FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015043319901

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: NEXT Financial Group, Inc., Respondent
[CRD No. 46214]

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, NEXT Financial Group, Inc. ("NEXT" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against NEXT alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

NEXT has been a FINRA member since 1999 and is headquartered in Houston, Texas. The Firm is a general securities broker-dealer and currently has approximately 612 registered persons and 411 registered branch locations.

RELEVANT DISCIPLINARY HISTORY

On May 28, 2014, FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2012030727301), in which NEXT was censured and fined $88,750 for failure to timely update representatives' Form U4 and Form U5 filings. NEXT also permitted its former General Counsel to directly supervise registered persons without principal registration in violation of NASD Membership and Registration Rule 1021. NEXT also violated NASD Conduct Rule 3010 by failing to establish and maintain a supervisory system, including written procedures, that was reasonably designed to prevent and detect unsuitable sales of structured products to retail customers.

On November 22, 2011, FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2009019063801), in which NEXT was censured, fined $50,000 and ordered to pay $2,000,000 in restitution to investors for violations of FINRA Rule 2010 and NASD Rules 2110, 2310 and 3010 arising out of its sales of certain private offerings and related supervisory deficiencies.

On November 10, 2010 ("2010 Settlement"), FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2009016272902), in which NEXT was censured, fined $400,000 and ordered to pay $103,179.84, plus interest, in restitution to customers. The primary violation concerned the Firm's failure to detect excessive trading by three of its registered representatives resulting in unnecessary sales charges totaling over $368,000. The Firm failed to use exception reports or any other reasonably designed system for detecting improper and excessive trading. In addition, the Firm did not have a reasonably designed branch audit program in place and failed to reasonably supervise variable annuity transactions.

On June 22, 2009 ("2009 Settlement"), FINRA issued a Letter of Acceptance, Waiver and Consent (No. 2006007058101), in which NEXT was censured and fined $1,000,000 for violations of NASD Rules 3010(a), 3010(b), 3010(e), 2440, IM-2440, 3110, 3012 and Section 17(f)(2) of the Exchange Act and Rule 17a-3(a)(6) thereunder. The Firm consented to findings that primarily involved failures to supervise its approximately 130 Office of Supervisory Jurisdiction ("OSJ") branch managers. Because of the supervisory failures, the Firm failed to detect churning of customer accounts by an OSJ manager and representative as well as excessive markups and markdowns on corporate bond trades.

OVERVIEW

In response to prior disciplinary actions, the Firm adopted new measures in an attempt to correct prior deficiencies. The new procedures, however, employed flawed methodologies and allowed misconduct to occur. The present matter involves various supervisory and other violations during the period August 2012 through September 2015 that arose in part from the Firm's inadequate response to prior FINRA disciplinary actions. The primary violation occurred between May 2014 and September 2015 when the Firm used faulty exception reports to detect excessive trading, failed to perform any review of those reports for a 14-month period, and allowed excessive trading to continue due to inadequate oversight.

The failure by some compliance personnel to fulfill their job duties was not detected due to an absence of procedures requiring follow-up on delegated supervisory tasks. These supervisory failures allowed a registered representative to excessively trade a senior investor's accounts, resulting in losses of approximately $391,893.

The Firm had similar deficiencies between August 2012 and April 2014 concerning its supervision of variable annuities ("VAs"). The Firm failed to have a surveillance system that monitored for problematic rates of exchange regarding VAs. In addition, the Firm also had inadequate exception reports, and the Firm's procedures ignored risks associated with multi-share class VAs.

The Firm also failed to reasonably monitor the use by its registered representatives of consolidated reports, did not take steps to ensure that information on its website was accurate regarding the Firm's Financial Partners, and did not reasonably supervise non-cash compensation received by its registered representatives.

FACTS AND VIOLATIVE CONDUCT

1. Failure to Implement a System Reasonably Designed to Detect Excessive Trading

From May 1, 2014 through September 30, 2015, the Firm failed to establish, maintain, and implement a supervisory system reasonably designed to detect and address excessively traded accounts. The supervisory failings resulted from inadequate corrective action taken by the Firm in response to prior FINRA disciplinary actions which included a failure to use exception reports or any other reasonably designed system to detect excessive trading. In addition, the Firm failed to identify excessive trading due to lack of clarity regarding supervisory responsibilities.

Firm Responded to Prior Disciplinary Actions by Utilizing Faulty Exception Reports

In the wake of prior supervisory failures identified in the 2009 and 2010 Settlements, the Firm began using exception reports to monitor for excessive trading. The exception reports used by the Firm, however, had inappropriate parameters and were not reasonably designed to detect active trading. For instance, one calculation used to gauge active trading is the turnover rate which is the number of times an account turns over in a specified period. Here, rather than calculating the turnover rate on a rolling basis, the Firm's exception reports used a year-to-date calculation extrapolated for a full year. As a result, an account that had been excessively traded for the last six months of the prior year, might not appear as an excessively traded account once a new year began.

Similarly, the Firm tracked year-to-date trade values to determine the volume of transactions occurring in an account. This calculation was also flawed, because the Firm combined buys and sells, resulting in an understated ratio.

Another measurement commonly used to evaluate active trading is the cost-to-equity ratio. Generally, this is the value of the account compared to the commissions charged and is reflected as a percentage. The ratio is used to determine the percentage of return an account would need to achieve to break even, considering the commissions charged. The Firm's exception reports were calculating the cost-to-equity ratio using a monthly equity value, rather than averaging the equity over a specified period of time. The resulting cost-to-equity ratio was often deceptively low due to the system used for the calculation.

Furthermore, in determining the commissions to use for the cost-to-equity ratio, the Firm included only commission figures and no markups and markdowns which were additional costs that the customers incurred in connection with bond trades. Consequently, the actual costs could be higher than reflected in the Firm's exception reports.

The Firm's design of the exception reports resulted in the possibility that the exception reports would not identify excessive trading.

The Firm Continued its Failure to Monitor Creation and Review of Documentation Used to Supervise Excessive Trading

In the 2009 Settlement, the Firm was relying on delivery of Purchase & Sales blotters to the Regional Managers to review for excessive trading. At that time, many of the blotters were not delivered, resulting in no supervisory review of excessive trading for certain registered representatives. In 2014 and 2015, similar problems arose with the new exception reports intended to address active trading. The Surveillance Department was tasked with creating and reviewing exception reports related to excessive trading. From May 2014 through September 2014, the Surveillance Department generated the exception reports, but never reviewed the reports. Subsequently, from October 2014 through September 2015, the Surveillance Department neither created nor reviewed the reports. Due to a lack of oversight, the Compliance Department was unaware that the reports were not being created or reviewed. Only during the FINRA cycle exam in September 2015 did the Firm identify the problem and begin to bring its reports current.

The Firm Failed to Detect Excessive Trading due to its Unreasonably Designed Procedures

Between January 1, 2014 and December 31, 2015, a NEXT Representative ("Representative 1") engaged in excessive trading in the accounts of a Customer. The time period of the excessive trading included the entire 14 months that the Surveillance Department failed to review the active trading exception reports. The Customer was an investor who routinely accepted Representative 1's recommendations. During the two-year period, Representative 1's trading resulted in an average turnover rate of 9.84 and, an average cost-to-equity ratio of 23.2% (converted to a percentage) in an IRA account of the Customer. In a second account, the trading resulted in an average turnover rate of 5.3 and an average cost-to-equity ratio of 20.02% (converted to a percentage). The trading generated total gross commissions of $147,718. During this same period, the Customer's accounts experienced losses of $391,893.

The Customer was in her sixties, had an investment objective to focus on generating income, had annual income of $60,000, and had a conservative to moderate risk tolerance. As reflected by the cost-to-equity ratios, the IRA account would need to return 23.2% to break even, and the second account would need to return 20.02% to avoid losses. Given the Customer's age and conservative risk tolerance, requiring a minimum return of 20 to 23% was unsuitable for these accounts. NEXT, however, failed to address the activity until 2016 due to flaws in its supervisory system.

Firm Procedures Continued to Lack Clarity Regarding Supervision and Escalation of Excessive Trading

Representative 1's excessive trading activity was not reasonably supervised by the Firm due to the lack of exception report creation, lack of exception report review, and lack of clarity regarding escalation. In July 2013, Representative 1's direct supervisor first raised concerns with Compliance regarding trading by Representative 1. Compliance tasked a manager with conducting a branch audit of Representative 1's branch. Despite repeated inquiries from Representative 1's direct supervisor regarding the trading review, the branch audit was not completed until over a year later, in October 2014. In response to the audit question "Are there an unusually large number of transactions in a single account?" the auditor answered "Yes," identifying four accounts, including an account for the Customer. The auditor further noted that the four accounts represented 48% of all trades entered by Representative 1 in 2014. The audit results, however, were never escalated. There is no evidence that anyone followed up to ensure the audit was completed or reviewed the results. As a consequence, Representative 1 continued to excessively trade the Customer's account until February 2016 without any meaningful response from the Firm. In February of 2016, the Customer complained to the Firm. As a result of the investigation that occurred in connection with the Customer's complaint, the Firm terminated Representative 1 and settled with the Customer for $386,646.

The supervisory violations in the 2009 Settlement resulted in part from lack of clarity over the person responsible for supervising a registered representative engaged in excessive trading. Similarly, in 2014 and 2015, the Firm lacked clarity regarding the person responsible for responding to Representative 1's excessive trading. If the Firm had instituted reasonably designed procedures to ensure branch audits were completed and findings of excessive trading acted upon, the Firm could have prevented the excessive trading by Representative 1 in the Customer's account.

As a result of the foregoing conduct, NEXT violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), and FINRA Rule 2010.

2. The Firm's Systemic Failures in the Supervision of VAs

The Firm earned over $219 million, or 27% of its revenue from the sale of VAs during the period July 1, 2012 through April 30, 2014. Although VA sales accounted for a significant percentage of the Firm's overall business, the Firm failed to implement a supervisory system and procedures reasonably designed to ensure appropriate suitability determinations in its VA sales, including L-share contracts.

FINRA made findings in the 2010 Settlement that NEXT did not provide reasonable supervision of VA transactions. In particular, the Firm could not provide evidence of principal review for 27 out of 125 variable annuity transactions. Despite the deficiencies found by FINRA in 2010, NEXT's supervision of VA sales continued to be deficient.

Failure to Implement an Adequate Supervisory System and Procedures for VA Exchange Transactions

From August 13, 2012 through April 30, 2014, the Firm failed to implement a reasonably designed supervisory system and procedures to monitor VA exchanges. FINRA Rule 2330(d) requires firms to:

> "(1) implement surveillance procedures to determine if any of the member's associated persons have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchange evidence conduct inconsistent with the applicable provisions of this Rule, other applicable FINRA rules, or the federal securities laws ('inappropriate exchanges'); and (2) have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges."

Specifically, the Firm failed to establish, maintain and enforce systematic surveillance procedures to identify possible inappropriate rates of VA exchanges. Instead, the Firm relied on its principals reviewing VA transactions to manually identify significant trends in terms of a high volume of VA exchange transactions, without providing any guidance or tools such as exception reports or trend analysis to assist the reviewers in evaluating whether exchange rates were excessive. The Firm relied on principals' purported familiarity with all of the VA transactions under their supervision, and had no system or procedures to maintain historic information about rates of exchange. It was unreasonable to expect the principals to detect trends for this number of representatives and volume of VA sales with no access to historical data, systematic surveillance procedures or guidance from the Firm.

Exception Reports Used to Monitor VA Transactions were Flawed

From April 1, 2013 through April 30, 2014, the Firm failed to enforce its existing procedures relating to the suitability review of VA transactions. The Firm's written supervisory procedures mandated a heightened suitability review for any VA transaction involving a customer older than 65 or in which the customer's investment would result in the allocation of 50% or more of his/her liquid net worth to VAs. In such cases, the supervising principal was required to document the basis for approval of the transaction.

The Firm, however, failed to reasonably enforce these procedures. First, the exception-reporting system that the Firm utilized to flag unsuitable VA transactions was inadequate. Forty-five transactions that met the age or allocation thresholds specified in the Firm's procedures were not identified in the VA exception reports. Thus, these 45 transactions for customers who were 65 or older or who invested more than 50% of their liquid net worth received no heightened review. Second, the Firm was not enforcing compliance with the documentation-of-rationale requirement. Seventy VA transactions effected during the one-year period had no documented rationale for recommendation or approval. As a consequence, 70 additional transactions that were identified using the flawed exception reports were approved with no documented rationale.

Failure to Establish Written Supervisory Procedures Relating to the Sale of Multi-Share Class VAs

From August 1, 2013 through April 30, 2014, the Firm's written supervisory procedures did not address suitability or supervision in the context of multi-share class VAs.

The Firm sells VA contracts with the option of various different share classes. The B-share contract is the most common share class and typically has a seven-year surrender period. The L-share contracts are designed for investors with short-term time horizons. The L-share contract provides the flexibility of a shorter surrender period of three to four years, and the fees associated with L-share contracts, which are assessed for the life of the contract, are typically between 35 and 50 basis points higher annually than most B-share contracts. If a purchaser fails to surrender an L-share contract during the surrender period, the purchaser will continue to pay a higher annual fee for the life of the contract, unless the contract provides for a "persistency credit."[1]

During a nine-month period (Aug. 1, 2013 through April 30, 2014), the Firm sold 617 variable annuity L-share contracts from its seven largest carriers with a premium amount of over $80 million. The Firm, however, did not establish,

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[1] Some L-share contracts have a specific provision, commonly called a "persistency credit", which reduces the annual fees so it is comparable to a B-share contract after the product is held for a certain period of time, generally seven to ten years.

maintain, and enforce a reasonably designed supervisory system and written supervisory procedures related to the sale of multi-share class VAs.

The Firm's written supervisory procedures failed to provide registered representatives and principals with guidance or suitability considerations for sales of different VA share classes. More specifically, the Firm did not provide guidance to its registered representatives on the features of various available share classes, the associated fees and surrender charges, and did not provide them with adequate information to compare share classes in order to make suitability determinations. Because of this lack of guidance, registered representatives were not provided the tools to present potential purchasers with a side-by-side comparison of the fees and surrender charges or other information detailing the potential impact of the increased fee if the L-share contract was held by the customer for a long term.

In addition, the Firm failed to establish, maintain, and enforce written supervisory procedures or provide sufficient guidance to its registered representatives and principals on the sale of long-term income riders, such as long-term income riders with L-share contracts.

As a result of the foregoing, NEXT violated NASD Rule 3010, and FINRA Rules 2330(d) and 2010.

3. The Firm failed to have a Reasonably Designed System for Supervising Consolidated Reports

A "consolidated report" as defined by FINRA Regulatory Notice 10-19 is a document provided by a broker to a customer that combines account information regarding a customer's financial holdings, regardless of where those assets are held. Consolidated reports supplement, but do not replace, the customer account statements required pursuant to NASD Rule 2340.

Regulatory Notice 10-19 reminds member firms that consolidated reports are communications with the public and therefore must be clear, accurate, and not misleading pursuant to FINRA Rule 2210(d)(1), which describes the content standards applicable to such communications. Firms that allow representatives to create consolidated reports must supervise the activity pursuant to FINRA Rule 3110 (and its predecessor, NASD Rule 3010). Where consolidated reports include accounts and assets held away from a firm, the firm must ensure that registered representatives are taking reasonable steps to ensure that those accounts and assets are valued accurately. Notice 10-19 recommends that firms providing consolidated reports to customers "ensure that the size and complexity of the consolidated reporting program does not exceed the firm's ability to supervise the activity and to subject it to a rigorous system of internal controls."

Regulatory Notice 10-19 identified significant regulatory concerns arising from reports including: "the potential for communicating inaccurate, confusing or misleading information to customers, lapses in supervisory controls, and the use of these reports for fraudulent or unethical purposes." Thus, FINRA "strongly encouraged" firms to review their procedures concerning the reports and warned, "[a]ny firm that cannot properly supervise the dissemination of consolidated reports by its registered representatives must prohibit the dissemination of those reports and take the necessary steps to ensure that its registered representatives comply with this prohibition."

From August 1, 2013 through April 30, 2014, the Firm lacked a supervisory system reasonably designed to ensure that information included on consolidated reports provided to customers was accurate. The Firm allowed 229 of its registered representatives to prepare and disseminate consolidated reports that included manual entry and valuation of assets held away from the Firm. In order to supervise consolidated statements, the Firm chose one manual entry for each registered representative on a monthly basis and requested that the registered representatives provide documentation supporting the existence of the investment and the valuation. Failure to provide the documentation was supposed to result in termination of privileges to use the consolidated reporting system.

First, the supervisory system was inadequate. Reviewing the accuracy of one entry per registered representative per month regardless of the total number made is unreasonable. For instance, during the month of April 2014, a registered representative ("Representative 2") made 704 manual entries. Despite the large number of manual entries, the Firm reviewed only one of Representative 2's entries for accuracy. Second, the Firm failed to enforce the procedures. For some registered representatives that made manual entries, the Firm failed to request any documentation or review any transactions. For others, there were no consequences for failing to provide proper supporting documentation.

As a result of the foregoing, NEXT violated NASD Rules 3010(a) and (b), and FINRA Rule 2010.

4. The Firm's Website Contained Misleading Information

From July 2013 to November 2015, the Firm omitted material facts from its website that caused its communications with the public to be misleading. During this time, FINRA Rule 2210(d)(1)(A) stated:

> All member communications with the public must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member may omit any material fact or qualification if the omission, in the light of the

> context of the material presented, would cause the communications to be misleading.

Throughout the period, the Firm's Account Information Form and Customer Agreement ("Account Agreement"), completed at account opening, directed customers to either ask their registered representative or visit the Firm's website to learn more about compensation the Firm received from product issuers in addition to sales commissions. The Firm provided silver, gold, and premier membership levels to certain issuers ("Financial Partners") in exchange for payments of $6,000, $24,000, and $48,000, respectively. The benefits to the Financial Partners were as follows:

- Silver — may place sales, marketing and educational materials on NEXT's intranet site;
- Gold — same as Silver plus the issuer is provided with registered representatives contact information; and
- Premier — same as Silver and Gold, plus the issuer is invited to attend NEXT's National Education Conference.

The Firm's Financial Partners List located on its public website failed to reflect 11 of 38 participants in its Financial Partners Program. In 2015, the undisclosed issuers cumulatively paid NEXT $214,893, compared to a total of $1,225,164 received by the Firm from all issuers in the Financial Partners Program. In 2014, the cumulative payments of the undisclosed issuers were $343,815, compared to overall payments of $1,978,235. In connection with this, the Firm failed to have supervisory procedures reasonably designed to detect and monitor for misleading communications on its website. Although the Account Agreement directed customers to the Firm's website, no one was tasked with reviewing the website to ensure that the list of Financial Partners was kept current.

As a result of the foregoing conduct, NEXT violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), FINRA Rule 2210(d)(1)(A) and FINRA Rule 2010.

5. The Firm Failed to Reasonably Supervise Non-Cash Compensation

From May 1, 2014 to June 24, 2015, the Firm failed to establish, maintain, and enforce a system and written supervisory procedures reasonably designed to achieve compliance with FINRA Rule 2310(c). Rule 2310(c) states:

> A member shall maintain records of all non-cash compensation received by the member or its associated persons [. . .] the records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and

value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons.

The Firm allowed its registered representatives to attend issuer-sponsored training or educational meetings. The Firm maintained a list that reflected the due diligence trips registered representatives were approved to attend and the anticipated covered expenses to be paid by the product sponsor; however, the Firm did not track who actually attended the events and the total amount of expenses incurred. As a result, the Firm could not adequately determine whether the non-cash compensation received by a representative was appropriate. The Firm also failed to establish an adequate system and written supervisory procedures to track and verify non-cash compensation received by its registered representatives which came in the form of direct sponsorship payments by product issuers to vendors/merchants. Emails of registered representatives reflected multiple occurrences of product issuers paying vendors/merchants for branch client events directly without the Firm's knowledge and approval of the non-cash compensation.

As a result of the foregoing conduct, NEXT violated NASD Rule 3010 (for conduct prior to December 1, 2014), FINRA Rule 3110 (for conduct on or after December 1, 2014), FINRA Rule 2310(c), and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure;
2. A $750,000 fine; and
3. The following undertaking:

a. NEXT shall:

(1) Retain, within 30 days of the date of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, systems and procedures (written and otherwise) and training relating to the violations identified in this AWC:

a) Actively traded accounts;

b) Variable annuity sales and exchanges;

c) Consolidated reports;

d) Timely disclosure of product sponsor participation in the Firm's Financial Partner's Program; and;

e) Adequacy of systems to track, verify, and supervise non-cash compensation received by associated persons.

(2) The Independent Consultant, any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties, shall not have provided consulting, legal, auditing or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the Notice of Acceptance of this AWC;

(3) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant;

(4) Cooperate with the Independent Consultant in all respects, including by providing staff support. NEXT shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, NEXT shall not terminate the relationship with the Independent Consultant without FINRA staff's written approval; NEXT shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to FINRA;

(5) At the conclusion of the review, which shall be no more than 150 days after the date of the Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems, procedures, and training relating to the violations identified in this AWC; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for

modifications and additions to the Firm's policies, systems, procedures and training; and

(6) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any other employment, consultant, attorney-client, auditing or other professional relationship with NEXT, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performing his or her duties pursuant to this AWC, shall not, without prior written consent of FINRA staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with NEXT or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

b. Within 90 days after delivery of the Written Report, NEXT shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.

(1) Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), NEXT shall provide FINRA staff with a written implementation report, certified by an officer of NEXT, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.

(2) Upon written request showing good cause, FINRA staff may extend any of the procedural dates set forth above.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that Respondent is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Complaint issued specifying the allegations against the Firm;

B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;

C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and

D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and

C. If accepted:

1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;

2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and

4. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that I have agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the Firm to submit it.

12/05/2017
Date (mm/dd/yyyy)

NEXT Financial Group, Inc., Respondent

By: ______________________
Barry G. Knight, President

Reviewed by:

____
Counsel for Respondent

Accepted by FINRA:

December 6, 2017
Date

Signed on behalf of the
Director of ODA, by delegated authority

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Laura Leigh Blackston, Senior Regional Counsel
FINRA, Department of Enforcement
1100 Poydras Street, Suite 850
New Orleans, Louisiana 70163-1108
Phone: (504) 412-2408
Facsimile: (202) 721-6525
Email: laura.blackston@finra.org

Corrective Action Statement of NEXT Financial Group, Inc.

In connection with the issuance of the Acceptance, Waiver, and Consent ("AWC") in this matter, NEXT Financial Group, Inc. ("NEXT," "Respondent," or the "firm") submits this statement describing the many corrective actions it has taken, in response to the issues described in the AWC.[1]

The AWC relates to Annual Cycle Examinations of NEXT conducted by the staff of the Financial Industry Regulatory Authority ("FINRA") in 2013, 2014, and 2015 covering the period generally from August 6, 2012 to May 7, 2015 (the "Relevant Period").

Identification of Excessively Traded Accounts

Following the 2015 Cycle Examination, NEXT revised its process for creating excessive trading reports to identify accounts for further review so that reports would calculate each account's turnover ratio and cost-to-equity ratio using trade data for a rolling twelve-month period. The firm also generated new reports for the period of October 2014 through August 2015 and conducted a gap analysis for the period, comparing the results from the revised methodology to the previous calculations. Certain accounts were identified for review and follow-up analysis, which was conducted by the firm's surveillance department. One registered representative was terminated by the firm after an internal review revealed that the level of trading activity in a customer's accounts was excessive in light of the customer's objectives and needs and the character of the accounts. The firm agreed to pay the customer of the terminated representative restitution for the losses incurred in her accounts.

In addition, the firm has established a Sales Practice Review Committee, which is composed of senior members of the Compliance, Legal, and Operations Departments, and has implemented procedures whereby certain potential sales practice violations that are identified either by surveillance or supervisory personnel are required to be submitted to the Committee for evaluation and possible resolution.

NEXT also believes that the addition of certain compliance and legal personnel, effected prior to and independent of FINRA's enforcement action, will greatly aid the firm in addressing FINRA's concerns regarding its ability to detect excessive trading and other issues. In November 2014, NEXT hired a new Chief Compliance Officer who has more than 30 years of compliance experience with broker-dealers, and – in addition to the changes described above – has made numerous positive changes to the firm's practices and policies. John T. Unger, NEXT's General Counsel, joined the firm in October 2014. Mr. Unger has practiced law for more than 30 years and, has served as a general counsel for broker-dealer firms for more than ten years. NEXT's new legal and compliance leadership is responsible for the changes described above, and is expected to greatly enhance the firm's compliance and supervisory efforts in the future.

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[1] This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect views of FINRA, or its staff.

Supervision of Variable Annuity Sales and Exchanges

Following the conclusion of the 2014 Cycle Examination, NEXT made several enhancements to its written supervisory procedures and systems pertaining to variable annuity sales and exchanges. Significantly, effect April 10, 2015, NEXT implemented a two-step, pre-execution review and approval process for all variable annuity sales or exchanges. Each variable annuity application and supporting documents is first submitted to a transaction review desk in the firm's home office, which is charged with (a) ensuring that the required documentation is complete and in good order, (b) determining that the proposed transaction does not violate any of the firm's policies or guidelines applicable to variable annuities (i.e., level of concentration and appropriate share class), and (c) entering transactions into a centralized database for tracking and reporting purposes. An application that passes the first review is then routed electronically to the designated supervisor of the representative recommending the purchase for a customer-specific suitability review. Each transaction is also subject to a third, post-execution, review and approval by the designated supervisor through the firm's electronic surveillance system, SunGard Protegent, which includes a rules engine. The transaction review desk also does a post-transaction review where on a weekly basis all commission data for the week is downloaded and reviewed to ensure that all variable annuity (and equity indexed annuity and alternative investment) transactions were approved prior to being submitted. Finally, transaction data also is extracted and reviewed by the firm on a quarterly basis to identify representatives whose rates of 1035 exchanges of variable annuities may be inappropriate.

Additionally, on February 1, 2016, NEXT implemented the mandatory use of the Morningstar® Annuity Intelligence℠ platform by all registered representatives when preparing Variable Annuity Disclosure Forms to ensure the accuracy of the expense information used when comparing the recommended variable annuity to an existing variable annuity contract in circumstances involving an anticipated exchange of the contract. The firm's Variable Annuity Disclosure Form also was improved and expanded to include a share class comparison, a calculation of a customer's liquid net worth, a description of the customer's allocation of total assets to annuities, both before and after the proposed transaction, and a section to document the rationale if the proposed allocation exceeds the firm's guidelines.

In connection with the sale of multi-share class variable annuities, the firm prohibited L-share purchases with long-term riders effective as of December 12, 2016.

Supervision of Consolidated Customer Statements

Firm customers who have a number of accounts with different custodians are sometimes provided with statements by their representative that consolidate or aggregate all of their account holdings on a single statement for their convenience. Prior to June 30, 2015, firm registered representatives were permitted to make certain manual entries into the system that produced consolidated statements, which was primarily used in connection with investments that did not have a public market price. Following the 2015 Cycle Examination, which identified an issue with the firm's procedures for auditing the manual entries, NEXT changed its written supervisory procedures to prohibit the manual entry of customer securities positions on consolidated statements by disabling the manual entry feature in the firm's third-party asset aggregation vendor's system.

Supervision of Disclosures Relating to the NEXT Partners Program

NEXT has marketing arrangements with a number of companies that provide financial services and products that the firm offers to its customers, which it refers to as "Partners." NEXT provides certain disclosures concerning the Partner Program and Partners on its public website. To address the deficiency identified by FINRA with respect to prompt and accurate public disclosure of the firm's revenue sharing arrangements, a written supervisory procedure was put in place to require tracking of the date each product sponsor enters and exits the Partner Program. On a quarterly basis, an updated list of program participants is posted to the firm's public website, unless no changes have occurred.

Supervision of Product Sponsor Due Diligence Trips

NEXT's procedures in place during the examination period with respect to product sponsor due diligence trips permitted representatives to attend product issuer-sponsored training or education meetings under certain circumstances. Such trips were subject to the firm's pre-approval and were allowed only if a review confirmed that the event complied with the criteria under the applicable non-cash compensation rules. The firm at all times maintained documents provided by a product sponsor evidencing that the issuer-sponsored meeting complied with those requirements. In some cases, product sponsors requested approval for a number of representatives to attend one of a series of regional meetings to be held over a period of time. In this scenario, some, but not all, product sponsors provide supplemental information after the meeting documenting the representatives who were actually invited, accepted, and attended a meeting. The deficiency identified was the firm's failure to monitor who actually attended the meetings and the total amount of expenses incurred or reimbursed. NEXT has amended its written supervisory procedures to require that, when a representative's participation in issuer sponsored training or education meetings is approved, the firm will request that the issuer provide a list of representatives who attend each meeting and the value of the non-cash compensation received, and maintain a record of such activity.