

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2017054462001**

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

RE: Axiom Capital Management, Inc., Respondent
Member Firm
CRD No. 26580

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Axiom Capital Management, Inc. ("Axiom" 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(s) 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

Axiom has been a FINRA-regulated broker-dealer since September 1990. Axiom conducts a general securities business that includes market making, underwriting and private placements. The Firm is headquartered in New York City and, as of April 2020, employs 32 registered individuals in six branch offices.

RELEVANT DISCIPLINARY HISTORY

The Firm does not have any relevant disciplinary history with the Securities and Exchange Commission, any state securities regulators, FINRA, or any other self-regulatory organization.

OVERVIEW

During the period of January 2013 to December 2014 (the "Relevant Period"), Axiom violated Section 15(c)(2) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 15c2-4 promulgated thereunder, and FINRA Rule 2010 by allowing investor funds to be escrowed in an account controlled by the issuer's law firm.

Axiom also violated NASD Rule 2210(d)(1)(A) and (B) (for conduct occurring before February 4, 2013), FINRA Rule 2210(d)(1)(A) and (B) (for conduct occurring on or after

February 4, 2013), and FINRA Rule 2010 by distributing sales materials to potential investors that did not meet FINRA's content standards for member communications with the public.

FACTS AND VIOLATIVE CONDUCT

Axiom Failed to Establish an Escrow Account that Satisfied the Requirements of Exchange Act Rule 15c2-4

Exchange Act Rule 15c2-4 requires a broker-dealer participating in a contingency offering to promptly deposit investor funds into a separate bank account as agent or trustee, or with a bank that has agreed to hold the funds in escrow account, until the contingency has occurred in order to ensure the return of money to investors if the issuer fails to satisfy the offering terms of a contingency offering.

A violation of Exchange Act Rule 15c2-4 is also a violation of FINRA Rule 2010, which requires member firms to "observe high standards of commercial honor and just and equitable principles of trade."

Axiom acted as one of two placement agents for a contingency offering conducted on behalf of Company A. During the period of January to March 2013, Axiom raised \$2,150,000 in investor funds, satisfying the minimum contingent amount to be raised. However, Company A's Canadian law firm served as escrow agent for the offering, and investor funds were deposited into an escrow account established and maintained by the law firm rather than with a bank not affiliated with A or Axiom as required.

By permitting investor funds to be deposited into an account held at an escrow agent that was not a bank, and affiliated with the issuer, Axiom violated Section 15(c)(2) of the Exchange Act, Rule 15c2-4 thereunder, and FINRA Rule 2010.

Axiom Distributed Sales Materials that did not meet FINRA's Content Standards

NASD Rule 2210 and FINRA Rule 2210¹ address FINRA member communications with the public and include content standards that apply to all member firm communications as well as filing and record-keeping requirements.

NASD Rule 2210(d)(1)(A) and FINRA Rule 2210(d)(1)(A) require all member communications with the public to be fair and balanced, and provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service. No member firm may omit any material fact or qualification if the omission, in light of the context of the material presented, would cause the communication to be misleading.

NASD Rule 2210(d)(1)(B) and FINRA Rule 2210(d)(1)(B) prohibit making any false, exaggerated, unwarranted or misleading statement or claim in any communication. In addition, member firms may not publish, circulate or distribute any communication that it knows, or has reason to know, contains any untrue statement of material fact or is otherwise false or misleading.

¹ FINRA Rule 2210 superseded NASD Rule 2210 effective February 4, 2013.

A violation of NASD Rule 2210 or FINRA Rule 2210 also constitutes a violation of FINRA Rule 2010.

During the Relevant Period, Axiom distributed investor presentations in connection with four contingency offerings conducted on behalf of issuers X, Q, B and C. Each of the investor presentations failed to provide a balanced presentation and sound basis for evaluating the proposed investment, in violation of NASD Rule 2210(d)(1)(A) and (B) and FINRA Rule 2210(d)(1)(A) and (B). Specifically, the presentations did not include detailed information regarding the securities being offered to investors. They also did not incorporate any information regarding the general risks of investing in X, Q, C or B, such as the fact that investments in private placements lack liquidity, are speculative and have a high degree of risk, including a complete loss of investment.

The investor presentations distributed on behalf of X, Q and B also provided potential investors incomplete, oversimplified, exaggerated, or unwarranted comparative references regarding the issuers, their products and customers, or the offering. For example, X's investor presentation described the issuer's product as the "longest lasting ... on the planet", allowing "users to easily extend the useful lives of their computers to 6-10 years..." without including facts or information substantiating the statements. Similarly, Q's investor presentation described the issuer as producing the "[l]eading platform for content streaming" and offering "[c]ompleted integration with every relevant mobile device..." without including a basis to substantiate these claims. B's investor materials described the investment as a \$6 million private placement when, in fact, the offering had a maximum contingency of \$16 million.

By distributing sales materials to potential investors that did not meet FINRA's content standards for member communications, Axiom violated NASD Rule 2210(d)(1)(A) and (b) (for conduct occurring before February 4, 2013), FINRA Rule 2210(d)(1)(A) and (B) (for conduct occurring on or after February 4, 2013), and FINRA Rule 2010.

- B. Respondent also consents to the imposition of the following sanctions: censure and fine in the amount of \$37,500.

Respondent agrees to pay the monetary sanction 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(s) specifically and voluntarily waive(s) any right to claim an 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 it;

- 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 waive 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 action 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

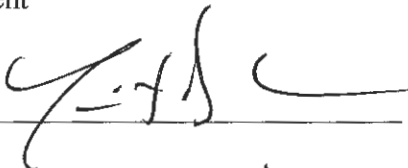
take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- 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 Respondent 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 it has agreed to the AWC's 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 it to submit it.

Axiom Capital Management, Inc.
Respondent

5/6/20
Date

By: 
Print Name: LIAM F. DALTON
Title: CEO

Reviewed by:

Daren R. Domina
Daren R. Domina, Esq.
Counsel for Respondent
Haynes and Boone, LLP
30 Rockefeller Plaza, 26th Floor
New York, New York 10112

Accepted by FINRA:

May 26, 2020

Date

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



Tiffany A. Buxton, Director
FINRA Department of Enforcement
One Brookfield Place, 200 Liberty Street, 11th Floor
New York, New York 10281