuals explained that they received repeated calls from EJ financial advisors despite having told the EJ financial advisors that they wished not to be contacted again. Viewed more broadly, according to EJ, the firm has only added six hundred sixty-five (665) numbers, in total from across the country since 2007, to its firm-specific do-not-call list, despite the fact that telemarketing is a core component of the EJ business model. Under FINRA Rule 3230, there are no exceptions to the prohibition on

calling numbers on a FINRA member's firm-specific do-not-call list for telemarketing purposes and EJ's failure to appropriately add telephone numbers to its firm-specific do-not-call list upon request is a violation of FINRA Rule 3230.

4. FINRA Rule 3230(a)(3) explains that "no member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to . . . [a]ny person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry." However, there are three possible exceptions to this restriction under subsection of (b) of the rule:

A member making telephone solicitations will not be liable for violating paragraph (a)(3) if: 1) The member has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member; 2) The member has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or 3) The associated person making the call has a personal relationship with the recipient of the call.

Generally, EJ has not relied on the prior written express permission or the preexisting business relationship exception in attempting to justify its telemarketing activities.

5. The term "personal relationship," as used in FINRA Rule 3230(a), is defined in FINRA Rule 3230(m)(18) as "any family member, friend, or acquaintance of the person associated with a member making an outbound telephone call." FCC rule-making history clarifies this definition by highlighting the following:

In determining whether a telemarketer is considered a "friend" or "acquaintance" of a consumer, we will look at, among other things, whether a reasonable consumer would expect calls from such a person because they have a close or, at least, firsthand relationship. *If a complaining consumer were to indicate that a relationship is not sufficiently personal for the consumer to have expected a call from the marketer, we would be much less likely to find that the personal relationship exemption is applicable.* 68 Fed. Reg. 44,149 (2003) (to be codified at 47 CFR pts. 64 and 68) (effective Aug. 25, 2003) (emphasis added).

The FCC goes on to explain that the personal relationship exception should, by its nature, be limited in use and thus limited in its impact on consumers.

While we do not adopt a specific cap on the number of calls that a marketer may make under this exemption, *we underscore that the limited nature of the exemption creates a strong presumption against those marketers who make more than a limited number of calls per day.* Therefore, the two most common sources of consumer frustration associated with telephone solicitations—high volume and unexpected solicitations—are not likely present when such calls are limited to persons with whom the marketer has a personal relationship. *Id.* (emphasis added)

EJ is subject to this provision, but EJ's use of the personal relationship exception is not limited and not limited in its impact on consumers. EJ has attempted to use the personal relationship exception to justify the vast majority of its questionable telemarketing practices. EJ even trains its new financial advisors to interact with all prospective clients in such a way that EJ, if ultimately necessary, may superficially justify every potentially violative telemarketing call made by its financial advisors by claiming the existence of a "personal relationship." EJ's conduct in this regard as well as EJ's subjective approach to determining what constitutes a "personal relationship" fundamentally violates not only the spirit and letter of FCC, FTC, and FINRA rules and regulations regarding telemarketing, but also undermines the protections these rules and regulations provide consumers across the country.

6. FINRA Rule 3010(b)(1) requires that EJ "establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to *supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD.*" (emphasis added) FINRA Rule 3010(c)(1) requires that EJ "conduct a review, at least annually, of the businesses in which it engages, *which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules.* Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses." (emphasis added) EJ is subject to these provisions but has failed to establish supervisory procedures that are reasonably designed to achieve compliance and prevent violations of applicable telemarketing rules and restrictions. In fact, EJ's supervisory procedures have essentially created an honor system for compliance leaving EJ financial advisors responsible for compliance in the face of contact and commission quotas but without sufficient supervision to ensure they do. Further, despite clear indications of non-compliance with applicable telemarketing rules, EJ has not only failed to uncover violations but has not substantially modified its compliance or supervisory procedures to address potentially problematic telemarketing practices.

7. Pursuant to N.H. RSA 421-B:8, X, persons licensed under this chapter to conduct securities business shall abide by the rules of the SEC, National Association of Securities Dealers (NASD, now FINRA), 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. Further, N.H. RSA 421-B:11, I-b(c) and N.H. RSA 421-B:17, V state that “[i]n any judicial or administrative proceeding under this chapter, *the burden of proving an exemption, preemption or an exception from a definition is upon the person claiming it.*” (emphasis added) EJ is subject to these provisions and is liable under New Hampshire securities law for violations of applicable FINRA Rules and has the burden of proving any applicable exception to those rules. According to documents produced by EJ and the Bureau’s supplemental analysis of the information provided, EJ has placed over twenty thousand (20,000) telemarketing or sales calls to New Hampshire residents whose numbers appear on the National Do Not Call Registry. As EJ has produced only limited and often erroneous evidence that any of these calls fall within FINRA Rule 3230(b) exceptions, EJ is unable to establish that the vast majority of these calls are not violative. Further, EJ’s failure to maintain adequate records of the telemarketing activities of its agents prevents EJ from meeting its burden of proving violative calls meet FINRA Rule 3230 exceptions. Each call placed to a New Hampshire number appearing on the National Do Not Call Registry that does not fall within one of the FINRA Rule 3230 exceptions is a violation of N.H. RSA 421-B:8, X and, thus, is subject to an administrative fine of \$2,500 pursuant to N.H. RSA 421-B:26, III. Further, EJ is subject to an administrative fine for the violative acts of its agents in the amount of \$2,500 per violation pursuant to N.H. RSA 421-B:26, III-a.
8. N.H. RSA 421-B:10, I(a) and (b)(2) provide that the secretary of state may by order deny, suspend, or revoke any license or application, or bar any person from licensure if he finds that such an order is in the public good and that the broker-dealer has willfully violated or failed to comply with any provision of this title or a predecessor law, or of any other state’s or Canadian province’s securities laws, or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any of such statutes, or any order thereunder of which the broker-dealer has notice and is subject. EJ is subject to this provision and has willfully established training and telemarketing procedures that violate the protections established by FINRA Rule 3230 pursuant to SEC oversight as established by the 1938 Maloney Act amendments to the Securities Exchange Act of 1934.
9. N.H. RSA 421-B:10, I(b)(10) provides that the secretary of state may by order deny, suspend, or revoke any license or application, or bar any person from licensure if he finds that a broker-dealer has failed to reasonably supervise its agents. N.H. RSA 421-B:10, III

provides that the secretary of state may issue an order requiring the person to whom any license has been granted to show cause why the license should not be revoked. The order shall be calculated to give reasonable notice of the time and place for the revocation hearing, and shall state the reasons for the issuance of the order. The secretary of state may by order summarily postpone or suspend any license pending final determination of any order to show cause, or of any other proceeding under this section, provided he finds that the public interest would be irreparably harmed by delay in issuing such order. Upon the entry of the order, the secretary of state shall promptly notify the applicant or licensee, as well as the employer or prospective employer if the applicant or licensee is an agent, that it has been entered and of the reasons for the order and that within 10 days after the receipt of a written request the matter will be set down for hearing. If the person to whom an order to show cause is issued fails to request a hearing within 30 days of receipt of such order, and none is ordered by the secretary of state, then such person shall be deemed in default, and the order shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the secretary of state, for good cause shown. If a hearing is requested or ordered, the secretary of state, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination. EJ is subject to these provisions. Further, EJ, through its failure to maintain adequate supervisory and compliance procedures, has failed to reasonably supervise the telemarketing activities of its financial advisors across all fifty-eight (58) New Hampshire EJ branch offices. EJ's conduct in this regard is subject to a fine of \$2,500 per violation pursuant to N.H. RSA 421-B:10, VI.

10. Pursuant to N.H. RSA 421-B:23, whenever it appears to the secretary of state that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter, the secretary of state shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of this chapter. EJ is subject to this provision yet maintains insufficient training and supervisory procedures related to telemarketing resulting in repeated violations of N.H. RSA 421-B. Further, the training materials EJ does provide to its financial advisors (in addition to their insufficiency) contravene FINRA telemarketing restrictions. These training materials provide guidance in cases of telemarketing calls that would not occur were proper telemarketing procedures implemented and adhered to. As such, EJ is subject to this provision and, in addition to administrative fines for such violations as permitted by N.H. RSA 421-B:26, III, EJ should be ordered to cease and desist from further violations of N.H. RSA 421-B.
11. Pursuant to N.H. RSA 421-B:22, IV, in any investigation to determine whether any person has violated or is about to violate this title or any rule or order under this title, upon the secretary of state's prevailing at hearing, or the person charged with the violation being

found in default, or pursuant to a consent order issued by the secretary of state, the secretary of state shall be entitled to recover the costs of the investigation, and any related proceedings, including reasonable attorney's fees, in addition to any other penalty provided for under this chapter. EJ is subject to this provision.

RELIEF REQUESTED

- III. The staff of the Bureau makes the following requests for relief in the above referenced matter as permitted under the Act:
1. Find as fact the allegations contained in Section I above of this petition.
 2. Make conclusions of law as stated in Section II of this petition relative to the allegations contained in Section I of this petition.
 3. Order EJ to cease and desist from further violations of N.H. RSA 421-B pursuant to N.H. RSA 421-B:23.
 4. Order EJ to show cause why EJ's broker-dealer licensure in New Hampshire should not be suspended for a period of time to be determined by the hearing officer, pursuant to N.H. RSA 421-B:10, I and III.
 5. Order EJ to pay and administrative fine of up to three million dollars (\$3,000,000) for violations of N.H. RSA 421-B alleged herein, in accordance with N.H. RSA 421-B:10, VI, and N.H. RSA 421-B:26, III.
 6. Order EJ to pay the Bureau's costs of investigation at an amount to be determined by the hearing officer pursuant to N.H. RSA 421-B:22, IV.
 7. Order EJ to comply with undertakings for compliance and report back to the Bureau with changes sufficient to establish compliance.
 8. Take such other actions as necessary for the protection of New Hampshire investors and enforcement of N.H. RSA 421-B.

RIGHT TO AMEND

The Bureau staff reserves the right to amend this Petition for Relief and to request that the Director of Securities take additional administrative action. Nothing herein shall preclude the Staff

from bringing additional enforcement action under this N.H. RSA 421-B or the regulations thereunder.

Respectfully submitted by:



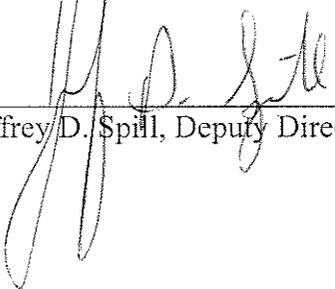
Adrian S. LaRochelle, Staff Attorney

4/11/13
Date



Eric A. Forcier, Staff Attorney

4/11/13
Date



Jeffrey D. Spill, Deputy Director

4/11/13
Date

Exhibit 1

Edward Jones Policy

As a firm, Edward Jones has decided to get permission to call all prospective clients, instead of trying to distinguish between people on the "Do-Not Call" list and those who are not on the list.

We feel this is the right thing to do.

When we build our first contact presentation this afternoon, I will give you specific words to use when asking for permission.

Permission to Call

In order to comply with FTC, FCC, and NASD rules about the national "Do Not Call" list, it is critical that you adhere to the following guidelines:

- ◆ These rules apply **only** to residences, **not** businesses.
- ◆ In most states, calls may be made only between the hours of 8:00 a.m. and 9:00 p.m. based on the time at the residence receiving the call.
- ◆ Calls may be made to existing clients whose names appear on the no-call list if there has been activity in the account during the previous 18 months. If there has been no activity during the previous 18 months, only calls of a service nature may be made.
- ◆ Calls to prospective clients whose names appear on the no-call list may be made if the following requirements are met:
 1. You have a personal firsthand relationship with the person, meaning you have met them face-to-face at least once.
 2. Based on conversation between you and the person, the person would reasonably expect a call from you.

At the state level, there are some variations in the calling hours. See JonesLink, Compliance, and State-Specific Requirements for more about your state.

Exhibit 2

No Call List

Before you get on the phone, we need to talk about the "No Call" list. As we discussed in Know Your Customer, the system will compare prospective client "home" and "other" phone numbers to our No Call List database.

If the phone number is on the No Call List database and if "Received permission to call?" is equal to NO, the words "Do not call" will display on JonesLink screens and reports in place of the phone number. "Do not call" will also display on NLP and LISTMGR reports.

If for some reason you want to check a number versus the No Call List, you can access an automated No Call List database. This list contains the firm's internal No Call list, the national No Call list and the state sponsored No Call lists.

NOCALL or VNCL

To access the No Call List:

Command

- ◆ Simply use the new **NOCALL** or **VNCL** command in the Communication System to determine if a prospective client appears on the No Call List.
- ◆ You will need to enter the 10-digit phone number and press **<Enter>**. The system will then display a message at the bottom of the screen advising that you may or may not make sales calls to this individual. You may not contact any prospective client appearing on the No Call List unless they have given you permission on one of your contacts.

To add a Name to the No Call List

If a prospective client requests not to be contacted in the future, please send a wire to userid **NOCALL** with the individual's 10-digit phone number and state code.

JonesLink- Rules Concerning Sales Calls

Information on the No Call list can be found on JonesLink in the Compliance Site: Compliance → Rules and Policies → Sales Calls. Please be sure to read it.

If you are asking for permission and getting a phone number from the prospective client, this should not be an issue. The popularity of the no call lists really emphasizes the importance of asking for a phone number on your face-to-face contacts.

Exhibit 3

On top of that, you can also go on to stress the firm's asset allocation philosophy, the many services you can provide, and the convenience of doing business with a broker who has a nearby office. Stress the value you can add as a Jones Financial Advisor.

15. I am going to wait for interest rates to go up or the market to rebound.

Let your prospective client know you understand their concern. However, stress that the best time to buy is when you have the money available.

Interest rates:

- ◆ Tell them you are not suggesting they lock up all of their money in this one investment. You believe this is a good place for some of their money.
- ◆ Ask them if X% was the worst rate they made over the next X years, would that be so bad?
- ◆ If you are face-to-face, use your McKenzie Tool Kit to show them the History of Interest Rates.

Market:

- ◆ Historically the market has been up more times than it has been down.
- ◆ Emphasize our philosophy of buying quality investments and holding for the long-term.

16. Don't call me, I'm on the Do Not Call list.

- ◆ Let them know you will respect their decision.
- ◆ Tell them when you see something you think they may be interested in, you'll be sure to stop by.

17. Put me on the Do Not Call list.

- ◆ Let them know you will respect their decision and will put them on Edward Jones Do Not Call list.
- ◆ Tell them when you see something you think they may be interested in, you'll be sure to stop by.