

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007008278201**

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

RE: Choice Investments Inc., Respondent
CRD No. 17665

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Respondent 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 Respondent 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

Choice Investments Inc. has been a FINRA member firm since April 1986. Choice is an independent broker dealer located in Austin, Texas. The firm has four active branches with 26 registered personnel. The firm's primary sources of revenue are generated from retail brokerage and investment advisory services.

OVERVIEW

From November 2005 through July 2007, Choice Investments Inc. ("Choice" or "the firm") committed several violations of NASD's Advertising Rules by means of various false and misleading statements regarding its services, including incomplete and unbalanced discussions of market timing and the use of leverage, within its website. These misleading advertisements were available for widespread access and use by the investing public, not only by those who were

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customers of the firm. In addition, the website discussed and presented performance data for a specific registered investment company but failed to comply with the specific disclosure requirements of Rule 482 under the Securities Act of 1933. The firm's website also noted that it was a member of the Securities Investor Protection Corporation ("SIPC") but failed to properly comply with SIPC's By-Laws. Additionally, the firm failed to file its website with FINRA's Advertising Regulation Department as it was required to do.

FACTS AND VIOLATIVE CONDUCT

Choice's website provided advice to both existing clients and the public through its stock trading and Inverse Index Fund investing systems. The problems associated with Choice's website, which led to the violations of NASD's Advertising Rules, are outlined below.

False and Misleading Website Materials **In Violation of NASD Conduct Rules 2210(d)(1)(A),¹** **2210(d)(1)(B),² and 2110**

Choice's website has existed since early 2000. Initially, the website provided advice to both existing clients and the public about stock trading through a system called "Stage Chart Investing." In November 2005, Choice reconstructed the website to also promote the use of Inverse Index Fund investing.

Unbalanced Discussion of Market Timing and Leverage

Both the Stage Chart Investing system and the Inverse Index Fund investing system emphasized the use of market timing and leverage to achieve profitable returns. With regard to market timing, the website repeatedly focused on the potential benefits without balancing this focus with disclosure of the risks and warnings that successful timing could not be assured. For example, Choice explained market timing in a very simplistic manner, analogizing it to a "pressure gauge" on the market. In this regard, Choice asserted "we try to capture about 70% of each up and down move, and all of that up and down adds up to more \$\$\$ in your account!" If the market goes down, "our pressure gauge turns negative, then we invest your money in a Down or Inverse Index Fund...." Choice failed to provide adequate disclosure that these results may not be achieved, or any warning of the risks associated with market timing. Similarly, when discussing the use of leverage, the website failed to disclose the risks or provide a clear example

¹ NASD Conduct Rule 2210(d)(1)(A): All member communications with the public shall 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 communication to be misleading.

² NASD Conduct Rule 2210(d)(1)(B): No member may make any false, exaggerated, unwarranted or misleading statement or claim in any communication with the public. No member may publish, circulate or distribute any public communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading.

of its potential negative impact on return. The omission of these material facts made the presentation misleading.

Due to the firm's failure to provide a clear and balanced discussion of the possible downside exposure of market timing and the use of leverage, Choice failed to provide potential investors with a sound basis for evaluating the facts regarding the products and services Choice offered.

False and Misleading Materials on Choice's website

False Success Stories and Misleading Testimonials

A section of the website titled "Who Are Our Clients...Client Success Stories" was completely false and misleading. The website appeared to contain success stories of real clients, named Amy, Mark, and Tim, who were evaluating their financial situations and making decisions regarding their future investments. Amy, Mark, and Tim were not actual customers of the firm. Rather, the customers and their success stories were completely fabricated.

Choice also used client testimonials and success stories that were misleading. One client testimonial stated: "I do not worry about my investments, because [Choice] has a system that does not use human emotions." This testimonial was misleading in that this client simply held one stock. Moreover, she never utilized either the stock trading system or the Inverse Index Fund investing system. In fact, she did not have sufficient funds to participate in the investing system. She opened her account with a \$2,000 investment, which is far less than the \$50,000 that was advertised on the website as the minimum to open an account for the Inverse Index Fund investing system. Plus, the firm failed to disclose that this account actually lost market value overall. Additionally, the website never disclosed that this client was an employee of one of the brokers who created Choice's website.

Another client testimonial on Choice's website stated: "I know that Wall Street will not protect me when the stock market goes down." This quote was inaccurate as the client actually stated: "I have learned that Mutual Funds will not protect me when the Market goes down."

Misleading Statements

Choice employed numerous exaggerated, unwarranted, and/or misleading statements throughout the website. For example, a section of Choice's website, entitled "Up & Down Investing for Dummies" provided a "friendly guide to help investors of all levels" better understand market timing, and described the author - a broker at Choice - as an "Index Fund Specialist." In this context, Choice made the following statements:

- "[M]any have timed the market for decades, but Wall Street does not want you to know their secrets;"

- "As Inverse Funds become widely used and more popular, many professionals will come out with track records to prove that Market Timing can work very well;"
- "Wall Street does not want us to invade their pot of gold;"
- "If you follow the formula below, you can do better than 'buy and hold' investing (we call it 'buy and hope');" and
- "We have found that over the long run, 'Up & Down' Investing should do much better than 'Buy & Hold' investing, even after the fees you would pay."

In addition, on its website, Choice chose to highlight the performance of a specific inverse index fund for a time period selected to show the Inverse Index Fund investing system in the best light.

For the foregoing reasons, the firm used false and misleading advertisements that violated NASD Conduct Rules 2210(d)(1)(A), 2210(d)(1)(B), and 2110.

**Failure to Comply with Other Rules Involving Disclosure Requirements
In Violation of NASD Conduct Rules 2210(e)³ and 2110**

Choice's website failed to comply with the disclosure requirements found in the Securities and Exchange Commission ("SEC") and the SIPC Rules. With regard to the failure to comply with SEC rules, the website discussed and presented performance data for a specific registered investment company but did not comply with the disclosure requirements of Rule 482 under the Securities Act of 1933. From at least November 2005 until August 2007, Choice posted historical performance charts on its website that represented a comparison between an investment company (Rydex Inverse Fund) and the S&P 500 from 2000 through 2003. Rule 482 under the Securities Act of 1933 states that for an advertisement that includes performance data of an open-end management investment company, such as Choice's website, recent performance data must be included and specific disclosures must be provided.⁴ Here, despite the fact that Choice created

³ NASD Conduct Rule 2210(e): Any violation by a member of any rule of the SEC, the Securities Investor Protection Corporation or the Municipal Securities Rulemaking Board applicable to member communications with the public will be deemed a violation of this Rule 2210.

⁴ Rule 482 of the Securities Act of 1933 states in pertinent part:

(a) Scope of rule. This section applies to an advertisement or other sales material (advertisement) with respect to securities of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) (1940 Act), or a business development company, that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Act. This section does not apply to an advertisement that is excepted from the definition of prospectus by section 2(a)(10) of the Act (15 U.S.C. 77b(a)(10)), or a Profile under § 230.498. An advertisement that complies with this section, which may include information the substance of which is not included in the prospectus specified in section 10(a) of the Act (15 U.S.C. 77j(a)), will be deemed to be a prospectus under section 10(b) of the Act (15 U.S.C. 77j(b)) for the purpose of section 5(b)(1) of the Act (15 U.S.C. 77e(b)(1))....

(b) Required disclosure. This paragraph describes information that is required to be included in an advertisement in order to comply with this section.

(1) Availability of additional information. An advertisement must include a statement that:

(i) Advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the prospectus contains this and other information about the investment company; identifies a source from which an investor may obtain a prospectus; and states that the prospectus should be read carefully before investing; or

(ii) If used with a Profile, advises an investor to consider the investment objectives, risks, and charges and expenses of the investment company carefully before investing; explains that the accompanying Profile contains this and other information about the investment company; describes the procedures for investing in the investment company; and indicates the availability of the investment company's prospectus.

(2) Advertisements used prior to effectiveness of registration statement. An advertisement that is used prior to effectiveness of the investment company's registration statement or the determination of the public offering price (in the case of a registration statement that becomes effective omitting information from the prospectus contained in the registration statement in reliance upon § 230.430A) must include the "Subject to Completion" legend required by § 230.481(b)(2).

(3) Advertisements including performance data. An advertisement that includes performance data of an open-end management investment company or a separate account registered under the 1940 Act as a unit investment trust offering variable annuity contracts (trust account) must include the following

(i) A legend disclosing that the performance data quoted represents past performance; that past performance does not guarantee future results; that the investment return and principal value of an investment will fluctuate so that an investor's shares, when redeemed, may be worth more or less than their original cost; and that current performance may be lower or higher than the performance data quoted. The legend should also identify either a toll-free (or collect) telephone number or a Web site where an investor may obtain performance data current to the most recent month-end unless the advertisement includes total return quotations current to the most recent month ended seven business days prior to the date of use. An advertisement for a money market fund may omit the disclosure about principal value fluctuation; and ...

(ii) If a sales load or any other nonrecurring fee is charged, the maximum amount of the load or fee, and if the sales load or fee is not reflected, a statement that the performance data does not reflect the deduction of the sales load or fee, and that, if reflected, the load or fee would reduce the performance quoted.

(4) Money market funds. An advertisement for an investment company that holds itself out to be a money market fund must include the following statement:

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at \$1.00 per share, it is possible to lose money by investing in the Fund.

A money market fund that does not hold itself out as maintaining a stable net asset value may omit the second sentence of this statement.

(5) Presentation. In a print advertisement, the statements required by paragraphs (b)(1) through (b)(4) of this section must be presented in a type size at least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement, provided that when performance data is presented in a type size smaller than that of the major portion of the advertisement, the statements required by paragraph (b)(3) of this section may appear in a type size no smaller than that of the performance data. If an advertisement is delivered through an electronic medium, the legibility requirements for the statements required by paragraph (b)(1) through (b)(4) of this section relating to type size and style may be satisfied by presenting the statements in any manner reasonably calculated to draw investor attention to them. In a radio or television advertisement, the statements required by paragraph (b)(1) through (b)(4) of this section must be given emphasis equal to that used in the major portion of the advertisement. The statements required by paragraph (b)(3) of this section must be presented in close proximity to the performance data, and, in a print advertisement, must be presented in the body of the advertisement and not in a footnote....

(d) Performance data for non-money market funds. In the case of an open-end management investment company or a trust account (other than a money market fund referred to in paragraph (e) of this section), any quotation of the

company's performance contained in an advertisement shall be limited to quotations of:

(1) Current yield. A current yield that:

- (i) Is based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);
- (ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;
- (iii) Is set out in no greater prominence than the required quotations of total return; and
- (iv) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(2) Tax-equivalent yield. A tax-equivalent yield that:

- (i) Is based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);
- (ii) Is accompanied by quotations of yield as provided for in paragraph (d)(1) of this section and total return as provided for in paragraph (d)(3) of this section;
- (iii) Is set out in no greater prominence than the required quotations of yield and total return;
- (iv) Relates to the same base period as the required quotation of yield; and
- (v) Adjacent to the quotation and with no less prominence than the quotation, identifies the length of and the date of the last day in the base period used in computing the quotation.

(3) Average annual total return. Average annual total return for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a et seq.) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

- (i) Be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter), N-3 (§§ 239.17a and 274.11b of this chapter), or N-4 (§§ 239.17b and 274.11c of this chapter);
- (ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;
- (iii) Be set out with equal prominence; and
- (iv) Adjacent to the quotation and with no less prominence than the quotation, identify the length of and the last day of the one, five, and ten year periods.

(4) After-tax return. For an open-end management investment company, average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption) for one, five, and ten year periods, except that if the company's registration statement under the Act (15 U.S.C. 77a et seq.) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed. The quotations must:

- (i) Be based on the methods of computation prescribed in Form N-1A (§§ 239.15A and 274.11A of this chapter);
- (ii) Be current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;
- (iii) Be accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;
- (iv) Include both average annual total return (after taxes on distributions) and average annual total return (after taxes on distributions and redemption);
- (v) Be set out with equal prominence and be set out in no greater prominence than the required quotations of total return; and
- (vi) Adjacent to the quotations and with no less prominence than the quotations, identify the length of and the last day of the one, five, and ten year periods.

(5) Other performance measures. Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

- (i) Reflects all elements of return;
- (ii) Is accompanied by quotations of total return as provided for in paragraph (d)(3) of this section;
- (iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (d)(4) of this section;
- (iv) Is set out in no greater prominence than the required quotations of total return; and

this portion of the website in November 2005, it only used data from 2000 through 2003. In addition, Choice did not include the required disclosures including, but not limited to, a legend noting that current performance may be lower or higher than the performance data quoted.

Further, while Choice disclosed its membership in SIPC, the firm failed to comply with SIPC's By-Laws, which require a hyperlink to the SIPC website.

For the foregoing reasons, Choice failed to comply with Rule 482 under the Securities Act of 1933 and the SIPC By-Laws. In so doing, the firm violated NASD Conduct Rules 2210(e) and 2110.

**Failure to File Website with FINRA's Advertising Regulation Department
In Violation of NASD Conduct Rules 2210(c)(2)⁵ and 2110**

Choice's website discussed the Inverse Index Funds which are registered investment companies. NASD Conduct Rules require member firms to file all advertisements and sales literature, including websites, concerning registered investment companies with FINRA's Advertising Regulation Department within 10 days of first use or publication. Choice failed to ever file its website with FINRA's Advertising Regulation Department and consequently violated NASD Conduct Rules 2210(c) and 2110.

OTHER FACTORS

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

- 1) To be censured;
- 2) To pay a fine of \$20,000;
- 3) An undertaking to file with FINRA's Advertising Regulation Department all

(v) Adjacent to the measurement and with no less prominence than the measurement, identifies the length of and the last day of the period for which performance is measured.

⁵ NASD Conduct Rule 2210(c)(2):

(2) Requirement to File Certain Material

Within 10 business days of first use or publication, a member must file the following advertisements and sales literature with the Department:

(A) Advertisements and sales literature concerning registered investment companies (including mutual funds, variable contracts, continuously offered closed-end funds, and unit investment trusts) not included within the requirements of paragraph (c)(3). The filing of any advertisement or sales literature that includes or incorporates a performance ranking or performance comparison of the investment company with other investment companies must include a copy of the ranking or comparison used in the advertisement or sales literature.

advertisements used on the firm's website or on the internet⁶ at least ten days prior to their first use for six months from the date of acceptance of this AWC. The ten-day period shall commence on the date of transmission with respect to advertisements or sales literature that Choice sends by facsimile and on the day following shipment with respect to advertisements or sales literature that Choice sends by overnight delivery. After ten days, these advertisements or sales literature may be used in the absence of comments from FINRA. However, at any time, upon receipt of comments from FINRA on the advertisements or sales literature filed prior to use, unless notified otherwise by FINRA, Choice shall take all reasonable steps to withhold or cause to be withheld the material from further publication until the changes specified by FINRA have been made, and such material will be revised and re-filed ten days prior to any use, unless otherwise agreed to by FINRA staff at its sole discretion.

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 it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it 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 Formal Complaint issued specifying the allegations against me;
- B. To be notified of the Formal 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,

⁶ This excludes hard copy print advertisements, sales literature (including mass email), advertisements that predate acceptance of this AWC and are to be used without material change, and advertisements reviewed and found unobjectionable by NASD after the date of this AWC that are used without material change.

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 General Counsel, 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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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 NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it; and
- C. If accepted:
 - 1. this AWC will become part of its permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about its disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and

the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and

4. Respondent 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. Respondent 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that Respondent has 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 Respondent to submit it.

5/17/08
Date

[Signature]
Respondent

Choice Investments Inc.

By: James G. Kaighin
Chief Compliance Officer

Reviewed by:

[Signature]
Patrick Lanier, Esquire

Accepted by FINRA:

June 4, 2008
Date

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

Susan Light
Susan Light
Senior Vice President
FINRA Department of Enforcement
14 Wall Street - 14th Floor
New York, NY 10005