

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E062003053802

TO: Department of Enforcement
NASD

RE: Choice Investments, Inc.
CRD No. 17665

Donald Arthur Itzen
General Securities Principal
CRD No. 853436

Jean Paul Cruikshank
General Securities Representative
CRD No. 3230480

Pursuant to Rule 9216 of NASD's Code of Procedure, Choice Investments, Inc., Donald Arthur Itzen and Jean Paul Cruikshank ("Choice" or the "firm," "Itzen," and "Cruikshank," respectively, or "Respondents," collectively) submit this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondents alleging violations based on the same factual findings.

The Respondents understand that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondents; and
3. If accepted:
 - a. this AWC will become part of Respondents' permanent disciplinary record and may be considered in any future actions brought by NASD against them;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondents' disciplinary record;
 - c. NASD, may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

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- d. Respondents 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondents' testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The Respondents also understand that their experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Choice Investments, Inc. is currently, and was during all time relevant hereto, a member of NASD and registered as a broker/dealer with the Securities and Exchange Commission. The firm became registered with NASD in April 1986. The firm's disciplinary history includes the following:

On March 26, 2001, NASD accepted a Letter of Acceptance, Waiver and Consent (CMS020018), whereby the firm was censured and fined \$9,000 for violations of NASD Rules 2110, 3010 and 6955(a).

On November 21, 2000, NASD accepted a Letter of Acceptance, Waiver and Consent (CMS000233), whereby the firm was censured and fined \$7,500 for violations of NASD Rules 2110, 4632(a) and 6420(a).

On February 23, 2000, NASD accepted a Letter of Acceptance, Waiver and Consent (C05000008), whereby the firm, Itzen and another individual were censured and fined \$27,000, of which \$19,500 was joint and several, for violations of NASD Rules 1032(f), 2110, 3010, and 3370 and SEC Rules 17a-3 and 17a-4.

Donald Arthur Itzen entered the securities industry in June 1978, when he registered with an NASD member firm. He registered with two other NASD member firms before registering with Choice Investment Products, Inc. (n/k/a Choice Investments, Inc.) in February 1986. He also briefly registered with another NASD member firm during his association with Choice. During his career in the securities industry, Itzen obtained Series 3, 4, 7, 24, 53, 63 and 66 securities licenses. He currently serves as Choice's president. His disciplinary history includes the February 23, 2000, action noted above.

Jean Paul Cruikshank entered the securities industry in March 1999, when he associated with an NASD member firm. He subsequently registered with three other firms before associating with Choice from October 2002 to December 31, 2004. He is not currently registered with an NASD member firm. Cruikshank has no prior disciplinary history. During his career in the securities industry, he obtained Series 6, 7 and 63 securities licenses.

I.

WAIVER OF PROCEDURAL RIGHTS

The Respondents specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against them;
- 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, 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Respondents specifically and voluntarily waive any right to claim bias or prejudice 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. Respondents further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of 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.

II.

ACCEPTANCE AND CONSENT

- A. The Respondents hereby accept and consent, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
 - 1. During the period from approximately January 2003 through December 2003, Jean Paul Cruikshank recommended unsuitable investment transactions to customer NS. Specifically, Cruikshank recommended several short-term purchases of low-priced, over-the-counter securities and put and call options in NS's two investment accounts (an IRA account and a regular account). His recommendations were unsuitable for NS in light of her financial condition, investment objectives, investment experience and net worth. At the time of Cruikshank's recommendations, NS was a single, unemployed mother of two,

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with limited income and investment experience. Her monthly income was approximately \$1,000, and the combined value of her two securities accounts (\$19,145) represented 37% of her liquid net worth. Her investment experience was limited to investing in mutual funds. Her investment objective for both of her accounts was long-term growth with greater risk. Cruikshank's recommendations were inconsistent with NS's investment objective because of the short-term nature of the trading in NS's accounts (the average holding period in her IRA account was 35 days, and 52 days in the other account).

Within a year of implementing Cruikshank's investment recommendations, one of NS's accounts had declined in value by approximately 82% (from \$11,050 to \$2,002).

Such acts, practice and course of conduct constitute violations of NASD Conduct Rules 2110 and 2310 by Jean Paul Cruikshank.

2. In connection with the above-described trading activity, Cruikshank guaranteed customer NS against losses after she expressed concern about the losses in her securities accounts. He told her that if he could not trade her accounts back to profitability, he would personally make up the losses and pay some of her personal expenses such as her credit card bills. To partially fulfill his guarantee, in July 2003, Cruikshank gave NS a check in the amount of \$1,000 that was drawn on his personal bank account.

Such acts, practice and course of conduct constitute violations of NASD Conduct Rules 2110 and 2330(e) by Jean Paul Cruikshank.

3. During the period from approximately May 2003 through November 2003, Cruikshank had written communications with NS in which he made unwarranted or misleading claims, made predictions or projections of performance, and failed to provide a sound basis for evaluating facts regarding recommended investment products.

Such acts, practice and course of conduct constitute violations of NASD Conduct Rules 2110 and 2210(d)(1) (A), (B) and (D) by Jean Paul Cruikshank.

4. During the period from approximately December 2002 through December 2003, Choice Investments, Inc., acting through Donald Arthur Itzen, failed to establish procedures that were reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules. Specifically, Choice's written supervisory procedures were inadequate in that they did not address how a supervisor was to conduct a suitability review of customer transactions. Additionally, Itzen failed to supervise Cruikshank's securities recommendations to customer NS in that he approved transactions in her account that were inconsistent with her stated investment objectives. Finally, Itzen failed to enforce the firm's written supervisory procedures regarding the approval of new customer accounts.

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Such acts, practices, and conduct constitute violations of NASD Conduct Rules 2110 and 3010 by Choice Investments, Inc. and Donald Arthur Itzen.

B. Respondents also consent to the imposition, at a maximum, of the following sanctions:

Choice Investments, Inc.: A censure; monetary fine in the amount of \$10,000, to be imposed jointly and severally with Donald Arthur Itzen; and a joint and several order with Jean Paul Cruikshank to pay restitution to customer NS in the amount of \$9,048, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from December 31, 2003, until the date of the restitution payment.

Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to NASD staff no later than 60 days after acceptance of this AWC. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customer NS from pursuing her own action to obtain restitution or other remedies. If for any reason Respondents Choice and/or Cruikshank cannot locate customer NS after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondents Choice and/or Cruikshank shall forward any undistributed restitution to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which customer NS is last known to have resided.

Donald Arthur Itzen: A monetary fine in the amount of \$10,000, to be imposed jointly and severally with Choice Investments, Inc., and a suspension from association with any NASD member firm in any principal or supervisory capacity for a period of 10 days.

Jean Paul Cruikshank: A monetary fine in the amount of \$15,000; a suspension from association with any NASD member in any capacity for a period of one year; and a joint and several order with Choice Investments, Inc. to pay restitution to customer NS in the amount of \$9,048, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from December 31, 2003, until the date of the restitution payment.

Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to NASD staff no later than 60 days after acceptance of this AWC. The imposition of a restitution order or any other monetary sanction herein, and the timing of such ordered payments, does not preclude customer NS from pursuing her own action to obtain restitution or other remedies. If for any reason Respondents Choice and/or Cruikshank cannot locate customer NS after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondents Choice and/or Cruikshank shall forward any undistributed restitution to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which customer NS is last known to have resided.

The monetary fine against Cruikshank shall be due and payable either immediately upon reassociation with a member firm following the suspension noted above, or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Unless otherwise noted, the sanctions imposed herein shall be effective on a date set by the Association staff.

III.

OTHER MATTERS

- A. Respondents understand that they may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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 NASD, nor does it reflect the views of NASD or its staff.
- B. Respondents Choice and Itzen agree to pay any monetary sanctions imposed on them upon notice that this AWC has been accepted and that such payments are due and payable and have attached Election of Payment forms showing the method by which they propose to pay any fine imposed.
- C. Respondent Cruikshank agrees to pay any monetary sanctions imposed on him upon re-entry as noted above.
- D. Respondents specifically and voluntarily waive any right to claim that they are unable to pay now, or at any time hereafter, any monetary sanction imposed in this matter.
- E. Respondent Cruikshank, understands that if he is barred or suspended from association with any NASD member, he become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, he may not be associated with any NASD member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. (See NASD Rule 8310 and IM-8310-1).

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce them to submit it.

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12/16/2015
Date

Choice Investments, Inc.,

By: Donald A. Itzen
(signature)

Name: Donald A. ITZEN
(printed name)

Title: PRESIDENT

Donald A. Itzen
Donald Arthur Itzen

Reviewed by:

Counsel for Respondents

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Date _____

Choice Investments, Inc.,

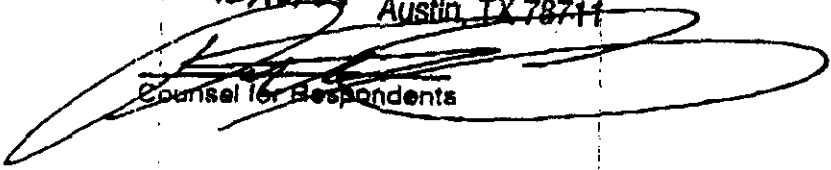
By: _____
(signature)

Name: _____
(printed name)

Title: _____

Donald Arthur Itzen

Reviewed by: Patrick Lanier
Per cover letter Attorney At Law
12/16/05 P.O. Box 13524
Austin, TX 78711


Counsel for Respondents

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Jean Paul Cruikshank 12-16-05

Reviewed by:

Counsel for Respondent

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Donald Arthur Itzen and Jean Paul Cruikshank

Accepted by NASD:

2/24/2006
Date

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

Karen E. Whitaker (by jpp)
Karen E. Whitaker, Regional Counsel
NASD Department of Enforcement
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972-716-7610; Fax No. 972-716-7646

NASD District Director
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