

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CE1050004

RE: AXA Advisors, LLC, Respondent
Member Firm
(CRD No. 6627)

Pursuant to Rule 9216 of NASD's Code of Procedure, Respondent AXA Advisors, LLC ("Respondent" or "AXA") submits 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 Respondent alleging violations based on the same factual findings.

Respondent understands 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 it; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary records;
 - 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
 - d. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which NASD is not a party.

Respondent also understands that its 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:

AXA Advisors, LLC, based in New York, New York, has been an NASD member since 1974. AXA has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- 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 ("SEC") 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 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. Findings

Respondent hereby accepts and consents, 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:

Summary

1. This matter involves violations of NASD Rule 2830(k), which prohibits member firms from favoring or disfavoring the sale or distribution of mutual fund shares on the basis of brokerage commissions received by the firm, and prohibits member firms from recommending the purchase of mutual fund shares on the basis of brokerage commissions received or expected to be received by the firm from any source.
2. From January 2001 through November 2003 (the "Relevant Period"), Respondent maintained two shelf space (or revenue sharing) programs under which a number of participating mutual fund complexes paid a fee in return for preferential treatment, which included enhanced access to the firm's sales force, placement of sales materials on the firm's internal web site, and promotion of the funds' shares by the firm on a broader basis than was available for other funds. During the Relevant Period, five of the fund complexes that participated in Respondent's shelf space program paid their fees, in whole or in part, by directing approximately \$3 million in brokerage commissions to Respondent. Respondent's receipt of these commission payments violated NASD Conduct Rules 2830(k) and 2110.

The Gold and Silver Partner Programs

3. During the Relevant Period, Respondent maintained two shelf space programs, known as the Gold partner program and the Silver partner program. In return for a fee, Respondent gave preferential treatment and enhanced visibility to mutual funds participating in the Gold and Silver programs. Gold and Silver program participants received the following benefits, among others:
 - enhanced access to Respondent's sales force through participation in national and regional meetings,
 - coverage in monthly AXA newsletters to the sales force describing Gold/Silver partner events and developments,

- a dedicated AXA marketing coordinator,
- sales desk support and access,
- exclusive access to the branches and sales force,
- home office meetings on a quarterly basis to align sales strategies and marketing efforts,
- a prominent presence on Respondent's internal website, including placement of sales and marketing content, and
- a listing of AXA's sales force.

In addition, Gold partners received the following exclusive benefits:

- priority placement in conference speaking spots,
- regional meeting and sales call participation,
- participation in AXA-initiated marketing campaigns, and
- option to participate in the firm's No-Transaction-Fee ("NTF") program, which reduced the registered representatives' transaction expenses for participating Gold partner funds. Gold partners that chose to participate in the NTF program were required to pay an additional quarterly fee based on the qualifying transactions.

Fund complexes that did not participate in the Gold or Silver programs did not receive any of the benefits listed above.

Respondent sold funds offered by approximately 60 fund complexes, but included only up to 21 fund complexes in its Gold and Silver programs.

4. Each year, Respondent negotiated with Gold and Silver fund complexes to determine the required participation fee. The fee amounts were based on both the fund company's sales and/or its assets under management at AXA. The parties negotiated rates as high as 25 basis points on the gross amount of sales of the participating fund, and as high as 5 basis points annually on the average daily assets under management for the fund complex. Silver partners paid up to 20 basis points on sales and up to 2.5 basis points on assets under management. Gold program participants paid more than Silver partners because of the additional benefits they received. AXA instituted a minimum fee for participation of \$250,000 for Gold partners and \$50,000 for Silver partners, but this minimum was waived in certain instances.

Use of Directed Brokerage Commissions

5. Mutual fund complexes generally use a variety of unaffiliated broker-dealers with institutional trading facilities to execute transactions in the portfolios of the mutual funds they distribute and manage. The selection of executing brokers is generally within the discretion of the mutual fund complex advisor, subject to the requirement of obtaining best execution.
6. During the Relevant Period, five of the participants in either the Gold and Silver programs paid all or part of their required revenue sharing fees for participating in the relevant program by directing brokerage commissions for portfolio transactions to Respondent. This allowed the mutual fund distributors or advisors to avoid using their own funds to pay the fees by using brokerage commissions, which are assets of the mutual funds.
7. Several Gold partner fund complexes also directed brokerage commissions in order to pay for their quarterly participation fees in the NTF program.
8. Respondent tracked the amount of directed brokerage commissions received by participant firms each month to determine how much commissions had been directed. At the end of the year, Respondent contacted Gold and Silver partners that failed to meet their required revenue sharing fees, and pursued payment of the "carryover receivables".

Resulting Rule Violations

Directed Brokerage

9. Conduct Rule 2830(k) is designed to prevent arrangements in which brokerage commissions, which are fund assets, are used to compensate member firms for selling fund shares. The rule is also designed to ensure that execution of portfolio transactions by brokerage firms is guided by the principle of "best execution" and not by other considerations.¹ The rule provides, in pertinent part:

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

* * *

¹ Proposed Rule Change, file SR-NASD-2004-027, 2004 SEC LEXIS 2488 (Oct. 29, 2004); *Notice to Members* 84-40

(6) No member shall, ... (B) recommend specific investment companies to sales personnel, or establish "recommended," "selected," or "preferred" lists of investment companies..., if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source

10. As described above, during the Relevant Period, Respondent received approximately \$3 million in directed brokerage commissions from five mutual fund complexes as payment for participation in Respondent's Silver and Gold Programs. The five mutual fund complexes received a number of benefits by participating in the program, including enhanced access to the firm's sales force and placement of sales material on the firm's internal web site. By receiving brokerage commissions to pay for the fund complexes' participation in the programs, Respondent violated NASD Conduct Rules 2830(k) and 2110.

B. Sanctions

Respondent also consents to the imposition, at a maximum, of the following sanctions:

1. A censure; and
2. A fine in the amount of \$900,000.

III.

OTHER MATTERS

- A. Respondent understands that it 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 NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed on it pursuant to the terms of this AWC.
- C. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certifies on behalf of Respondent that I 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 me to submit it.

AXA Advisors, LLC

May 16, 2005
Date

By: [Signature]
Name: Edward H. Dane
Title: President

Reviewed by:

Brian L. Rubin
Brian L. Rubin, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Counsel for Respondent

Accepted by NASD:

6/8/05
Date

[Signature]
Katherine A. Malfa
Vice President and Chief Counsel
Department of Enforcement
NASD
1801 K St., N.W.
Washington, D.C. 20006

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