

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009020149901**

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

RE: AXA Advisors, LLC, Respondent
CRD No. 6627

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, AXA Advisors, LLC ("Respondent," "AXA Advisors" 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 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

Respondent has been registered with FINRA since January 23, 1974. The Firm is a subsidiary of AXA Financial, Inc., a member of AXA Group. AXA Advisors conducts a general securities business and is primarily engaged in the distribution of mutual funds, variable life insurance and variable annuity contracts. AXA Advisors has approximately 5,800 registered persons and 1,300 branch offices. The Firm has no relevant disciplinary history.

OVERVIEW

Kenneth Neely was a former registered representative working at the Firm's Clayton, Missouri branch office. While at the Firm, Neely engaged in a Ponzi scheme whereby he induced customers of the Firm and others to participate in a fictitious "St. Louis Investment Club" and to invest in an equally fictitious real estate investment trust, the "St. Charles REIT." FINRA barred Neely from associating with a member firm.¹ In April 2008, the Firm became aware of red flags relating to Neely's activities, including a spreadsheet reflecting a payment plan for individuals

¹ Letter of Acceptance, Waiver and Consent, No. 20080157230901 (July 23, 2009).

who Neely had induced to participate in his fictitious investment, together with Neely's improbable explanation for the spreadsheet. The Firm failed to respond adequately to these red flags, thus violating NASD Rules 3010 and 2110.

FACTS AND VIOLATIVE CONDUCT

When Neely became associated with AXA Advisors in August 2007, he had been the subject of four customer complaints, including three arbitrations, concerning his business practices at prior employers. Additionally, when Neely applied to the Firm, it was aware that he was experiencing financial difficulties. Despite the compliance risk posed by Neely, Respondent failed to supervise Neely in a reasonable manner and failed to respond adequately to red flags concerning Neely's fraudulent scheme to misappropriate customer funds.

In April 2008, during an annual audit of Neely, the Firm reviewed Neely's computer and discovered an Excel spreadsheet. The spreadsheet reflected a payment schedule for eight individuals who Neely had induced to participate in his fraudulent scheme. The spreadsheet was marked "Ken Neely" and listed his home address. Titled "Statement of Accounts with Clients," the spreadsheet listed the names of investors in Neely's fictitious investment. The spreadsheet also showed the total amount invested (\$323,000), the initial amounts invested by each individual and the specific individual amounts due in April 2008.

Upon discovering this document, the examiner who conducted the audit became suspicious and asked Neely to explain it. In person and later in an email, Neely provided unlikely explanations for the spreadsheet. He explained that a friend and potential client planned to start a business and needed advice on how to manage business finances.

According to Neely, he used the spreadsheet to show his friend how to keep track of assets and liabilities. In his email about the spreadsheet, Neely falsely explained that he used his name instead of his friend's company name, and names of individuals, instead of vendors of his friend's company, so that Neely "would not be liable for any plans that [his friend] put together on his own or any mistakes he made while inputting his information." Neely also explained that his friend provided the individual names which appeared on the spreadsheet, even though one of the named individuals was a client of Neely's.

Despite these statements, the Firm accepted Neely's explanation without adequate further review. Based on the foregoing, AXA Advisors failed to supervise Neely reasonably and failed to investigate adequately red flags concerning Neely's misconduct. Accordingly, the Firm violated NASD Rules 3010 and 2110.

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

1. A censure; and
2. A fine in the amount of \$100,000.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Respondent agrees to pay the fine imposed herein 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 Firm understands that this settlement includes a finding that it failed to supervise an individual who violated Section 10(b) of the Securities Exchange Act of 1934 (the "Act") and SEC Rule 10b-5 and that under Section 3(a)(39)(F) of the Act, incorporating Section 15(b)(4)(E) of the Act, and under Article III, Section 4 of FINRA's By-laws, this finding subjects the Firm to a statutory disqualification with respect to membership.

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 Respondent;
- 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 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 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 response to public inquiries about Respondent's disciplinary record;
 - 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 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 Respondent 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

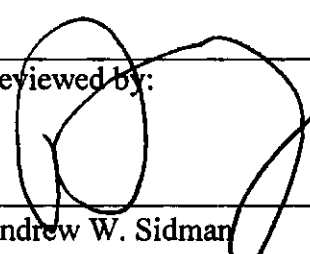
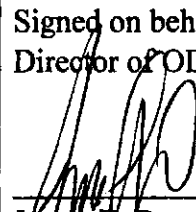
views of FINRA or its staff.

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 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 the Firm to submit it.

2.8.12
Date


Respondent, AXA Advisors, LLC

Christine Nigro
President
AXA Advisors, LLC

Reviewed by: <u></u> Andrew W. Sidman Bressler, Amery & Ross Counsel for Respondent 17 State Street 34th Floor New York, NY 10004 212-510-6916	Accepted by FINRA: <u>3/13/12</u> Date Signed on behalf of the Director of ODA, by delegated authority <u></u> James H. Day Associate Vice President and Chief Counsel FINRA Department of Enforcement 1801 K Street, NW Washington, DC 20006 202-974-2917
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