

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 61563 / February 22, 2010

ADMINISTRATIVE PROCEEDING
File No. 3-13786

In the Matter of

**AXIOM CAPITAL
MANAGEMENT, INC.,**

Respondent.

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

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) of the Securities Exchange Act of 1934 (“Exchange Act”) against Axiom Capital Management, Inc. (“Axiom” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) 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 it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

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

Summary

These proceedings arise out of Respondent's failure reasonably to supervise Gary J. Gross ("Gross"), a registered representative formerly associated with Respondent, in connection with Gross's sale of private placement offerings and private issuances of public entities, commonly known as "PIPE" transactions (collectively "private placements"), from approximately January 2005 through at least September 2006.² Gross violated Section 17(a) of the Securities Act of 1933 ("Securities Act") and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder by, among other things, making unsuitable investment recommendations. Respondent failed reasonably to supervise Gross because it failed to devise a reasonable system to implement the firm's policies and procedures regarding review for suitability of private placement investments and review of subsequent transactions to determine suitability of the transaction in light of the customer's current holdings. As a result, Respondent failed reasonably to supervise Gross within the meaning of Section 15(b)(4)(E) of the Exchange Act.

Respondent

1. **Axiom Capital Management, Inc.**, a Delaware corporation with its principal place of business in New York, New York, has been registered with the Commission since June 1990 as a broker-dealer (File No. 8-42638) and as an investment adviser from June 2004 through October 2006 (File No. 801-61632).

Other Relevant Individual

2. **Gross, 57**, is a resident of Boca Raton, Florida. Gross lived in Boca Raton while associated with Respondent from December 2002 until his termination in January 2007 as a result of the misconduct discussed herein. During the period at issue, Gross held Series 7, 63 and 65 licenses.

Background

Gross's Employment with Respondent

3. Respondent hired Gross in December 2002 and established its first branch office in Boca Raton, Florida for him. The office was staffed primarily by Gross, his branch manager, and a sales assistant. Due to customer complaints from Gross's previous firms, the State of Florida required, among other things, that Respondent place Gross on strict supervision. Gross remained subject to strict supervision until Respondent terminated him in January 2007.

4. In May 2003, Respondent hired a branch manager to manage Respondent's Boca Raton branch office and supervise Gross. The branch manager's compensation was based on

² In September 2008, the Commission filed an action against Gross. SEC v. Gary J. Gross, Case No. 08-81039-CIV-Marra/Johnson (S.D. Fla. September 22, 2008), Litigation Release No. 20732 (September 22, 2008).

commissions he generated from his own customers and a two percent override he received of the branch office's net commissions.

Gross's Misconduct

5. Beginning in early 2005 through at least April 2006, Gross sold millions of dollars worth of private placements to his customers. Gross touted the purported profitability of private placements to some of his customers, but failed to disclose the substantial risks, namely that the investments were illiquid and the companies were start-up ventures that needed funding. Instead, Gross described the private placements as riskless investments, offered by high-quality companies. The private placements were unsuitable recommendations for a portion of Gross's customers, who were elderly, retired with limited annual income, and risk-averse. Given the customers' ages, financial circumstances, investment objectives and lack of prior experience in private placements, these investment recommendations and other subsequent investment recommendations, including non-private placement investments, Gross made between approximately January 2005 and September 2006 were unsuitable.

Respondent's Failure to Supervise Gross

6. Respondent failed reasonably to supervise Gross with a view to preventing and detecting his violations of the federal securities laws.

7. Respondent failed to have a reasonable system to implement its policies and procedures with respect to suitability review of private placements to address whether Gross's recommendations were suitable in light of his customers' investment objectives, risk tolerance, and other holdings. Respondent's written supervisory procedures manual ("WSP") required the registered representative to determine whether a private placement was a suitable investment to recommend to a customer, however, it failed to provide a clear mechanism for supervisory oversight of these determinations. Elsewhere, Respondent's WSP provided that the supervisor was responsible for reviewing transactions for suitability "where appropriate," but failed to define appropriate circumstances for this suitability review. In the absence of a meaningful system to implement Respondent's policies and procedures regarding suitability, the firm failed to prevent and detect Gross's unsuitable recommendations to his customers to purchase private placements.

8. Respondent had no system that included in suitability reviews by supervisors subsequent to the purchase of a private placement consideration of whether a new recommendation was suitable for a customer in light of that customer's other holdings. Respondent failed to provide guidance to supervisors regarding whether recommending additional private placements or other investments would be suitable for a customer in light of the investor's existing private placement holdings, and failed to develop systems to provide critical information to supervisors regarding customers' existing private placement holdings. Private placement transactions were not reflected on the systems supervisors used to review Gross's activities. If these systems had included complete records of customer transactions, supervisors could have detected Gross's unsuitable recommendations to customers with one or more private placements in their holdings.

Violations

9. As a result of the conduct described above, Gross violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

10. As a result of the conduct described above, Respondent failed reasonably to supervise Gross within the meaning of Section 15(b)(4)(E) of the Exchange Act with a view to preventing and detecting Gross's violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

Undertaking

Respondent undertakes to:

- a. retain, within 30 days of the date of entry of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Division of Enforcement of the Commission, to (i) review Axiom's written supervisory policies and procedures concerning suitability review of private placements; and (ii) review Axiom's systems to implement its written supervisory policies and procedures concerning suitability review of private placements and suitability reviews subsequent to the purchase of a private placement.
- b. require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a Report to Axiom and the Division. The report shall address the supervisory issues described above in Section IV.a. and shall include a description of the review performed, the conclusions reached, the Independent Consultant's recommendations for changes or improvements to the policies, procedures, and practices of Axiom and a procedure for implementing the recommended changes or improvements to such policies, procedures, and practices.
- c. adopt, implement, and maintain all policies, procedures, and practices recommended in the Report of the Independent Consultant. As to any of the Independent Consultant's recommendations about which Axiom and the Independent Consultant do not agree, such parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that Axiom and the Independent Consultant are unable to agree on an alternative proposal, Axiom will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.
- d. cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may

reasonably request, and by permitting and requiring Axiom's employees and agents to supply such information and documents as the Independent Consultant may reasonably request.

e. that, in order to ensure the independence of the Independent Consultant, Axiom (i) shall not have the authority to terminate the Independent Consultant without the prior written approval of the Division; and (ii) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the Order at their reasonable and customary rates.

f. require the Independent Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Axiom, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Independent Consultant in performance of his/her duties under this Order shall not, without prior written consent of the Division of Enforcement in Miami, Florida, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Axiom, or any of their present or former affiliates, directors, officers, employees or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

V.

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

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

- A. Respondent Axiom is censured.
- B. Respondent shall pay civil penalties of \$60,000 to the United States Treasury. Payment shall be made in the following installments:
 - (a) within ten days of the entry of the Order, a payment of \$20,000.00;
 - (b) within 30 days of entry of the Order, a payment of \$8,000.00;
 - (c) within 60 days of entry of the Order, a payment of \$8,000.00;
 - (d) within 90 days of entry of the Order, a payment of \$8,000.00;
 - (e) within 120 days of entry of the Order, a payment of \$8,000.00;
 - (f) within 150 days of entry of the Order, a payment of \$8,000.00.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accrued pursuant to 31 U.S.C. 3717, shall be due and payable immediately, without further application. Payments shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the 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 Axiom 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 Eric R. Busto, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, Miami Regional Office, 801 Brickell Avenue, 18th Floor, Miami, Florida 33131.

C. Respondent shall comply with the undertaking enumerated in Section IV above.

By the Commission.

Elizabeth M. Murphy
Secretary