STATE OF NEBRASKA
Department of Banking & Finance

In the Matter of: Earl J Johnson III, 909 North 96th Street, Omaha, Nebraska 68114	)))))	FINDINGS OF FACT CONCLUSIONS OF LAW AND CONSENT ORDER

THIS MATTER comes before the Nebraska Department of Banking and Finance ("DEPARTMENT"), by and through its Director, pursuant to its authority under the Securities Act of Nebraska, Neb. Rev. Stat. §§ 8-1101 to 8-1123 (Reissue 2012; Supp. 2013) ("Act"). Pursuant to Neb. Rev. Stat. § 8-1115 (Reissue 2012), the DEPARTMENT has investigated the acts of Earl J. Johnson III, 909 North 96th Street, Omaha, Nebraska. As a result of such investigation, and being fully advised and informed in the matter, the Director and Earl J. Johnson III enter into the following Findings of Fact, Conclusions of Law and Consent Order ("Order").

FINDINGS OF FACT

1. Earl J. Johnson III ("JOHNSON") (CRD #4274899) was registered in Nebraska as an investment adviser representative and registered representative of Waddell and Reed ("W&R") from September 2000 through December 2011, and is now an investment adviser representative with Evergreen Capital Management, Inc. ("Evergreen"), pursuant to Neb. Rev. Stat. § 8-1103 (Reissue 2012). JOHNSON has offices located at 909 North 96th Street, Omaha, Nebraska.

2. KJ, a current Nebraska resident, maintains a brokerage IRA account with W&R. JOHNSON was identified as the registered representative of the account during

the relevant time period. JOHNSON is aware of the identity of KJ, which is being kept confidential in this Order for privacy reasons.

3. In June 2011, JOHNSON requested and received a loan from KJ in the amount of ten thousand dollars ($10,000.00).

4. JOHNSON instructed KJ to remove the amount of the loan from her brokerage IRA account at W&R and place the money in her personal checking account. She was then to give JOHNSON a cashier's check for the full amount.

5. JOHNSON provided the instructions to KJ in writing on his W&R business letterhead.

6. JOHNSON acknowledges he received a loan from KJ for ten thousand dollars ($10,000.00).

7. During the relevant time period, W&R maintained the following policy and procedures as part of its Compliance Policies for Financial Advisors and Managing Principals:

> a. Section 11 E. – Payments to and from others (Loans): Advisors may not borrow from, loan to, arrange a loan for, or assist a client in securing a loan for any purpose unless specifically authorized in writing by the Managing Principal as detailed in Section 13 D.
>
> b. Section 13 D. – Loans, Joint Accounts, and Funding Accounts: Advisors are prohibited from borrowing from or lending money and/or securities to a client except in the following instance: the client is an immediate family member and the advisor has received permission from the Managing Principal and Regional Vice President documented on a Conflict Waiver Request Form.

8. On August 31, 2010 and September 30, 2011, JOHNSON submitted his W&R Compliance Manual Certification stating that he had received, read and had the

opportunity to ask questions regarding the Compliance Policies for Financial Advisors and Managing Principals. JOHNSON also certified that he would not "borrow or loan money or securities from or to any client" unless he "received prior written permission from [his] Managing Principal, Regional Vice Principal and the Compliance Department through the submission of a Conflict Waiver Request Form."

9. On September 30, 2011, on W&R's Annual Compliance Questionnaire Form, JOHNSON marked "NO" to Question 16a; "Do you currently have any outstanding loans with a client where you either borrowed funds or securities from a client or lent funds or securities to a client?"

10. Both KJ and JOHNSON have represented to the DEPARTMENT the loan has been paid in full.

11. Evergreen has agreed to place JOHNSON on a three (3) year heightened supervision plan which includes:

a. Reviewing new account applications for completeness and suitability.

b. Reviewing existing client accounts on a quarterly basis.

c. Requiring JOHNSON to annually verify in writing he has not engaged in inappropriate transactions or behaviors with clients.

CONCLUSIONS OF LAW

1. The DEPARTMENT has jurisdiction over this matter pursuant to the Act.

2. Neb. Rev. Stat. § 8-1102(2) (Reissue 2012) provides, in part, that it shall be unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale,

whether through the issuance of analyses or reports or otherwise, to engage in dishonest or unethical practices as the Director may define by rule, regulation, or order.

3. 48 NAC 12.005.06 provides that it is a dishonest or unethical practice under Section 8-1102(2)(d) and Section 8-1103(9)(a)(vii) of the Act for an investment adviser representative to borrow money or securities from a client unless the client is a broker dealer, an affiliate of the adviser, or a financial institution engaged in the business of loaning funds or securities.

4. The facts set forth in Findings of Fact Nos. 2 through 9, above, constitute violations of 48 NAC 12.005.06 by JOHNSON, in that JOHNSON borrowed money from a client who was not a broker-dealer, an affiliate of the company, or a financial institution engaged in the business of lending funds or securities.

5. The facts set forth in Findings of Fact Nos. 7 through 9, above, constitute violations of Neb. Rev. Stat. § 8-1102(2) (Reissue 2012) by JOHNSON, in that JOHNSON falsely certified on W&R's Compliance Manual Certification that he understood W&R's policy and procedures regarding borrowing money from a client and that he would ask for permission. JOHNSON certified this after knowingly not following the procedures regarding his borrowing money from KJ.

6. Under the Act's statutory framework, the Director has legal and equitable authority to fashion significant protective remedies.

7. It is in the best interest of JOHNSON, and it is in the public's best interest, for JOHNSON and the Director to resolve the issues included herein.

CONSENT ORDER

NOW THEREFORE, the parties to this Order agree as follows:

Stipulations: In connection with this Order, JOHNSON and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.

2. An Order should be entered in this matter, which shall be in lieu of other proceedings by the DEPARTMENT, except as specifically referenced in this Order.

JOHNSON further represents as follows:

1. JOHNSON is aware of his right to a hearing regarding this Order at which he may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing and any related appeal on all matters covered by this Order is irrevocably waived.

2. JOHNSON is acting free from any duress or coercion of any kind or nature.

3. This Order is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for purposes of this Order and for no other purposes.

FURTHER, JOHNSON agrees to take whatever action is necessary to ensure compliance with all provisions of the Act in the future. If, at any time, the DEPARTMENT determines that JOHNSON commits any violations of the Act, the DEPARTMENT may take any action available to it under the Act.

IT IS THEREFORE ORDERED as follows:

1. Earl J. Johnson III shall pay a fine in the amount of two thousand five hundred dollars ($2,500.00).

2. Earl J. Johnson III shall pay the costs of the investigation conducted by the DEPARTMENT in the amount of one thousand dollars ($1,000.00).

3. Earl J. Johnson III shall pay the total of the fine and costs assessed pursuant to this Order in the amount of three thousand five hundred dollars ($3,500.00), by check or money order payable to the Nebraska Department of Banking and Finance within one hundred eighty (180) days from the effective date of this Order. A minimum of five hundred dollars ($500.00) shall be submitted by one check or money order within thirty (30) days from the effective date of this Order.

4. Earl J. Johnson III shall take a course, acceptable to the DEPARTMENT, covering investment adviser regulation and ethical standards. JOHNSON shall provide the DEPARTMENT with proof of the successful completion of the course. Such course shall be completed within ninety (90) days of the effective date of this Order.

5. Earl J. Johnson III shall follow Evergreen's heightened supervision plan for the next three (3) years from the effective date of this order.

In the event that JOHNSON fails to comply with the provisions of this Order, the DEPARTMENT may commence such action as it deems necessary and appropriate in the public interest.

The effective date of this Order will be the date of the Director's signature.

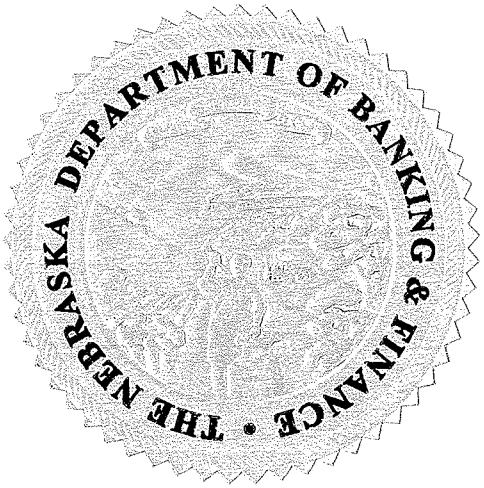
DATED this 21st day of January, 2014.

EARL J. JOHNSON III

Earl J. Johnson III
909 North 96th Street
Omaha, Nebraska 68114

DATED this 22nd day of January, 2014.

STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE



By:
John Munn, Director

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