

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 60480 / August 11, 2009

ADMINISTRATIVE PROCEEDING
File No. 3-13577

In the Matter of

AXA Advisors, LLC,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS PURSUANT TO
SECTION 15(b)(4) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 (“Exchange Act”) against AXA Advisors, LLC (“AXA” or “Respondent”).

II.

In anticipation of the institution of these proceedings, AXA has submitted an Offer of Settlement which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over Respondent and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Section 15(b)(4) of the Securities Exchange Act of 1934 (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds that¹:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. Respondent failed reasonably to supervise Gordon R. Moore (“Moore”) with a view to preventing and detecting his violations of the federal securities laws during the period July 2004 through June 2007. During at least this time period, Moore fraudulently induced investors, the majority of whom were current teachers in Colorado public schools, to consent to roll over their retirement investments from their Colorado Public Employees’ Association (“PERA”) 401(k) accounts into existing 403(b) investment products offered by Respondent.

Respondent

2. Respondent is a New York corporation with its main office in New York, New York and has been registered with the Commission as a broker-dealer since 1974 and as an investment adviser since 1978.

Other Relevant Persons

3. Moore was a registered representative and investment adviser with AXA from June 1, 2001 through July 23, 2007 until he resigned in connection with an investigation by the Colorado Attorney General’s office into his conduct. Moore operated out of an office in Longmont, Colorado and was supervised by an AXA branch office in Denver, Colorado.

Criminal Action Against Moore

4. On August 24, 2007, in the District Court for the City and County of Denver, Moore was charged with forty-five felony counts of securities fraud, theft, computer crime, criminal impersonation, forgery, and attempt to influence a public official. On January 8, 2008, Moore pled guilty to one count each of three class three felonies: securities fraud, theft, and computer crime. On February 26, 2008, Moore was sentenced to two years probation and ordered to pay criminal restitution in an amount based on the commissions he earned from his fraudulent activities.

Commission’s Civil Action Against Moore

5. On August 1, 2008, the Commission instituted and simultaneously accepted Moore’s offer to settle an administrative proceeding which barred Moore from association with any broker, dealer, or investment adviser pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Investment Advisers of 1940.

Moore’s Misconduct

6. Moore fraudulently induced investors, the majority of whom were current teachers in Colorado public schools, to consent to roll over their retirement investments in securities from their PERA 401(k) accounts into the customers’ existing 403(b) products offered by Respondent during the period July 2004 through June 2007. PERA’s rules, among other things, restrict withdrawals to participants who have terminated their PERA-eligible employment or reached the age of 59-1/2. The participants did not satisfy either requirement and thus were ineligible for rollovers. Moore misrepresented the PERA rollover rules to the participants and

induced them to sign documents which he later falsified. Moore fraudulently induced at least \$1.6 million worth of direct participant rollovers into Respondent's 403(b) products using this scheme. As a result, Moore violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

AXA's Failure to Supervise

7. Respondent failed to establish adequate procedures relating to rollover transactions. Respondent knew that Moore was rolling over participants' PERA 401(k) accounts into 403(b) accounts with Respondent, transferring participants from mutual fund investments into annuity investments. Moore was actively soliciting participants to transfer investments resulting in a commission for Moore. Respondent had inadequate supervisory procedures in place to review rollover transactions into customers' existing accounts because supervisors were only required to review rollovers into new annuity accounts, not existing annuity accounts. Moore completed over 130 fraudulent rollovers by exploiting this gap in Respondent's supervisory system. If AXA had established a procedure for reviewing Moore's rollover transactions into existing accounts, Moore's fraud likely would have been detected and prevented.

8. The lack of procedures relating to review of rollovers led supervisors to miss information that could have signaled Moore's violations. Documents in the customer files indicated that Moore was completing rollovers for participants that were still employed by their respective school districts and thus were ineligible for rollovers unless they had reached the age of 59-1/2. Specifically, certain files contained copies of the PERA 401(k) rollover checks dated closely in time to forms authorizing continued automatic school system payroll deductions payable to their 403(b) annuity accounts with Respondent. Respondent's lack of procedures for reviewing rollover transactions into existing accounts allowed these red flags and Moore's fraudulent activity to go undetected.

Conclusions

9. Under Section 15(b)(4)(E) of the Exchange Act, broker-dealers are responsible for reasonably supervising, with a view to preventing violations of the federal securities laws, persons subject to their supervision. Respondent was responsible for supervising Moore.

10. The Commission has repeatedly emphasized that the "responsibility of broker-dealers to supervise their employees by means of effective, established procedures is a critical component in the federal investor protection scheme regulating the securities markets." *Dean Witter Reynolds, Inc.*, Exchange Act. Rel. 46578 (October 1, 2002). Section 15(b)(4)(E) provides that a broker-dealer may discharge this responsibility by having "established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect" such violations. "Where there has been an underlying violation of the federal securities laws, the failure to have or follow compliance procedures has frequently been found to evidence a failure reasonably to supervise the primary violator." *In the Matter of William V. Giordano*, Exchange Act Rel. No. 36742 (January 19, 1996). In addition to adopting effective procedures for supervision, broker-dealers "must provide effective staffing, sufficient resources, and a system of follow up and review to determine that any responsibility to supervise

delegated to compliance officers, branch managers, and other personnel is being diligently exercised.” *In the Matter of Mabon, Nugent & Co.*, Exchange Act Rel. No. 19424 (January 13, 1983).

11. Because Moore violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Respondent failed to establish adequate procedures that would reasonably be expected to prevent and detect such violations, Respondent failed reasonably to supervise Moore for purposes of Section 15(b)(4)(E) of the Exchange Act.

AXA’s Remedial Efforts

12. In determining to accept Respondent’s Offer, the Commission considered the remedial acts promptly undertaken by Respondent to make significant improvements to its supervisory system, and the cooperation afforded the Commission staff.

13. Due in part to Respondent’s remedial acts, the participants ultimately incurred no monetary harm.

Undertakings

14. Respondent has represented to the staff of the Denver Regional Office that, following the discovery of Moore’s violations, Respondent hired an outside consultant to recommend improvements to its supervisory and compliance practices for sales made by its retirement benefits group. Respondent has already put into place procedures to ensure that all 401(k) rollovers into 403(b) accounts are appropriate and is in the process of implementing additional improvements recommended by the outside consultant. Among the improvements, Respondent has implemented procedures to confirm that all 401(k) rollover transactions into 403(b) accounts, including rollovers into accounts that have been previously established, are reviewed for eligibility and suitability. In addition, Respondent is in the process of developing an automated system for reviewing the suitability of all subsequent contributions not originating from ordinary payroll deductions and, once fully implemented, Respondent will provide written certification of that fact to the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent’s Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 15(b)(4) of the Exchange Act, AXA Advisors is hereby censured;

B. AXA Advisors shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier’s check, or bank money order;

(B) made payable to Securities and Exchange Commission, (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312, and (D) submitted under cover letter that identifies AXA as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Donald Hoerl, Regional Director, Securities and Exchange Commission, 1801 California Street., Suite 1500, Denver, CO 80202.

C. To preserve the deterrent effect of this civil penalty, Respondent agrees that it shall not argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the Court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this Paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Elizabeth M. Murphy
Secretary