

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
November 7, 2007

In the Matter of

NEXT FINANCIAL GROUP, INC.

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ORDER FOLLOWING PREHEARING
CONFERENCE

I held a second telephonic prehearing conference today with counsel for the Division of Enforcement (Division) and Respondent NEXT Financial Group, Inc. (NEXT). The Division explained that it will seek a cease-and-desist order and a tier-two civil penalty of \$325,000 for the violations alleged in the Order Instituting Proceedings (OIP). Although Paragraph III.B of the OIP discusses remedial action pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Exchange Act), the Division stipulated that no Section 15(b) sanction will be sought in this proceeding.

(1) The Division's More Definite Statement (presented in the form of an amended OIP) makes clear that some of the alleged violations occurred between 2001 and 2004 (OIP ¶¶ II.B.9, 12). For proven misconduct during that interval, the maximum tier-two civil penalty would be something less than \$325,000. See 17 C.F.R. § 201.1002. Indeed, the \$325,000 maximum is applicable only to a tier-two violation that occurred after February 14, 2005. See 17 C.F.R. § 201.1003. It is uncertain if the Division is asking me to treat the entire course of conduct described in the OIP as a single tier-two violation, for which a maximum penalty of \$325,000 is appropriate or, in the alternative, to find multiple tier-two violations that collectively warrant a civil penalty of \$325,000. By November 13, 2007, the Division shall clarify its position on this issue.

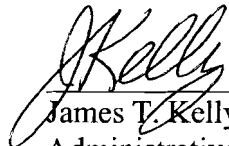
(2) By November 16, 2007, NEXT shall state whether it intends to oppose the Division's requested civil monetary penalty on the grounds of inability to pay. See Section 21B(d) of the Exchange Act. If NEXT intends to pursue this affirmative defense, it must provide detailed financial disclosure when it submits its prehearing brief on November 28, 2007. See Rule 630 of the Rules of Practice of the Securities and Exchange Commission (Commission); Terry T. Steen, 53 S.E.C. 618, 626-28 (1998) (holding that an Administrative Law Judge may require the filing of sworn financial statements). At the hearing, the Division would then have an opportunity to cross-examine a NEXT official about the financial data provided on November 28.

(3) Paragraph II.B.3 of the OIP alleges that NEXT's transition team provided recruits with a sample Excel spreadsheet that many recruits used to supply NEXT with nonpublic

personal information of current customers. Paragraph II.B.4 of the OIP identifies seventeen specific categories of such information. NEXT's Answer to the OIP stated: "NEXT would deny that all of the information set out in (1) through (17) of paragraph II.B.4 is nonpublic personal information of the client as the Division . . . alleges." By November 16, 2007, NEXT shall supplement its Answer to the OIP to identify which of the seventeen specific categories of information it admits are covered by Regulation S-P and which of the seventeen specific categories of information it contends are not covered by Regulation S-P. See Rule 220(c) of the Commission's Rules of Practice.

(4) A final prehearing conference will be held by telephone on November 29, 2007, at 3:00 p.m., E.S.T.

SO ORDERED.



James T. Kelly
Administrative Law Judge