

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)
)
Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620,)
Houston, TX 77042)
)
Respondent.)
)
Type of Agency Action: Enforcement)
)
License Number: 306194N)

FILED
DEC 21 2020
STATE OF INDIANA
DEPT. OF INSURANCE

FINAL ORDER

The Enforcement Division of the Indiana Department of Insurance (“Department”), by counsel, Victoria Hastings, and Next Financial Group, Inc. (“Respondent”), a licensed nonresident insurance producer organization, signed an Agreed Entry which purports to resolve all issues involved in the above-captioned cause number, and which has been submitted to the Commissioner of the Indiana Department of Insurance (“Commissioner”) for approval.

The Commissioner, after reviewing the Agreed Entry, which imposes a seven thousand five hundred dollar (\$7,500) civil penalty against Respondent, submit a Corrective Action Plan to the Department, and conduct branch examinations for 3% of its nationwide branch examinations upon the Department’s request for the nature of two (2) administrative actions taken against them over the period of two (2) years and for failed to timely report one (1) of those administrative actions, finds it has been entered into fairly and without fraud, duress or undue influence, and is fair and equitable between the parties. The Commissioner hereby incorporates the Agreed Entry, attached, as if fully set forth herein, and approves and adopts in full the Agreed Entry as resolution of this

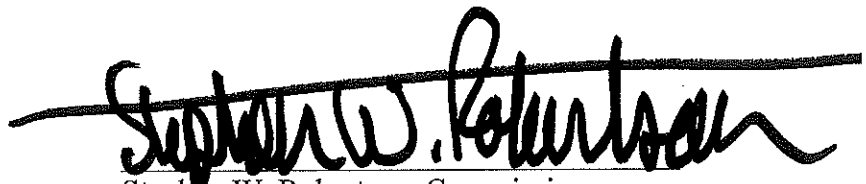
matter.

IT IS THEREFORE ORDERED by the Commissioner as follows:

1. Respondent shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) to the Department within thirty (30) days after the Commissioner signs the Final Order adopting this Agreed Entry.
2. Respondent shall submit a Corrective Action Plan to the Department within thirty (30) days after the Commissioner signs the Final order adopting this Agreed Entry.
3. For a period of two years commencing on the date the Commissioner signs the Final Order adopting this Agreed Entry, Respondent shall conduct branch examinations, which will include a review of registered representative's statements from bank accounts used for depositing commissions and payment of business expenses, and sample customer files and transactions, and, upon request by the Department on a semi-annual basis, Respondent will provide summaries of a random sample of 3% of its nationwide branch examinations completed during the preceding six months, which will be submitted to the Department within ten (10) business days upon the Department's request.

12-21-2020

Date Signed


Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Victoria Hastings, Attorney
ATTN: Taylor Peycha, Investigator
Indiana Department of Insurance
311 West Washington Street, Suite 103
Indianapolis, Indiana 46204-2787

Next Financial Group, Inc
ATTN: Licensing Department
2500 Wilcrest Drive, Suite 620,
Houston, TX 77042

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

**BEFORE THE INDIANA
COMMISSIONER OF INSURANCE**

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)
)
NEXT Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620,)
Houston, TX 77042)
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Respondent.)
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Type of Agency Action: Enforcement)
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License Number: 306194N)

FILED
DEC 21 2020
STATE OF INDIANA
DEPT. OF INSURANCE

AGREED ENTRY

This Agreed Entry is executed by and between the Enforcement Division of the Indiana Department of Insurance ("Department"), by counsel, Victoria Hastings, and NEXT Financial Group, Inc. ("Respondent"), to resolve all issues in the above-captioned cause number. This Agreed Entry is subject to the review and approval of Stephen W. Robertson, Commissioner of the Indiana Department of Insurance ("Commissioner").

WHEREAS, Respondent is a licensed nonresident insurance producer organization, holding license number 306194N since September 28, 1999;

WHEREAS, Respondent's license was set to renew on January 31, 2020, and Respondent submitted an application to renew its license on or about November 13, 2019;

WHEREAS, on or about December 6, 2017, Respondent submitted a Letter of Acceptance, Waiver and Consent to the Financial Industry Regulatory Authority ("FINRA") pursuant to which Respondent agreed to pay a fine of \$750,000 for having a faulty exception reporting system for excessive trading and inadequate supervisory procedures that allowed an agent to excessively trade, resulting in a loss for a consumer;

WHEREAS, Respondent reported the FINRA action to the Department on January 10, 2018;

WHEREAS, Respondent failed to timely report the FINRA action to the Department within thirty (30) days of the final disposition of the matter;

WHEREAS, on or about March 11, 2019, as part of the Share Class Disclosure Initiative undertaken by the United States Securities and Exchange Commission ("SEC"), the Respondent consented to the entry of an Order Instituting Administrative and Cease-and-Desist Proceedings, pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, making findings, and imposing remedial sanctions and a cease-and-desist order for failing to disclose a conflict of interest in its receipt of 12b-1 fees and the selection of mutual fund share classes that pay such fees. Respondent agreed to pay \$163,442.12 in interest and \$1,241,907.77 in restitution;

WHEREAS, Respondent timely reported the SEC action to the Department on April 4, 2019; but Respondent failed to include any legal documentation from the action;

WHEREAS, Indiana Code § 27-1-15.6-12(b)(2)(A) provides that the Commissioner may levy a civil penalty for violating an insurance law;

WHEREAS, Respondent's conduct is a violation of Indiana Code § 27-1-15.6-17(a), an insurance law, that states in part, that a producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in Indiana not more than thirty (30) days after the final disposition of the matter. The report shall include a copy of the order, consent to order, or other relevant legal documents;

WHEREAS, John T. Unger, General Counsel of NEXT Financial Group, Inc., is authorized to act on behalf of Respondent and obligate it to perform in accordance with this agreement; and

WHEREAS, the Department and Respondent (collectively, the "Parties") desire to resolve this matter without the necessity of a hearing.

IT IS, THEREFORE, NOW AGREED by and between the Parties as follows:

1. The Commissioner has jurisdiction over the subject matter and the Parties to this Agreed Entry.
2. In order to avoid formal litigation in this matter, Respondent has determined that it is in its best interest to enter into this Agreed Entry. As such, Respondent acknowledges that it executes this Agreed Entry with full realization of its contents and effects.
3. This Agreed Entry is executed knowingly, voluntarily, and freely by the Parties. The Parties agree that the terms of this Agreed Entry constitute final resolution of this matter.
4. If this Agreed Entry is accepted by the Commissioner, Respondent knowingly, voluntarily, and freely waives the right to a public hearing on this matter, including the right to appear in person before the Commissioner, present evidence, cross-examine witnesses, and present arguments.
- ~~5. If this Agreed Entry is accepted by the Commissioner, Respondent~~
knowingly, voluntarily, and freely waives the right to judicial review of this matter or otherwise appeal or challenge the validity of this Agreed Entry.
6. If this Agreed Entry is accepted by the Commissioner, Respondent knowingly, voluntarily, and freely waives, releases, and forever discharges all claims or challenges, known or unknown, against the Department, its Commissioner, employees, agents, and representatives, in their individual

and official capacities, that arise out of or are related to the Agreed Entry or Final Order, including but not limited to any act or omission as part of the underlying audit, investigation, negotiation, or approval process.

7. Respondent shall pay a civil penalty in the amount of seven thousand five hundred dollars (\$7,500) to the Department within thirty (30) days after the Commissioner signs the Final Order adopting this Agreed Entry without modification to the terms herein and a signed copy of the Final Order is provided to Respondent. Upon receipt of the payment by Respondent, Respondent's November 13, 2019 license renewal application shall be approved effective as of January 31, 2020, for a period of two years, and the Department's pending non-renewal order in this matter shall be vacated.
 8. Respondent shall submit a Corrective Action Plan to the Department within thirty (30) days after the Commissioner signs the Final Order adopting this Agreed Entry. The Corrective Action Plan shall consist of, but is not limited to, training employees, oversight and supervision protocols, and procedures to implement regarding reporting administrative actions to the Department.
-
- For a period of two years commencing on the date the Commissioner signs the Final Order adopting this Agreed Entry, Respondent shall conduct branch examinations, which will include a review of registered representative's statements from bank accounts used for depositing commissions and payment of business expenses, and sample customer files and transactions, and, upon request by the Department on a semi-annual basis, Respondent will provide summaries of a random sample of 3% of its

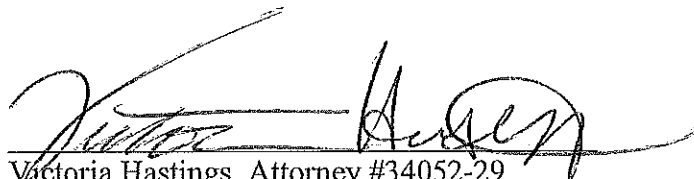
nationwide branch examinations completed during the preceding six months, which will be submitted to the Department within ten (10) business days upon the Department's request.

9. Respondent has carefully read and examined this Agreed Entry and fully understands its terms.
10. Respondent has had the opportunity to have this Agreed Entry reviewed by legal counsel of its choosing, at its own expense, and is aware of the benefits gained and obligations incurred by the execution of this Agreed Entry. Respondent understands and agrees that the Department cannot give it legal advice.
11. Respondent has entered into this Agreed Entry knowingly, voluntarily, and freely, and has not been subject to duress, coercion, threat, or undue influence.
12. This Agreed Entry constitutes the entire agreement between the Parties, and no other promises or agreements, express or implied, have been made by the Department or by any employee, director, agent, or other representative thereof to induce Respondent to enter this Agreed Entry.
13. The Department agrees to accept Respondent's compliance with the terms of this Agreed Entry as full satisfaction of this matter, and warrants and represents that so long as Respondent complies with the terms of this Agreed Entry, the Department will not bring any further action against Respondent based on the facts that gave rise to this Agreed Entry.

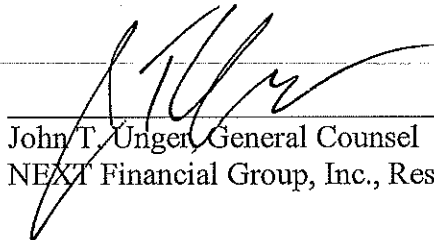
14. In the event the Department finds there has been a breach of any of the provisions of this Agreed Entry, the Department may reopen this matter and pursue alternative action pursuant to Indiana Code § 27-1-15.6-12.
15. Respondent waives any applicable statute of limitations for purposes of any enforcement of the terms and conditions of this Agreed Entry.
16. Respondent acknowledges that this Agreed Entry may be admitted into evidence in any judicial or administrative proceeding against Respondent to enforce the terms and conditions contained herein.
17. Respondent understands that this Agreed Entry resolves only the matter pending with the Department and does not affect any criminal prosecution or civil litigation that may be pending or hereinafter commenced against Respondent.
18. This Agreed Entry does not in any way affect the Department's authority in future audits, investigations, examinations, negotiations, or other complaints involving Respondent.
19. It is expressly understood that this Agreed Entry is subject to the Commissioner's acceptance and has no force or effect until such acceptance is evidenced by the entry of a Final Order by the Commissioner.
20. Should this Agreed Entry not be accepted by the Commissioner, it is agreed that presentation to, and consideration of this Agreed Entry by the Commissioner, shall not unfairly or illegally prejudice the Commissioner or Respondent from further participation in or resolution of these proceedings.

21. If this Agreed Entry is accepted by the Commissioner, it will become part of Respondent's permanent record and may be considered in future actions brought by the Department or any other regulator against Respondent. It is further understood that, if accepted by the Commissioner, this Agreed Entry and resulting Final Order are public records pursuant to Indiana Code § 4-21.5-3-32 that may not be sealed or otherwise withheld from the public, and may be reported to the National Association of Insurance Commissioners and published on the Department's website as required.
22. Respondent acknowledges that this is an Administrative Action it may be required to report to other jurisdictions in which it is licensed and on future licensing applications.

12/3/2020
Date Signed


Victoria Hastings, Attorney #34052-29
Indiana Department of Insurance

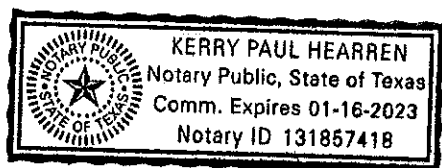
11/23/2020
Date Signed


John T. Unger, General Counsel
NEXT Financial Group, Inc., Respondent

STATE OF TEXAS)
) SS:
COUNTY OF HARRIS)

Before me a Notary Public in and for the State of Texas, personally appeared John T. Unger, General Counsel, on behalf of NEXT Financial Group, Inc., and being first duly sworn by me upon his oath, says that the facts alleged in the foregoing instrument are true.

Signed and sealed this 23 day of November, 2020.



Kerry P. Hearren
Signature

KERRY P. HEARREN
Printed

My Commission expires: 1-16-2023

Return executed originals to:
INDIANA DEPARTMENT OF INSURANCE
Enforcement Division, Suite 103
311 West Washington Street
Indianapolis, IN 46204-2787
317/234-5883 - telephone
317/234-2103 – facsimile

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF
THE INDIANA DEPARTMENT OF
INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)

Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620)
Houston, TX 77042)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 306194N)

FILED

MAY 12 2020

STATE OF INDIANA
DEPT. OF INSURANCE

Order Granting Joint Motion to Continue Hearing
Scheduled for May 13, 2020

Respondent NEXT Financial Group, Inc. ("NEXT") and the Indiana Department of Insurance ("IDOI") (together, the "Parties") filed a *Joint Motion to Continue Hearing Scheduled for May 13, 2020*. The Administrative Law Judge, having considered the Motion and being otherwise duly advised, now finds that the same should be **GRANTED**.

IT IS THEREFORE ORDERED that the Hearing scheduled for May 13, 2020 at 10:00 A.M. is CONTINUED for at least 60 days to a date and time to a date to be determined.

Dated: 5/12/20

Reuben B. Hill / DB
Reuben B. Hill
Administrative Law Judge
Indiana Department of Insurance

Distribute to:

Scott Kosnoff

Amy Strati

Matthew R. Elliott

FAEGRE DRINKER BIDDLE & REATH LLP

300 N. Meridian St. Suite 2500

Indianapolis, IN 46204

Scott.Kosnoff@Faegredrinker.com

Amy.Strati@Faegredrinker.com

Matthew.Elliott@Faegredrinker.com

Counsel for NEXT Financial Group, Inc.

Victoria Hastings

Indiana Department of Insurance

311 West Washington St., Suite 103

Indianapolis, IN 46204-2787

T: (317) 234-2101

vhastings@idoi.in.gov

Counsel for Indiana Department of Insurance

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF
THE INDIANA DEPARTMENT OF
INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:

Next Financial Group, Inc.
2500 Wilcrest Drive, Suite 620
Houston, TX 77042

Respondent.

Type of Agency Action: Enforcement

License Number: 306194N

FILED

MAR 04 2020

STATE OF INDIANA
DEPT. OF INSURANCE

Order Granting Joint Motion to Continue Hearing
Scheduled for March 3, 2020

Respondent NEXT Financial Group, Inc. ("NEXT") and the Indiana Department of Insurance ("IDOI") (together, the "Parties") filed a *Joint Motion to Continue Hearing Scheduled for March 3, 2020*. The Administrative Law Judge, having considered the Motion and being otherwise duly advised, now finds that the same should be **GRANTED**.

IT IS THEREFORE ORDERED that the Hearing scheduled for Tuesday, March 3, 2020 at 10:00 A.M. is CONTINUED for at least 60 days to a date and time to a date to be determined.

Dated: 3/4/20



Reuben B. Hill
Administrative Law Judge
Indiana Department of Insurance

Distribute to:

Scott Kosnoff
Amy Strati
Matthew R. Elliott
FAEGRE DRINKER BIDDLE & REATH LLP
300 N. Meridian St. Suite 2500
Indianapolis, IN 46204
Scott.Kosnoff@Faegredrinker.com
Amy.Strati@Faegredrinker.com
Matthew.Elliott@Faegredrinker.com

Counsel for NEXT Financial Group, Inc.

Victoria Hastings
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
T: (317) 234-2101
vhastings@idoi.in.gov

Counsel for Indiana Department of Insurance

STATE OF INDIANA)
) SS:
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BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)

Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620)
Houston, TX 77042)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 306194N)

FILED

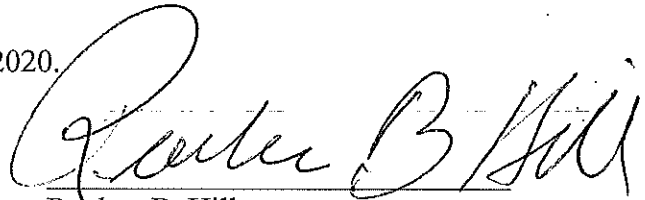
MAR 06 2020

STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF NEW HEARING DATE

The Administrative Law Judge Granted the Joint Motion to Continue Hearing for
60 days that was scheduled for March 3, 2020. The ALJ now resets this matter for a
hearing on May 13, 2020 at 10:00 a.m. eastern..

So Ordered this 6th day of March, 2020.



Reuben B. Hill
Administrative Law Judge

Distribution:

Victoria Hastings
311 W Washington Street Suite 103
Indianapolis, IN 46204

Scott Kosnoff
Amy Strati
Matthew Elliott
FAEGRE DRINKER BIDDLE & REATH LLP
300 N. Meridian St., Suite 2500
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF
THE INDIANA DEPARTMENT OF
INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)

Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620)
Houston, TX 77042)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 306194N)

FILED

MAY 11 2020

STATE OF INDIANA
DEPT. OF INSURANCE

Joint Motion to Continue Hearing Scheduled for May 13, 2020

Respondent NEXT Financial Group, Inc. ("NEXT") and the Indiana Department of Insurance ("IDOI") (together, the "Parties"), through their respective counsel, respectfully move this tribunal to continue the hearing scheduled for May 13, 2020 at 10:00 A.M., for at least 60 days to a date and time to be determined.

In support of this motion, the Parties state as follows:

1. Pursuant to the relevant provisions of Indiana Code § 27-1-15.6-12 and the Indiana Administrative Orders and Procedures Act, NEXT timely filed its petition challenging the IDOI's Administrative Order and Notice of Nonrenewal of License and requesting a hearing on February 10, 2020.

2. On February 19, 2020, this tribunal entered a Notice of Hearing, advising NEXT that this matter is set for a hearing on Tuesday, March 3, 2020 at 10:00 A.M. before Administrative Law Judge Reuben B. Hill.

3. This tribunal granted the Parties' *Joint Motion to Continue Hearing Scheduled for March 3, 2020*, and continued the hearing until May 13, 2020 at 10:00 A.M.

4. The Parties have engaged in discussions regarding the potential for resolving this matter prior to a hearing and have tentatively reached the terms of such a resolution, but have not yet completed drafting an agreed entry, and accordingly, are moving to continue the hearing date to allow them additional time to complete their settlement discussions prior to the hearing.

5. The Parties are not making this motion for the purpose of improper delay or to burden either of the Parties.

6. For avoidance of doubt, NEXT is not waiving its right to hearing pursuant to Indiana Code § 27-1-15.6-12(d), but rather, jointly with IDOI, is only requesting additional time sufficient for the Parties to engage in settlement discussions prior to a hearing.

WHEREFORE, the Parties respectfully request that this tribunal continue the hearing scheduled for May 13, 2020, for at least 60 days to a date and time to be determined.

(Signatures on the following page)

Respectfully submitted,

INDIANA DEPARTMENT OF
INSURANCE

/s/ Victoria Hastings

Victoria Hastings, Atty. #34052-29
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
T: (317) 234-2101
vhastings@idoi.in.gov

*Counsel for Indiana Department of
Insurance*

FAEGRE DRINKER BIDDLE &
REATH LLP

/s/ Matthew R. Elliott

Scott Kosnoff, Atty. #14285-49
Amy Strati, Atty. #15811-49
Matthew R. Elliott, Atty. #34000-49
300 N. Meridian St. Suite 2500
Indianapolis, IN 46204
T: (317) 237-0300
F: (317) 237-1000
Scott.Kosnoff@Faegredrinker.com
Amy.Strati@Faegredrinker.com
Matthew.Elliott@Faegredrinker.com

*Counsel for NEXT Financial Group,
Inc.*

CERTIFICATE OF SERVICE

I certify that on May 11, 2020, I caused the foregoing to be filed and served by electronic mail on the following:

Hon. Reuben B. Hill
Administrative Law Judge
c/o Dawn Bopp
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
dbopp@idoi.in.gov

Victoria Hastings
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
vhastings@idoi.in.gov

/s/ Matthew R. Elliott

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF
THE INDIANA DEPARTMENT OF
INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:

Next Financial Group, Inc.
2500 Wilcrest Drive, Suite 620
Houston, TX 77042

Respondent.

Type of Agency Action: Enforcement

License Number: 306194N

FILED

FEB 28 2020

STATE OF INDIANA
DEPT. OF INSURANCE

Joint Motion to Continue Hearing Scheduled for March 3, 2020

Respondent NEXT Financial Group, Inc. ("NEXT") and the Indiana Department of Insurance ("IDOI") (together, the "Parties"), through their respective counsel, respectfully move this tribunal to continue the hearing scheduled for March 3, 2020 at 10:00 A.M., for at least 60 days to a date and time to be determined. In support of this motion, the Parties state as follows:

1. Pursuant to the relevant provisions of Indiana Code § 27-1-15.6-12 and the Indiana Administrative Orders and Procedures Act, NEXT timely filed its petition challenging the IDOI's Administrative Order and Notice of Nonrenewal of License and requesting a hearing on February 10, 2020.

2. On February 19, 2020, this tribunal entered a Notice of Hearing, advising NEXT that this matter is set for a hearing on Tuesday, March 3, 2020 at 10:00 A.M. before Administrative Law Judge Reuben B. Hill.

3. The Parties are currently engaged in discussions regarding the potential for resolving this matter prior to a hearing, but have not yet completed their settlement discussions, and accordingly, are moving to continue the hearing date to allow them additional time to complete their settlement discussions prior to the hearing.

4. The Parties are not making this motion for the purpose of improper delay or to burden either of the Parties.

5. For avoidance of doubt, NEXT is not waiving its right to hearing pursuant to Indiana Code § 27-1-15.6-12(d), but rather, jointly with IDOI, is only requesting additional time sufficient for the Parties to engage in settlement discussions prior to a hearing.

WHEREFORE, the Parties respectfully request that this tribunal continue the hearing scheduled for March 3, 2020, for at least 60 days to a date and time to be determined.

(Signatures on the following page)

Respectfully submitted,

INDIANA DEPARTMENT OF
INSURANCE

/s/ Victoria Hastings

Victoria Hastings, Atty. #34052-29
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
T: (317) 234-2101
vhastings@idoi.in.gov

*Counsel for Indiana Department of
Insurance*

FAEGRE DRINKER BIDDLE &
REATH LLP

/s/ Matthew R. Elliott

Scott Kosnoff, Atty. #14285-49
Amy Strati, Atty. #15811-49
Matthew R. Elliott, Atty. #34000-49
300 N. Meridian St. Suite 2500
Indianapolis, IN 46204
T: (317) 237-0300
F: (317) 237-1000
Scott.Kosnoff@Faegredrinker.com
Amy.Strati@Faegredrinker.com
Matthew.Elliott@Faegredrinker.com

*Counsel for NEXT Financial Group,
Inc.*

CERTIFICATE OF SERVICE

I certify that on February 28, 2020, I caused the foregoing to be filed and served by U.S. Mail and hand delivery on the following:

Hon. Reuben B. Hill
Administrative Law Judge
c/o Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787

Victoria Hastings
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787
vhastings@idoi.in.gov

/s/ Matthew R. Elliott

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)
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Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620,)
Houston, TX 77042)
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Respondent.)
)
Type of Agency Action: Enforcement)
)
License Number: 306194N)

FILED
FEB 19 2020
STATE OF INDIANA
DEPT. OF INSURANCE

NOTICE OF HEARING

Notice is hereby given, pursuant to Indiana Code § 4-21.5-3 *et seq.*, that an evidentiary hearing will be held on March 3, 2020, at 10:00 A.M. P.M. Eastern Time, at 311 West Washington Street, Suite 103, Indianapolis, Indiana, to determine whether to grant the Respondent's request for the renewal of its nonresident producer organization license.

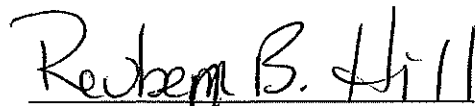
The hearing will be conducted in accordance with the provisions of the Administrative Orders and Procedures Act, codified at Indiana Code § 4-21.5-3 *et seq.* The Commissioner's authority to refuse to renew an insurance producer organization's license is contained in Indiana Code § 27-1-15.6-12.

The issues to be resolved at the hearing are those described in the Administrative Order and Notice of Nonrenewal of License, filed on January 31, 2020.

The Indiana Department of Insurance asserts that Respondent has not fully met the requirements of licensure under Indiana Code § 27-1-15.6-12. Specifically, Respondent did not timely notify the Department of administrative actions taken against them, in violation of Indiana

Codes §§ 27-1-15.6-12(b)(2)(A), 27-1-15.6-17(a) and has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business, in violation of Indiana Code § 27-1-15.6-12(b)(8).

In accordance with Indiana Code § 27-1-15.6-34, the Administrative Law Judge in this matter is:



Indiana Department of Insurance
311 West Washington Street - Suite 103
Indianapolis, Indiana 46204-2787
Telephone: 317-234-3520

The Department of Insurance will be represented by its counsel, Victoria Hastings, who can be reached at:

Indiana Department of Insurance
311 West Washington Street - Suite 103
Indianapolis, Indiana 46204-2787
Telephone: 317-234-2101

A party who fails to attend or participate in a pre-hearing conference, hearing or other later stage of the proceeding, may be held in default or have a proceeding dismissed under Indiana Code § 4-21.5-3-24.

Dated: _____

2/19/20



Administrative Law Judge
Indiana Department of Insurance

This Notice has been sent to:

Next Financial Group, Inc.
2500 Wilcrest Drive, Suite 620
Houston, TX 77042

Matthew R. Elliott, Scott M. Kosnoff, and
Amy E. Strati, Attorneys for Respondent
300 North Meridian St., Suite 2500,
Indianapolis, IN 46204

Victoria Hastings, Attorney
ATTN: Taylor Peycha, Investigator
Indiana Department of Insurance
311 West Washington St., Suite 103,
Indianapolis, IN 46204-2787

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF
THE INDIANA DEPARTMENT OF
INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:

Next Financial Group, Inc.
2500 Wilcrest Drive, Suite 620
Houston, TX 77042

Respondent.

Type of Agency Action: Enforcement

License Number: 306194N

FILED
FEB 10 2020
STATE OF INDIANA
DEPT. OF INSURANCE

**PETITION FOR ADMINISTRATIVE REVIEW
AND REQUEST FOR HEARING**

NEXT Financial Group, Inc. ("NEXT"), by counsel and pursuant to Indiana Code § 27-1-15.6-12(d) and Chapter 3 of the Indiana Orders and Procedures Act, Indiana Code art. 4-21.5 ("AOPA"), petitions for administrative review of the Administrative Order and Notice of Nonrenewal of License dated January 31, 2020 ("Nonrenewal Order") from the Indiana Department of Insurance and Insurance Commissioner Stephen W. Robertson (together, the "Department"), and requests a hearing. A true and accurate copy of the Nonrenewal Order is provided as **Exhibit A**. In support of this petition, NEXT states:

1. This filing is timely because it is within fifteen days of NEXT's receipt of the Nonrenewal Order, and within 63 days of the mailing of the Nonrenewal Order on or about January 31, 2020. See Ind. Code § 4-21.5-3-7(a); Ind. Code § 27-1-15.6-12(d).

I. NEXT's Interest

2. NEXT is a full service independent contractor broker-dealer and investment advisor, which also offers insurance products and services. NEXT is registered with the United State Securities and Exchange Commission (SEC), a member of the Financial Industry Regulatory Authority (FINRA), and licensed in 50 states and the District of Columbia as a broker dealer¹ and investment advisor, and in 47 states and the District of Columbia as an insurance agency or producer. NEXT employs approximately 450 independent registered representatives throughout the country.

3. NEXT is a licensed nonresident insurance producer organization in Indiana, holding license number 306194N ("License") since September 28, 1999. The License was most recently renewed by the Department on January 9, 2018 and was to expire on January 31, 2020.²

4. On or about November 13, 2019, NEXT filed a renewal application for its License with the Department ("Renewal Application"). See Ex. A at ¶ 7.

5. NEXT disclosed in its Renewal Application that it had been a party to an administrative action. *Id.*

¹ NEXT is also licensed as a broker dealer in Puerto Rico and the Virgin Islands.

² During the pendency of the Department's review of this petition, NEXT's "existing license does not expire until the agency has disposed of the proceeding under this chapter concerning the renewal[.]" Ind. Code § 4-21.5-3-4(d) & (a)(3); see also Ind. Code § 25-0.5-9-21 (providing "[t]he department of insurance (IC 27-1) is a board under IC 25-1-8.").

6. The Nonrenewal Order is directed to NEXT because it denies the renewal of NEXT's License and states that the License "shall not be renewed due [to] the nature of multiple administrative actions, three (3) of which were not timely reported to the Department." *See* Ex. A at p. 4.

7. NEXT is aggrieved by and adversely affected by the Nonrenewal Order because it declines to renew NEXT's License, which prevents NEXT from continuing to do business as an insurance producer in Indiana. *See* Ind. Code § 27-1-15.6-3(a) ("A person shall not sell, solicit, or negotiate insurance in Indiana . . . unless the person is licensed for that line of authority under this chapter"). NEXT is therefore a proper party to seek administrative review of the Nonrenewal Order under Indiana Code §§ 4-21.5-3-5 and 27-1-15.6-12(d).

II. The Department's Jurisdiction

8. The Department is the State agency charged with overseeing and regulating licenses for insurance producers in Indiana. *See, generally*, Ind. Code art. 27-1; 760 Ind. Admin. Code 2. The Department's address is: 311 West Washington Street, Suite 300, Indianapolis, Indiana 46204-2787. The official duties of the Indiana Commissioner of Insurance, Stephen W. Robertson, are set forth in Indiana Code § 27-1-1-2 and associated statutes, and include oversight of the Department and the administration of laws and regulations relating to insurance in Indiana. The

Commissioner is the “ultimate authority” for the Department under AOPA. Ind. Code § 4-21.5-1-15; Ind. Code § 27-1-1-2(a).

9. The Department has jurisdiction over this petition for administrative review under Indiana Code § 27-1-15.6-12(d), which provides NEXT the right to “a hearing before the commissioner to determine the reasonableness of the commissioner’s action” following the Commissioner’s “refus[al] to renew a license[.]” The Nonrenewal Order is an “order” within the meaning of AOPA, Ind. Code § 4-21.5-1-9, and Indiana Code § 4-21.5-3-7 authorizes NEXT to petition for review of the Nonrenewal Order. Additionally, Indiana Code § 27-1-15.6-34 provides “[a]ll hearings held under this chapter are governed by IC 4-21.5-3.”

III. Issues Presented

10. The issue presented upon administrative review and hearing is whether the Commissioner’s refusal to renew NEXT’s License was reasonable in light of the allegations in the Nonrenewal Order or otherwise contrary to law. The Nonrenewal Order should be reversed because the Commissioner’s refusal to renew the License is unreasonable because, among other reasons, it is arbitrary and capricious, unsupported by the evidence, an abuse of the Department’s discretion, in excess of the Department’s statutory authority, and contrary to law.³

11. The Nonrenewal Order states that NEXT’s License “shall not be renewed due [to] the nature of multiple administrative actions, three (3) of which

³ NEXT hopes to obtain additional information, including from the Department about the allegations and any investigation the Department conducted through this review, and explicitly reserves the right to modify, or supplement, this Petition to address any supplemental information obtained.

were not timely reported to the Department.” See Ex. A at p. 4. The Nonrenewal Order is purportedly based on a conclusion that NEXT used “fraudulent, coercive, or dishonest practices, or demonstrat[ed] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere” under Indiana Code § 27-1-15.6-12(b)(8). See Ex. A at ¶ 11. Yet, the Nonrenewal Order does not identify what specific “practices” and factual assertions are being relied on to justify nonrenewal based on Indiana Code § 27-1-15.6-12(b)(8). See, *Perdue v. Gargano*, 964 N.E.2d 825 (Ind. 2012) (finding a due process violation because “a constitutionally adequate explanation [for an adverse agency action] must include the individualized factual bases underlying [the] adverse determination” and that “[m]erely offering applicants information from which they could potentially deduce the reasons for a denial is no process at all.”). The Department’s references to the out-of-state actions alone does not adequately allege nor establish “practices” or a pattern of conduct by NEXT, especially given the scope of NEXT’s operations, the number of its representatives, and the period of time covered by the actions.⁴

12. Notably, in none of the out-of-state actions relied on by the Department was NEXT suspended or barred by other authorities from selling or providing services related to the products involved.

⁴ As a result, NEXT has not been afforded due process in connection with the Nonrenewal Order because, for example, the Department has not provided actual notice of the factual bases of the allegations it relied upon (other than conclusory references to out-of-state orders) and a meaningful opportunity to respond to allegations related to any alleged use of “fraudulent, coercive, or dishonest practices, or demonstrat[ed] incompetence, untrustworthiness, or financial irresponsibility in the conduct of business” implicating Indiana Code § 27-1-15.6-12(b)(8). See, e.g., *Ind. State Bd. of Educ. v. Brownsburg Cmty. Sch. Corp.*, 842 N.E.2d 885, 890 (Ind. Ct. App. 2006) (“This is not being technical. This is being fair. A party should be given an opportunity to meet the issues which the court is considering.” (emphasis omitted)).

13. In at least some of the out-of-state actions referenced by the Nonrenewal Order, the conduct at issue did not relate to products or services regulated by the Department. For example, in the actions by agencies in Massachusetts and New Hampshire identified in the Nonrenewal Order, the orders related to concentration guidelines relative to non-traded real estate investment trusts (REITs), which are not regulated by the Department under Indiana Code art. 27-1. Accordingly, this conduct should not be permitted to serve as the basis for nonrenewal under Indiana Code § 27-1-15.6-12(b)(8).

14. NEXT has also taken a number of corrective actions prior to and in response to the out-of-state actions referenced in the Nonrenewal Order. Such corrective measures should be considered in determining the reasonableness of the Nonrenewal Order, including the determination that NEXT is using “fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere” under Indiana Code § 27-1-15.6-12(b)(8).

15. The Department also asserts that NEXT violated an “insurance law” by failing to report three actions in other jurisdictions within 30 days or by one other disclosure not including adequate documentation under Indiana Code § 27-1-15.6-17(a). *See* Ex. A at ¶¶ 3, 4, 5, 6, 10.

16. First, the Department asserts that NEXT was untimely in reporting that the Virginia State Corporation Commission ordered it to pay restitution fees on or about September 11, 2017. *See* Ex. A at ¶ 3. However, the order in this Virginia

matter indicates it was file-stamped by the Virginia State Corporation Commission's clerk's office on September 21, 2017 and records from the National Insurance Producer Registry (NIPR) show that NEXT submitted the Virginia order on October 27, 2017, which was only six days after the purported deadline. In fact, the description of the document submitted on NIPR suggests the disclosure was intended to be filed on October 21, 2017 because the title of the disclosure document was "NEXT Disclosure 10.21.2017" which would have been within 30 days. What is more, the Virginia action predated the issuance of NEXT's most recent License renewal in Indiana, which was approved by the Department on January 9, 2018. For this reason, the Department should not be permitted to now reconsider this out-of-state action that was presumably considered during NEXT's prior renewal cycle.

17. Second, the Nonrenewal Order states that NEXT timely notified the Department that the State of Kansas Office of the Securities Commissioner ordered payment of a fine on or about October 6, 2017 but that NEXT "failed to include any orders from the administrative action or any other relevant legal documents." See Ex. A at ¶ 4. While a copy of the order was inadvertently omitted, NEXT did provide the Department with a summary of the Kansas action. And, like the Virginia action, NEXT disclosed this Kansas order to the Department prior to the Department's issuance of NEXT's most recent renewal on January 9, 2018. At no point during that prior review did the Department notify NEXT that it had insufficient documentation related to Kansas action, and therefore the Department should not be permitted to now reconsider it during a new renewal cycle.

18. Third, the Department asserts that NEXT failed to timely report that the Financial Industry Regulatory Authority (FINRA) fined NEXT on or about December 6, 2017. *See* Ex. A at ¶ 5. Online records from NIPR show that NEXT notified the Department of the FINRA action on or about January 10, 2018, which despite multiple intervening holidays was merely five days after the purported deadline.

19. Finally, the Department asserts that NEXT did not timely report that the SEC ordered the payment of restitution and interest by NEXT on or about March 11, 2019. *See* Ex. A at ¶ 6. However, online records from the NIPR show that NEXT submitted disclosure of the SEC order, which was part of an omnibus order involving more than 100 firms, to the Department through NIPR on April 4, 2019. As a result, this submission occurred less than 30 days after March 11, 2019 and was timely under Indiana Code § 27-1-15.6-17(a).

20. Even if this tribunal finds it appropriate to consider these minor procedural deficiencies related to NEXT's submissions, including the submission of disclosures for out-of-state orders less than a week after the purported deadline, this conduct does not justify the Nonrenewal Order. *See, e.g., Comm'r of Indiana Dep't of Ins. v. Schumaker*, 118 N.E.3d 11, 22 (Ind. Ct. App. 2018) (holding that producer's delay in disclosing permanent bar by FINRA did *not* merit refusal to renew license).

WHEREFORE, NEXT Financial Group, Inc. respectfully requests that the Indiana Department of Insurance and Commissioner Stephen W. Robertson appoint an administrative law judge to hear NEXT's petition, and that the administrative law

judge and Commissioner Robertson reverse the Nonrenewal Order refusing to renew
NEXT's License.

Dated: 2/10/2020

Respectfully submitted,

FAEGRE DRINKER BIDDLE & REATH LLP

By: 

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Amy Strati, Ind. Atty. #15811-49

Matthew R. Elliott, Ind. Atty. #34000-49

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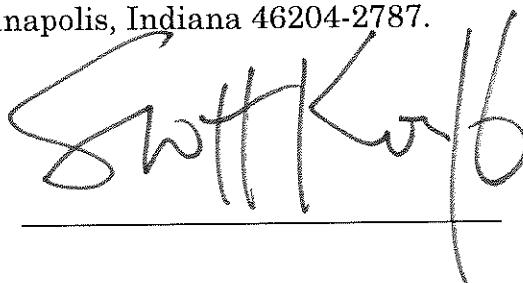
Attorneys for NEXT Financial Group, Inc.

CERTIFICATE OF SERVICE

I certify that on February 10, 2020 I caused the foregoing to be filed by hand delivery and served by U.S. Mail on the following:

Victoria Hastings, Attorney
Taylor Peycha, Investigator
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787

Commissioner Stephen W. Robertson
Indiana Department of Insurance
311 West Washington St., Suite 300
Indianapolis, Indiana 46204-2787.



A handwritten signature in black ink, appearing to read "Scott K. Robertson", is written over a horizontal line.

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE THE COMMISSIONER OF THE
INDIANA DEPARTMENT OF INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)

Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620)
Houston, TX 77042)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 306194N)

FILED

FEB 10 2020

STATE OF INDIANA
DEPT. OF INSURANCE

APPEARANCE BY ATTORNEY

1. The party on whose behalf this form is being filed is:

Initiating _____ Responding X Intervening _____; and
the undersigned attorney and all attorneys listed on this form now appear in this case for
the following parties: NEXT Financial Group, Inc.

2. Applicable attorney information for service as required by Trial Rule 5(B)(2):

Name:	Scott M. Kosnoff	Atty. No.: 14285-49
Address:	FAEGRE DRINKER BIDDLE & REATH LLP	Phone: (317) 237-0300
	300 North Meridian Street	Fax: (317) 237-1000
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	Indianapolis, IN 46204-1750	
	E-Mail: Scott.Kosnoff@faegredrinker.com	

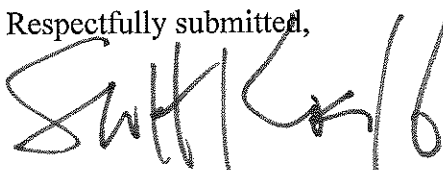
Name:	Amy E. Strati	Atty. No.: 15811-49
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	Suite 2500	
	Indianapolis, IN 46204-1750	
	E-Mail: Matthew.Elliott@faegredrinker.com	

3. This is a N/A case as defined in administrative Rule 8(B)(3).
4. I will accept service by fax at the above noted number: Yes _____ No X _____
I will accept service by email at the noted address: Yes X _____ No _____
5. There are related cases: Yes _____ No X _____
6. There are other party members: Yes _____ No X _____
7. This form has been served on all other parties and Certificate of Service is attached:
Yes X _____ No _____

Dated: February 10, 2020

Respectfully submitted,



Scott M. Kosnoff (#14285-49)

Amy E. Strati (#15811-49)

Matthew R. Elliott (#34000-49)

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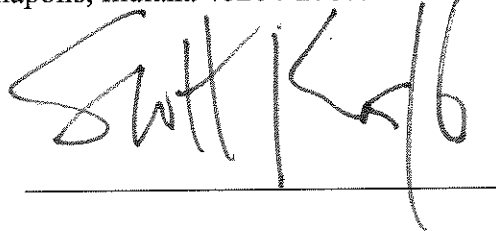
Attorneys for NEXT Financial Group, Inc.

CERTIFICATE OF SERVICE

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Taylor Peycha, Investigator
Indiana Department of Insurance
311 West Washington St., Suite 103
Indianapolis, IN 46204-2787

Commissioner Stephen W. Robertson
Indiana Department of Insurance
311 West Washington St., Suite 300
Indianapolis, Indiana 46204-2787.



A handwritten signature in black ink, appearing to read "SWR/KAB", is written over a horizontal line.

STATE OF INDIANA)
) SS:-
COUNTY OF MARION)

BEFORE THE INDIANA
COMMISSIONER OF INSURANCE

CAUSE NO.: 18866-AG19-1218-206

IN THE MATTER OF:)

Next Financial Group, Inc.)
2500 Wilcrest Drive, Suite 620,)
Houston, TX 77042)

Respondent.)

Type of Agency Action: Enforcement)

License Number: 306194N)

FILED

JAN 31 2020

STATE OF INDIANA
DEPT. OF INSURANCE

ADMINISTRATIVE ORDER AND
NOTICE OF NONRENEWAL OF LICENSE

The Indiana Department of Insurance ("Department"), pursuant to the Indiana Administrative Orders and Procedures Act, Indiana Code § 4-21.5-1 *et seq.*, and Indiana Code § 27-1-15.6-12, hereby gives notice to Next Financial Group, Inc. ("Respondent") of the following Administrative Order:

1. Respondent is a licensed nonresident insurance producer organization, holding license number 306194N ("Respondent's License") since September 28, 1999.
2. Respondent's License will expire on January 31, 2020.
3. On or about September 11, 2017, the Virginia State Corporation Commission ordered Respondent to pay restitution fees of sixty thousand dollars (\$60,000) for failing to properly supervise an agent who misappropriated funds, which was not timely reported to the Department.
4. On or about October 6, 2017, the State of Kansas Office of the Securities Commissioner ordered Respondent to pay seventy-five thousand dollars (\$75,000) for violating the

Kansas Uniform Securities Act, which was timely reported to the Department, but failed to include any orders from the administrative action or any other relevant legal documents.

5. On or about December 6, 2017, the Financial Industry Regulatory Authority ("FINRA") fined Respondent seven hundred fifty thousand dollars (\$750,000) for having a failed security system allowing an agent to excessively trade, resulting in a loss for a consumer, which was not timely reported to the Department.
6. On or about March 11, 2019, the United States Securities and Exchange Commission issued a Cease & Desist Order against Respondent for failing to disclose a conflict of interest in fees received by a consumer. Respondent was ordered to pay one hundred sixty-three thousand four hundred forty-two dollars and twelve cents (\$163,442.12) in interest and one million two hundred forty-one thousand nine hundred seven dollars and seventy-seven cents (\$1,241,907.77) in restitution, which was not timely reported to the Department.
7. On November 13, 2019, Indiana Department received a renewal application for Respondent's nonresident producer's license where they answered "yes" to having been a party to an administrative action. Respondent did not include a copy of the order, consent to order, or other relevant legal documents in the report to the Department regarding the administrative actions against Respondent.
8. On or about December 19, 2019, the New Hampshire Department of State –Bureau of Securities Regulation issued a Consent Order due to Respondent's failure to reasonably supervise the sale of certain alternative investments to a number of clients, which was timely reported to the Department.

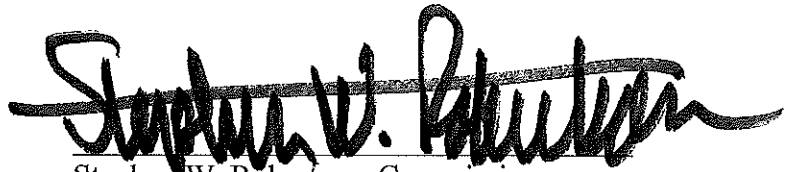
9. On or about December 20, 2019, the Massachusetts Office of the Secretary of the Commonwealth –Securities Division issued a Cease & Desist Order against Respondent, for failing to supervise an agent that over concentrated customers in non-traded real estate investments trusts. Respondent was fined one hundred fifty thousand dollars (\$150,000) and ordered to pay restitution of approximately twenty-four thousand dollars (\$24,000), which was timely reported to the Department.
10. Indiana Code § 27-1-15.6-12(b)(2)(A) provides, in part, that the Commissioner may refuse to issue or renew an insurance producer license for violating an insurance law. Indiana Code § 27-1-15.6-17(a) is an insurance law, that states a producer shall report to the Commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in Indiana not more than thirty (30) days after the final disposition of the matter. The report shall include a copy of the order, consent to order, or other relevant legal documents.
11. Indiana Code § 27-1-15.6-12(b)(8) provides, in part, that the Commissioner may refuse to issue or renew an insurance producer license due a producer using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in Indiana or elsewhere.
12. Indiana Code § 27-1-15.6-12(d) provides that when the Commissioner refuses to renew a license, the Commissioner shall notify the Respondent, in writing, of the reasons for the nonrenewal. This Order serves as that notice.
13. The Commissioner further notifies Respondent that, pursuant to Indiana Code § 27-1-15.6-12(d), Respondent may, within sixty-three (63) days of the mailing of this Order, make a written demand upon the Commissioner for a hearing to determine the

reasonableness of this action. Such a hearing shall be held within thirty (30) days from the date of receipt of Respondent's written demand.

WHEREFORE, based on the foregoing, the Commissioner of Insurance hereby notifies Respondent that **Respondent's License shall not be renewed** due the nature of multiple administrative actions, three (3) of which were not timely reported to the Department.

1-31-2020

Date Signed

A handwritten signature in black ink, appearing to read "Stephen W. Robertson", written over a horizontal line.

Stephen W. Robertson, Commissioner
Indiana Department of Insurance

Distribution:

Next Financial Group, Inc.
ATTN: Licensing Department,
2500 Wilcrest Drive, Suite 620,
Houston, TX 77042

Victoria Hastings, Attorney
ATTN: Taylor Peycha, Investigator
Indiana Department of Insurance
311 W Washington St., Suite 103
Indianapolis, IN 46204-2787