

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013035371201**

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

RE: J.D. Nicholas & Associates, Inc.
CRD No. 44791

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent J.D. Nicholas & Associates, Inc. ("JD Nicholas" 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 the Firm 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

JD Nicholas, formerly known as A&F Securities, Inc. ("A&F"), has been a FINRA member since May 12, 1998. The Firm employs 42 registered representatives ("RRs").

RELEVANT DISCIPLINARY HISTORY

On June 17, 2013, the Firm consented to findings of the New Hampshire Bureau of Securities Regulation ("NHBSR") ("the New Hampshire Order") for violations of the NHBSR code. More specifically, under New Hampshire statute RSA 421-B, broker-dealers shall abide by the rules of the Securities and Exchange Commission and other self-regulatory organizations which have jurisdiction over the licensee, which set forth standards of conduct in the securities industry. The Order stated that the Firm failed to abide by FINRA Rule 3230 (formerly NASD Rule 2212) by failing to enforce its supervisory system to prevent violations of

the Do-Not-Call ("DNC") Registry restrictions. The Firm was fined \$40,000 and was prohibited for one year from soliciting any new business from New Hampshire residents during the period June 21, 2013 through June 21, 2014.

On February 27, 2013, the Firm consented to findings of the Arkansas Securities Commissioner that it failed to enforce its systems to supervise the activities of its agents from placing violative calls to Arkansas residents whose telephone numbers were registered on the DNC registry. The Firm was fined \$17,500

On September 20, 2010, A&F entered into an AWC (2008011649201) in which it was censured and fined \$27,500 for violations of Section 17(a) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rule 17a-3, NASD Conduct Rules 3010, 3070, 3110 and 2110, and Article V, Section 2(c) of FINRA's By-Laws based on findings that A&F failed to (i) report multiple complaints to the Rule 3070 system and maintain records concerning those complaints; (ii) update a registered person's Uniform Application for Securities Industry Registration or Transfer ("Form U4"); and (iii) implement its own heightened supervisory procedures with respect to three brokers on heightened supervision.

OVERVIEW

During the time period June 2013 through November 2013, the Firm failed to reasonably enforce its supervisory procedures related to telemarketing activities, including ensuring that requests to add telephone numbers to the Firm's DNC List were handled timely and accurately. Accordingly, the Firm violated FINRA Rules 3230(a) and (d) and 2010.

Additionally, during the time period July 2012 through June 2013, the Firm failed to timely submit five Rule 4530 complaint filings for correspondence deemed to contain a solicitation based complaint and failed to submit a Rule 4530 filing for one e-mail correspondence also containing a solicitation based complaint. The firm also failed to accurately report one complaint to the Rule 4530 reporting system.

FACTS AND VIOLATIVE CONDUCT

FINRA Rule 3230 (a) & (d) – Telemarketing

Rule 3230(a) in pertinent part states that: No member or person associated with a member shall initiate any outbound telephone call to ... Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

Further 3230(d) requires that: Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

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

During the time period June 2013 through November 2013, the Firm failed to consistently block calls through its automated system to telephone numbers on the Firm's DNC List. During that period, the Firm's telephone system failed to block 489 outgoing phone calls to numbers on its DNC List, including calls to 6 New Hampshire residents. Some of the telephone numbers on the DNC list were called multiple times.

In addition, the Firm failed to implement a system, as required under FINRA telemarketing rules, to ensure that requests to add telephone numbers to the Firm's DNC List were handled timely and accurately.

Accordingly, the Firm violated FINRA Rules 3230(a) and (d) and 2010.

FINRA Rule 4530(d) – Complaint Reporting

FINRA Rule 4530(d) requires that member firms report statistical and summary information regarding customer complaints on a quarterly basis. FINRA Rule 4530(d) requires members to report statistical and summary information regarding customer complaints in the detail required by the Association.

The Firm from July 2012 through June 2013 failed to timely report statistical and summary information regarding five customer complaints and failed to submit a Rule 4530 filing for one e-mail correspondence customer complaint. The firm also failed to accurately file one complaint to the Rule 4530 reporting system.

Accordingly, the Firm violated FINRA Rules 4530(d) and 2010.

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

- A censure, and

- A fine of \$35,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) 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 the inability to pay, now or at any time hereafter, the monetary sanction(s) 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 Respondent; and
- C. If accepted:
 - 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 - 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. 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: (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. 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.

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 have 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 the Firm to submit it.

2/10/15
Date (mm/dd/yyyy)


J. D. Nicholas & Associates, Inc., Respondent

By: Daniel Duncanson

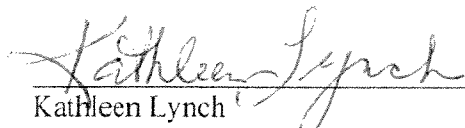
Reviewed by:


Ian J. Primet, Esq.
Counsel for Respondent
Wexler Burkhardt Hirschberg & Unger LLP
377 Oak Street
Concourse Level C2
Garden City, New York 11530

Accepted by FINRA:

3-19-15
Date

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


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