BEFORE THE NATIONAL ADJUDICATORY COUNCIL

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the Continued Association of Ronald M. Berman as a General Securities Representative with Axiom Capital Management, Inc.	Notice Pursuant to Section 19(d) Securities Exchange Act of 1934 SD-1997 December 11, 2014

I. Introduction

On July 31, 2013, Axiom Capital Management, Inc. ("Axiom" or "the Firm") filed a Membership Continuance Application ("MC-400" or "the Application") with FINRA's Department of Registration and Disclosure ("RAD"). The Application requests that FINRA permit Ronald M. Berman ("Berman"), a person whom RAD determined is statutorily disqualified, to continue to associate with the Firm as a general securities representative. On June 18, 2014, a subcommittee ("Hearing Panel") of FINRA's Statutory Disqualification Committee held a hearing on the matter. Berman appeared at the hearing, accompanied by his counsel, Lawrence E. Fenster, Esq., his proposed supervisor, Eric Miller ("Miller"), and Axiom's counsel, Michael Unger, Esq. Lorraine Lee-Stepney, Ann-Marie Mason, Esq., and Bernard V. Canepa, Esq. appeared on behalf of FINRA's Department of Member Regulation ("Member Regulation").

For the reasons explained below, we deny Axiom's Application.[1]

II. Whether Berman Is Statutorily Disqualified

Berman and Axiom contend that Berman is not statutorily disqualified. For the reasons set forth below, we disagree.

---

[1] Pursuant to FINRA Rule 9524(a)(10), the Hearing Panel submitted its written recommendation to the Statutory Disqualification Committee. The Statutory Disqualification Committee considered the Hearing Panel's recommendation and presented a written recommendation to the National Adjudicatory Council.

A. The Vermont Order

On January 17, 2013, Vermont's Department of Financial Regulation, Berman, and Axiom entered into a Stipulation and Consent Order (the "Vermont Order"). Pursuant to the Vermont Order, Berman agreed to withdraw his registration and not to reapply for reinstatement for five years, and pay an administrative penalty of $25,000. The Vermont Order also ordered Axiom to pay $49,488 in restitution, $20,000 in administrative penalties, $10,000 in investigatory costs, and make a donation of $30,000 to Vermont's financial services education and training special fund. Berman and Axiom paid all amounts due and owing under the Vermont Order.

The basis for the Vermont Order were findings that, from January 2005 through July 2009, Berman engaged in unauthorized trading in the brokerage accounts of two customers (Eric and Greg John, collectively the "John brothers") and that they suffered losses as a result of Berman's misconduct.[2] The Vermont Order also found that Berman violated an existing Order Imposing Undertakings in Connection with Registration Under the Vermont Securities Act and Consent to Same dated November 17, 2005 (the "Vermont Registration Order") entered into with the State of Vermont upon his initial registration in the state.[3] Further, the Vermont Order found that Axiom engaged in unauthorized trading (through Berman), failed to properly maintain required books and records, and failed to properly supervise Berman (and in doing so, also violated the Vermont Registration Order).

Berman and the Firm contend that Francis John, the John brothers' father, authorized the transactions executed by Berman, "but there was a failure to maintain written documentation permitting the father to place trades." The Application states that the John family, including Francis John and his sons, were long-time clients of Berman. Francis John established custodial

---

2 The amended complaint filed by Vermont against Berman and Axiom alleged that Berman executed more than 700 unauthorized trades in the John brothers' accounts from June 2005 through March 2009, and that Berman traded in uncovered and highly speculative options in the accounts (which earned him $41,000 in commissions while the accounts' values decreased substantially).

3 Both Berman and Axiom are parties to the Vermont Registration Order, which Vermont entered after evaluating Berman's registration and "determin[ing] that it would be appropriate for the protection of investors in Vermont that Berman's application be approved subject to certain conditions and undertakings." The Vermont Registration Order required that the Firm, among other things, supervise Berman pursuant to specific terms and conditions, required the Firm and Berman to file regular reports regarding the Firm's supervision of Berman's trading and other activities, and required the Firm and Berman to inform Vermont of any customer complaints. Berman and Axiom failed to comply with the Vermont Registration Order because they failed for the first three years to timely provide annual certifications of compliance with the Vermont Registration Order and failed to timely report to Vermont the John brothers' complaint.

investment accounts for each child when they were young, and Francis John controlled such accounts. The Application further states that when the John brothers became of age, while Berman was employed with another member firm, Berman provided them with all necessary paperwork and authorization forms to allow Francis John to continue to trade their accounts, receive trade confirmations and monthly statements, and to access the accounts online. The Application states that the John brothers completed these forms, and shortly thereafter Berman joined Axiom.

The Application also states that in 2008, the John brothers submitted an email revoking Francis John's trading authority in their accounts, and Axiom immediately stopped accepting trades from Francis John for those accounts. The John brothers subsequently filed an arbitration claim. At that time, Axiom discovered that copies of the third-party authorization forms for the John brothers' accounts could not be found.

B. The Vermont Order Rendered Berman Statutorily Disqualified

Article III, Section 4 of FINRA's By-Laws incorporates by reference the definition of "statutory disqualification" set forth in Section 3(a)(39) of the Securities Exchange Act of 1934 ("Exchange Act"). Section 604 of the Sarbanes-Oxley Act of 2002 expanded the definition of statutory disqualification in Exchange Act Section 3(a)(39) by creating and incorporating Exchange Act Section 15(b)(4)(H) so as to include persons that are subject to any final order of a state securities commission or state authority that supervises or examines banks that: (1) "bars such person from association with an entity regulated by such commission," or (2) "constitutes a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative or deceptive conduct." *FINRA Regulatory Notice 09-19*, 2009 FINRA LEXIS 52, at *5-6 (Apr. 2009).

The Vermont Order constitutes a final order that bars Berman because it ordered Berman to withdraw his registration and not to reapply for reinstatement for five years. *See In the Matter of the Association of X*, Redacted Decision No. SD00003 (NASD NAC 2000), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p011567.pdf (holding that a consent order entered by the CFTC providing that an individual shall not for a period of three years apply for registration with the CFTC is the functional equivalent to an order denying, revoking, or suspending registration and rendered him statutorily disqualified); *see also Disqualification of Felons and Other Bad Actors from Rule 506 Offerings*, Securities Act Release No. 9414, 2013 SEC LEXIS 2000, at *75 (July 10, 2013) (providing that under Exchange Act Section 15(b)(4)(H)(i), if a final order has the effect of barring an individual such sanction is a bar, regardless of the language contained in the order).

The Vermont Order is also a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive ("FMD") conduct. The Uniform Disciplinary Action Reporting Form ("Form U6") filed with FINRA's Central Registration Depository ("CRD"®) by Vermont on March 17, 2014, indicates that the Vermont Order is a final order based on violations of laws or regulations that prohibit FMD conduct under Exchange Act Section 15(b)(4)(H)(ii). The record further shows that Vermont confirmed that the Form U6 properly indicated that the Vermont Order was an FMD order. *See Membership Continuance Application of Applicant Firm A*, Application No. 20090173549, 2010 FINRA Discip. LEXIS

11, at *7 n.4 (FINRA NAC Aug. 18, 2010) (holding that FINRA generally weighs a state's determination, as indicated on the state's Form U6, in considering whether an individual violated a law prohibiting fraudulent, manipulative, or deceptive conduct).

Moreover, the Vermont statutes violated by Berman and the nature of Berman's underlying misconduct as set forth in the Vermont Order further demonstrate that the Vermont Order constitutes a final order based upon violations of laws or regulations that prohibit FMD conduct. The amended complaint underlying the Vermont Order alleged that, among other things, Berman engaged in dishonest or unethical practices in the securities industry by engaging in unauthorized trading, in violation of Vermont law. *See* 9 V.S.A. § 5412(d)(13) (providing that a person may be disciplined if he has "engaged in dishonest or unethical practices in the securities . . . industry within the previous 10 years"). The Vermont Order found that Berman engaged in unauthorized trading, and the Commission has held that such conduct violates laws that prohibit FMD conduct. *See Nicholas S. Savva*, Exchange Act Release No. 72485, 2014 SEC LEXIS 2270, at *35-36 (June 26, 2014) (finding that order was disqualifying as an FMD order because Savva engaged in unauthorized trading in violation of Vermont law and stating that "such business practices are, at a minimum, deceptive and violate antifraud provisions of securities laws").

Berman and Axiom argue that the Vermont Order is not disqualifying because FINRA investigated the same underlying misconduct and issued Cautionary Actions against Berman and the Firm in April 2013 (i.e., a few months after the Vermont Order) without taking any additional action. Berman further argues that FINRA considered that Francis John had prior trading authority over the account in deciding to issue Cautionary Actions. While we may consider that FINRA issued Berman and Axiom Cautionary Actions in connection with the misconduct underlying the Vermont Order in weighing the seriousness of that misconduct, FINRA's failure to take more formal action against Berman or Axiom in connection with this misconduct does not preclude our finding that the Vermont Order is statutorily disqualifying. Under the Exchange Act, the Vermont Order is, standing on its own, a final order issued by a state regulator that bars Berman and finds that he violated statutes prohibiting FMD conduct.

Berman and Axiom also argue that the Vermont Order is not disqualifying because Berman negotiated the terms of the order and voluntarily agreed to the consent order. Consent orders, however, may serve as the basis for a statutory disqualification where an individual had notice and an opportunity for a hearing on the matter. *See Savva*, 2014 SEC LEXIS 2270, at *25-34 (finding that a consent order entered into with the State of Vermont, which contains "neither admit nor deny" language, is a final order entered by a state securities regulator under Exchange Act Section 15(b)(4)(H)); *see also Eric J. Weiss*, Exchange Act Release No. 69177, 2013 SEC LEXIS 837 (Mar. 19, 2013) (affirming FINRA's denial of an application for a disqualified individual to continue to associate with a firm where the disqualifying order was a consent order between Weiss and the State of Connecticut and he neither admitted nor denied any facts). Here, there is no dispute that Berman and Axiom had notice of the complaint underlying the Vermont Order, agreed to settle the matter, and in doing so waived all procedural rights afforded to them under Vermont law (including the right to a hearing).

Finally, Berman and Axiom argue that Berman is not disqualified because there was no finding that Berman acted willfully and no court order revoking Berman's registration. Findings of willfulness, and court orders regarding certain events, however, are just several categories of statutorily disqualifying events. Neither of these categories of disqualifying events is the basis of our finding that Berman is statutorily disqualified and is therefore not relevant here. The Vermont Order is disqualifying because it is a final order entered by Vermont barring Berman and a final order based upon violations of laws that prohibit FMD conduct.

Having determined that the Vermont Order rendered Berman statutorily disqualified, we turn to the merits of the Application.

III. Background Information

A. Berman's Employment History

Berman has been employed in the securities industry since August 1967, when he qualified as a registered representative (Series 1). Berman registered as a Floor Clerk Conducting Public Business (PC) in September 1977, and as an Interest Rate Options Representative (Series 5) in October 1981. He also passed the Uniform Securities Agent State Law Examination in July 1979.

Berman has been associated with Axiom since May 2003.[4] He was previously associated with two firms. Berman is one of Axiom's largest producers.

B. Berman's Disciplinary History

1. Customer Complaints

In March 2009, the John brothers filed with FINRA an arbitration claim against Axiom related to Berman's handling of their accounts.[5] They alleged that Axiom was responsible for failing to supervise Berman and for his fraudulent misconduct, sale of unsuitable securities, and unauthorized trading in their accounts. The John brothers sought $720,000 in damages. Axiom settled the claim for $225,000. At the hearing, Miller testified that he believed Berman contributed to this settlement, although the record does not show how much Berman contributed.

In addition to the John brothers' complaint involving Berman, at least six customer complaints have been filed against Berman.

---

[4] Berman's continued association with the Firm is consistent with FINRA's interpretation of Article III, Section 3(c) of FINRA's By-Laws, permitting individuals who become statutorily disqualified while they are employed to continue working pending the outcome of the statutory disqualification process.

[5] Although the John brothers' arbitration claim involved Berman's trading in their accounts, they did not name Berman in their claim.

In August 2013, customers alleged that Berman made unsuitable recommendations. The customers sought $500,000 in damages. Axiom settled this matter for $162,500, without Berman personally contributing to this settlement.

In June 2010, Francis John filed with FINRA an arbitration claim against Berman and Axiom.[6] Francis John alleged that Berman made unsuitable investments, engaged in excessive trading, breached his fiduciary duty and engaged in fraud. Francis John sought $11.945 million in damages. Berman and Axiom settled this claim for $150,000, which was paid entirely by Berman.

In July 2003, customers filed with NYSE an arbitration claim against Berman that alleged Berman effected transactions without fully explaining the risks inherent in the transactions. The customers sought damages of $925,000. The claim was settled for $74,500, and Berman contributed $37,250 to that settlement.

In May 1997, a customer alleged that Berman failed to disclose the risks and strategy of the customer's investments, and sought $520,000 in damages. A FINRA arbitration panel awarded the customer $66,000, and the award was charged against Berman's commissions.

In March 1988, customers alleged that Berman made unsuitable recommendations, and sought $100,000 in damages. This matter was settled for $22,000, and the settlement was charged against Berman's commissions.

Finally, in January 1969, customers alleged that Berman churned their account. Berman's firm settled this matter for $15,000.

2. Other Disciplinary and Regulatory Matters

In addition to the customer complaints, and related to Berman's trading in the John brothers' accounts, in April 2013 FINRA issued Berman and Axiom Cautionary Actions. Specifically, the Cautionary Actions cited Axiom for failing to maintain the proper books and records required to accept third-party discretionary orders in the accounts of the John brothers, and cited Berman for accepting orders in these accounts from a third party without prior written authorization. FINRA further stated that, "[c]onsideration was given to the fact that the orders were placed by Francis John, the customers' father, and that [Francis] John had prior trading authority over the accounts."

In April 2004, the Chicago Board Options Exchange censured Berman and fined him $5,000. It found that Berman made loans to, and communicated with, customers without his

---

[6] This claim was unrelated to the John brothers' arbitration claim. Further, four additional customer complaints have been filed against Berman. These complaints alleged unsuitable and excessive trading in options, breach of fiduciary duty, misrepresentations, improper loans to a customer and improper sharing of profits with a customer, and breach of contract. Each of these matters was dismissed without Berman or his firms paying the complaining customers.

firm's consent or prior supervisory approval. Before the Hearing Panel, Berman testified that he had received a phone call from a friend's wife that his friend was suicidal because of money concerns, and that Berman loaned him $960,000 without first obtaining his firm's approval. Berman further testified that he knew the firm's policies required him to obtain approval of any loan to a customer, but he intentionally loaned the money to his friend notwithstanding the firm's policies because Berman believed that it was the right thing to do.

A number of states (including Colorado, Georgia, Texas, New Jersey, Florida, Utah and Vermont) have placed conditions on Berman's registrations as a result of Berman's regulatory history. Certain of the states' restrictions imposed upon Berman and Axiom have expired.

Finally, Berman's prior firm permitted him to resign for sending emails to customers without prior supervisory approval.

The record shows no other criminal, disciplinary or regulatory proceedings, complaints, or arbitrations against Berman.

C. The Firm

Axiom has been a FINRA member since September 1990, and is based in New York City. The MC-400 states that the Firm has five branch offices, one Office of Supervisory Jurisdiction, and it employs 23 registered principals and 56 registered representatives. Axiom describes its business as a "[r]etail broker-dealer in corporate equity and debt securities, municipal securities, variable life and annuity products, options, tax shelters and limited partnerships in primary distributions, [and] private placements."

Mark Martino ("Martino") serves as Axiom's President and Chief Executive Officer. In June 2011, Berman loaned Martino $500,000. Martino used approximately $250,000 of these funds to make a capital contribution to Axiom. Martino repaid Berman $200,000 (exclusive of interest) between June 2011 and June 2012, but borrowed an additional $200,000 from Berman, which Martino again paid to Axiom as a capital contribution. As a result of Martino's capital contributions, he currently owns a 49% interest in Axiom.[7] As of the date of the Application, the balance Martino owed to Berman totaled approximately $480,000.

---

[7] Axiom represents that it has made interest payments on the first loan from Berman (the interest rate is variable and at the time of the Application was 3%); Martino makes payments on the second loan from Berman. Neither of the loans is documented, and the record is unclear concerning the interest rate, if any, on the second loan.

Liam Dalton ("Dalton") is the Chairman of Axiom's board of directors. Dalton currently owns a 51% interest in Axiom. Prior to Martino's capital contributions to Axiom, Dalton owned 90% of the Firm (and Martino 10%). Dalton sold a portion of his shares in the Firm to Martino. As set forth below, Dalton is Berman's proposed alternate supervisor.

1. Regulatory Actions

In February 2010, the Commission entered against Axiom an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions (the "SEC Order"). Pursuant to the SEC Order, Axiom, without admitting or denying any findings, consented to a censure and a $60,000 fine. The SEC Order found that Axiom failed to reasonably supervise a registered representative pursuant to the Exchange Act, and further found that a registered representative based out of the Firm's Boca Raton office sold to customers millions of dollars of private and non-private placements without disclosing the substantial risks of such investments. The SEC Order further found that Axiom did not have a clear mechanism in place for supervisors to review their registered representatives' suitability determinations. The SEC Order required Axiom to hire an independent consultant to review and recommend changes to its written supervisory procedures ("WSPs").[8] Miller testified that Axiom closed its Boca Raton office in 2006 or 2007.

In June 2007, FINRA accepted a Letter of Acceptance, Waiver and Consent ("AWC") from the Firm for violations of NASD Rules 1022, 2860, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to designate a compliance registered options principal who had no sales functions, and failed to maintain complete securities order memoranda. FINRA censured the Firm and fined it $10,000.

In August 2006, FINRA accepted an AWC from the Firm for violations of NASD Rule 6955. Without admitting or denying the allegations, the Firm consented to findings that it failed to transmit to the Order Audit Trail System accurate and complete reports. FINRA censured the Firm and fined it $6,000.

In May 2004, FINRA accepted an AWC from the Firm for violations of Exchange Act Rules 10b-10 and 17a-3, NASD Rules 2230, 6230, and 2110, and MSRB Rule G-14. Without admitting or denying the allegations, the Firm consented to findings that it failed to disclose

---

[8] The SEC Order rendered Axiom statutorily disqualified pursuant to Exchange Act Sections 3(a)(39) and 15(b)(4)(E). Axiom, however, was not required to go through a FINRA eligibility proceeding because the sanctions against it are no longer in effect. *See* SEC No-Action Letter, 2009 SEC No-Act. LEXIS 349, at *7-8 (Mar. 17, 2009) (providing that the SEC will not take action against FINRA if it does not file a notice seeking approval of a statutorily disqualified firm if it is disqualified solely due to a finding that it failed to reasonably supervise, with a view to preventing violations of the federal securities laws, another person who committed a violation, so long as the sanctions are no longer in effect).

commissions charged to customers on transaction confirmations, failed to disclose payments to the Firm for order flow on transaction confirmations, failed to time stamp or accurately time stamp order tickets, failed to timely file municipal security transaction reports, and inaccurately reported certain information on transaction reports. FINRA censured the Firm and fined it $15,000.

In September 2003, FINRA accepted an AWC from the Firm and Martino for violations of Section 17(b) of the Securities Act of 1933 and NASD Rules 2210, 3010, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it produced, published, and disseminated research reports that contained material misrepresentations and omissions, and contained exaggerated, unwarranted, and misleading statements. It further found that the Firm failed to establish, maintain, and enforce a supervisory system and WSPs to supervise the publication of research reports, and that Martino failed to adequately supervise activities related to the issuance of research reports. FINRA censured the Firm and fined it $50,000, and suspended Martino in all principal or supervisory capacities for 60 days and fined him $15,000.

In March 2002, FINRA accepted an AWC from the Firm for violations of Exchange Act Rule 17a-3 and NASD Rules 3110, 6130, and 2110. Without admitting or denying the allegations, the Firm consented to findings that it failed to record accurate order execution times and failed to properly report short sales through the Automated Transaction Service. FINRA censured the Firm and fined it $6,000.

In January 1998, the Connecticut Department of Banking issued a consent order against Axiom alleging that it employed an unregistered agent who sold unregistered securities and that the Firm failed to implement procedures reasonably designed to ensure compliance with a prior order summarily suspending the Firm's registration (for failing to respond to a subpoena). Connecticut suspended the Firm's registration for 90 days, required that it hire an independent consultant to review its procedures, and fined it $35,000.[9]

Finally, in September 1995, FINRA accepted an offer of settlement from Axiom and others (including Dalton) for violations of Article III, Section 1 of NASD's Rules of Fair Practice. Without admitting or denying the allegations, the Firm consented to findings that it employed an individual as a consultant and secretary who was subject to a statutory disqualification, without obtaining prior approval to do so. FINRA censured the Firm and fined it $7,500.[10]

---

[9] The record shows that shortly after its entry, Connecticut vacated the consent order.

[10] CRD states that Dalton was advised by counsel that although the statutorily disqualified individual at issue was the subject of an injunction, an appeal of that injunction was pending.

Further, Axiom has been named in seven customer-initiated arbitration claims, including Francis John's claim and the John brothers' claim. Axiom settled three of these claims for $112,000 total. As of the hearing, two claims against Axiom had not yet been resolved.

2. Routine Examinations

FINRA conducted a Sales Practice and Financial/Operations examination in 2012. FINRA did not note any exceptions.

On September 30, 2010, FINRA issued the Firm a Cautionary Action in connection with the Firm's 2009 examination. FINRA cited the Firm for failing to provide complete information on new account documentation. The Firm responded in writing that it corrected the deficiencies noted in the Cautionary Action.

The 2009 examination also resulted in a compliance conference to address the following exceptions: failing to have new account forms or Customer Identification Program documentation for numerous customer accounts and releasing escrowed funds prior to all requirements for release being met and prematurely disbursing customer investments from an escrow account.

The record shows no other recent complaints, disciplinary proceedings, or arbitrations against Axiom.

IV. Berman's Proposed Business Activities and Supervision

Axiom proposes that it will continue to employ Berman as a general securities representative in its home office in New York City. The Firm represents that Berman will be compensated by commissions. Berman primarily sells options but also sells equities and mutual funds.

Berman will be supervised by Miller.[11] Miller currently serves as Axiom's Chief Compliance Officer and has served in such capacity since 2010. Miller has been with Axiom since March 2004, and he first registered as a general securities representative in February 1994. Miller also registered as a general securities principal in March 1994, as an options principal in May 1994, as a general securities sales supervisor in June 1994, and as a municipal securities principal in November 1994. He also passed the uniform securities agent state law exam in August 1994, the NYSE compliance officer exam in October 2002, and the national commodity futures exam in May 2007. Miller has been associated with five other firms. Miller currently

---

[11] Axiom originally proposed that Maria Wilson DiChiara ("DiChiara"), Axiom's Executive Vice-President and Director of Operations, serve as Berman's primary supervisor, and that Martino serve as Berman's alternate supervisor. Similar to Martino, in November 2008 Berman loaned DiChiara $100,000 in connection with her divorce. At the time, DiChiara served as Berman's supervisor. Miller approved this loan, which was undocumented, and the Application indicates that the interest rate is 3% and that DiChiara owes approximately $59,000 to Berman. Subsequent to Member Regulation's recommendation letter, the Firm replaced DiChiara with Miller as Berman's proposed primary supervisor, and Martino with Dalton as Berman's alternate supervisor.

directly supervises Berman, the first person Miller has ever directly supervised. As Axiom's Chief Compliance Officer, Miller has general oversight over the entire Firm's activities.

In 2004, Miller entered into an AWC with FINRA for violations of NASD Rules 3010 and 2110. Axiom states that, "[a]s stated in the AWC, while Mr. Miller was employed as Director of Compliance at Ladenburg Capital Management, he became aware of an 'eavesdropping device' at the firm and failed to make inquiry or direct an inquiry to be undertaken with regard to the device. Mr. Miller was suspended from associating with any NASD member in a supervisory capacity for 15 days and paid a fine of $5,000."

Miller was also named in two customer complaints, but he was later dismissed from these actions. Further, Miller was initially named in the action underlying the Vermont Order, but he was later dismissed from that matter.

The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Miller.

Axiom further proposes that Dalton serve as Berman's alternate supervisor. Dalton first registered as a general securities representative in December 1984, as a general securities principal in December 1988, as a financial and operations principal in November 1990, as a registered options principal in April 1994, and as a municipal securities principal in July 1994. Dalton also passed the uniform securities agent state law exam in January 1985. Dalton has been with the Firm since April 1990, and CRD shows that he was previously associated with one other firm.

One customer has filed a complaint against Dalton, although Dalton was dismissed from that matter. Dalton is also a party to the September 1995 settlement with FINRA. The record shows no other disciplinary or regulatory proceedings, complaints, or arbitrations against Dalton.

The Firm originally proposed that Berman continue to be supervised pursuant to "Special Supervisory Procedures" that had been in place at the Firm since 2012.[12] Subsequent to receiving Member Regulation's recommendation, Axiom proposed that Miller and Dalton serve as Berman's primary and alternate supervisors, respectively, and it submitted a revised heightened supervisory plan. Subsequent to the hearing, the Firm submitted the following revised heightened plan of supervision:[13]

---

[12] At the hearing, Miller testified that Berman has been on some form of heightened supervision since shortly after he joined the Firm in 2003.

[13] At the hearing, the Hearing Panel had questions concerning the proposed plan of supervision and concerns regarding several proposed terms of the plan. The Hearing Panel afforded Axiom an opportunity to submit a revised heightened supervisory plan after the hearing. The items that are denoted by an asterisk are heightened supervisory conditions for Berman that Axiom has represented are not standard operating procedures of the Firm.

* 1. The written supervisory procedures of Axiom will be amended to state that Miller is the primary supervisor for Berman.

2. Miller will supervise Berman on-site and on the same floor at Axiom's main office and Miller will be present during, at least, trading hours to supervise Berman.

* 3. Berman will not maintain discretionary accounts.

* 4. Berman will not act in a supervisory capacity, and will not receive overrides on the commissions, fees, or profits generated by others.

* 5. Berman will not engage in training registered representatives of Axiom or persons seeking to become registered representatives of Axiom.

6. Miller will review and approve each new securities account, at or prior to the opening of the account by Berman. Account paperwork will be documented as approved with a date and signature, and Miller will maintain the paperwork at Axiom's home office located in New York, NY. Miller will keep evidence of the approval segregated for ease of review during any statutory disqualification examination.

7. Miller will review and approve Berman's orders after execution, on or about a T+ 1 basis but not later than a T+ 3 basis. Miller will evidence his review by initialing a daily clearing agent report and/or an Excel report of all Berman's transactions. Copies of the report(s) will be kept segregated for ease of review during any statutory disqualification examination.

* 8. Miller will supervise Berman's outside business activities, if any. Berman will disclose to Miller in writing, on a monthly basis, details related to Berman's outside business activities. The disclosure must contain, but not be limited to, Berman's activity log and a summary of closed and pending transactions.

9. Miller will review incoming and outgoing electronic correspondence addressed to or relating to Berman, through the Axiom email archiving system. Written and /or fax correspondence will be reviewed upon its arrival and before it is sent.

* 10. For the purposes of electronic client communication, Berman will only be allowed to use an Axiom email address, with all emails being filtered through Axiom's email system. If Berman receives a business-related email message in another email account outside Axiom, he will immediately deliver/forward that message to his Axiom email address as well as Miller's email address. Berman will also inform Axiom in writing of all outside email accounts that he maintains and will provide Axiom access to outside email accounts upon request.

11. If Miller is to be on vacation or out of the office for an extended period, Dalton, also located at Axiom's headquarters office, will act as Berman's interim supervisor with respect to numbers 2, 6, 7, and 9 above for the required period.

12. All complaints pertaining to Berman, whether verbal or written, will be immediately referred to Miller for review. Berman will prepare a memorandum for the file with full details responding to the allegations and present it to Miller. Miller will review this memorandum and conduct such further inquiry as needed with respect to the complaint. Miller will document the actions taken, and/or resolution of the matter. If necessary, the matter will be escalated to Dalton for further consideration. Documents pertaining to these complaints will be kept segregated for ease of review during any statutory disqualification examination.

* 13. Axiom must obtain prior approval from Member Regulation if it wishes to change Berman's responsible supervisor from Miller to another person.

* 14. On a quarterly basis, Berman will certify in writing to Miller that he has read and fully understands Axiom's current Written Supervisory Procedures, and any other applicable Axiom policies pertaining to his obligations to keep accurate books and records. Miller will maintain copies of Berman's certifications and will keep them segregated for ease of review during any statutory disqualification examination.

* 15. On a quarterly basis, Berman will certify in writing to Miller that he is in full compliance with all of his disclosure reporting obligations pursuant to FINRA rules. Miller will maintain copies of Berman's certifications and will keep them segregated for ease of review during any statutory disqualification examination. Miller will confirm the accuracy of Berman's certifications and will perform any necessary review in connection therewith.

* 16. Miller will certify in writing within 15 business days of the end of each quarter (March 31st, June 30th, September 30th and December 31st) that he and Berman are in compliance with all of the above conditions of heightened supervision imposed upon Berman. The certifications will be maintained and kept segregated for ease of review during any statutory disqualification examination.

* 17. Miller will contact no less than 25% of Berman's accounts that have four (4) or more opening transactions per month for three (3) consecutive months. Contact will be within not more than four (4) months of such activity in the account. Evidence of the contact will be maintained and kept segregated for ease of review during any statutory disqualification examination.

* 18. Miller will have annual mailings sent to all of Berman's accounts directing the recipients to Miller's attention in the event of any questions, concerns or complaints. Evidence of the mailings by copies of the letters will be maintained and kept segregated for ease of review during any statutory disqualification examination.

19. Miller will review all third-party trading accounts annually to ensure that all required records are in-house and valid. Miller will communicate with the customers of such accounts by telephone, email or mail on an annual basis to ensure that the trading authorizations on file remain valid. Records of those communications shall be maintained and will be segregated for ease of review during any statutory disqualification examination.

* 20. As of the effective date of these supervisory procedures, loans from Berman to clients, his direct supervisor, Miller, Martino, Dalton and DiChiara, will not be permitted. Loans to anyone else affiliated with Axiom Capital Management, Inc. or any of its affiliates must be approved in advance by at least two (2) upper management personnel and Miller. Any approved loan must be documented setting forth, at a minimum, the terms of the loan and the schedule for repayment.

21. For the purpose of this plan, the effective date of these supervisory procedures shall be the date of approval of Axiom's MC-400 application.[14]

---

[14] Prior to the hearing, Axiom listed on its pre-hearing submissions an individual as a potential expert witness. Axiom stated that it hired its proposed expert to independently review and revise Axiom's heightened supervisory plan for Berman, and the expert would testify concerning "his role in the formulation of the plan for a statutorily disqualified individual, the purpose and intended effect of the Plan, and how the provisions of the Plan are designed with specific regard to Mr. Berman." Member Regulation objected to the proposed expert's testimony, and the Hearing Panel excluded the proposed expert because it did not believe that his proposed testimony would be helpful or illuminating to it in rendering a decision on the Application (including whether the plan afforded Berman with stringent supervision). We agree that the Subcommittee properly exercised its discretion in excluding the proposed expert's testimony, as the Subcommittee had substantial experience to properly evaluate the proposed heightened supervisory plan and Axiom did not adequately explain how the proposed expert's testimony was relevant. *See Dep't of Enforcement v. Fiero*, Complaint No. CAF980002, 2002 NASD Discip. LEXIS 16, at *89-90 (NASD NAC Oct. 28, 2002) (finding that hearing panel members in FINRA proceedings often have industry experience and have broad discretion to exclude expert testimony). We adopt this ruling as our own.

V. Member Regulation's Recommendation

Member Regulation recommends that the Application be denied because, in its view: (1) Axiom is unable to effectuate and comply with its proposed heightened supervisory plan and its regulatory history demonstrates that it is unable to effectively supervise Berman; (2) Miller "does not have the experience or wherewithal to supervise a disqualified individual pursuant to heightened supervision;" (3) Axiom's heightened supervisory plan does not ensure that Berman will not repeat his misconduct; (4) Berman's disqualifying event is recent, serious and involved fraud; (5) Berman's regulatory history shows his inability and lack of willingness to comply with rules and regulations; and (6) Berman's loans to Martino create conflicts of interest.

VI. Discussion

In evaluating an application like this, we assess whether the sponsoring firm has demonstrated that the proposed association of the statutorily disqualified individual is in the public interest and does not create an unreasonable risk of harm to the market or investors. *See Continued Ass'n of X*, Redacted Decision No. SD06002, slip op. at 5 (NASD NAC 2006), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@adj/documents/nacdecisions/p036476.pdf; *see also Frank Kufrovich*, 55 S.E.C. 616, 624 (2002) (holding that FINRA "may deny an application by a firm for association with a statutorily-disqualified individual if it determines that employment under the proposed plan would not be consistent with the public interest and the protection of investors"); FINRA By-Laws, Art. III, Sec. 3(d) (providing that FINRA may approve association of statutorily disqualified person if such approval is consistent with the public interest and the protection of investors). Factors that bear upon our assessment include the nature and gravity of the statutorily disqualifying misconduct, the time elapsed since its occurrence, the restrictions imposed, the totality of the regulatory and criminal history, and the potential for future regulatory problems. We also consider whether the sponsoring firm has demonstrated that it understands the need for, and has the capability to provide, adequate supervision over the statutorily disqualified person. The sponsoring firm has the burden of demonstrating that the proposed association is in the public interest despite the disqualification.

See Timothy P. Pedregon, Jr., Exchange Act Release No. 61791, 2010 SEC LEXIS 1164, at *16 & n.17 (Mar. 26, 2010).[15]

After carefully reviewing the entire record in this matter, we find that Berman's proposed continued association with the Firm would create an unreasonable risk of harm to investors and the market. Accordingly, we deny the Application for Berman to continue to associate with the Firm as a general securities representative.

First, we are troubled by Berman's disciplinary and regulatory history. At least six customers have filed complaints against Berman, he has personally paid more than $275,000 to settle certain of these complaints, and Berman's firms have paid an additional $424,750 to settle customer complaints against or involving Berman.[16] These complaints involved serious allegations such as unsuitable recommendations, fraud, excessive trading, and failing to explain the risks of securities transactions, and raise concerns regarding Berman's treatment of

---

[15] Berman and Axiom argue that the standard articulated by the Commission in *Paul Edward Van Dusen*, 47 S.E.C. 668 (1981), should apply to this case because FINRA conducted its own investigation into the misconduct underlying the Vermont Order and concluded that a Cautionary Action was appropriate. *Van Dusen* and subsequent Commission precedent dictate that where the Commission or FINRA have already addressed a disqualified individual's misconduct through their administrative processes, and have chosen to impose certain sanctions for that misconduct, FINRA should not consider the individual's underlying misconduct when it evaluates a subsequent application to associate with a member firm. This precedent, however, does not require that we apply the *Van Dusen* standard where FINRA has issued a Cautionary Action for the same misconduct for which a state regulator has issued a final order that renders an individual statutorily disqualified. Further, the Cautionary Action did not sanction or discipline Berman in any manner. *See FINRA Sanction Guidelines*, at 9 (Technical Matters) (stating that Cautionary Actions are informal actions that are not included in the term "action" for purposes of FINRA's Sanction Guidelines), *available at* http://www.finra.org/web/groups/industry/@ip/@enf/@sg/documents/industry/p011038.pdf; *see also* Interpretative Letter dated August 2, 2001 from Shirley Weiss to Conrad Lysiak (stating that "Letters of Caution [n/k/a Cautionary Actions] issued to member firms and associated persons by NASD Regulation, Inc. staff are not sanctions within the meaning of Rule 8310(a)(6)"), *available at* https://www.finra.org/Industry/Regulation/Guidance/InterpretiveLetters/P002520.

[16] The record is unclear whether Berman contributed to the complaint settled for $15,000 early in his career. While Berman and Axiom argue that this customer complaint and several others are dated and should not be considered, several other complaints are recent. Regardless, we may consider Berman's entire history in assessing whether he presents an unreasonable risk of harm to the market or investors. *See Savva*, 2014 SEC LEXIS 2270, at *58 (rejecting applicants' argument that older customer complaints should not be considered); *Weiss*, 2013 SEC LEXIS 837, *32 (holding that "[w]hile some of these complaints [considered by FINRA] may not be recent, such history still reflects poorly on an applicant's judgment and trustworthiness") (internal quotations omitted).

customers. We also note that the Chicago Board Options Exchange censured Berman and fined him $5,000 for making a large loan to a customer and communicating with customers without Berman's firm's consent or prior supervisory approval. We find particularly concerning Berman's testimony that he intentionally violated his firm's policies and rules in connection with this loan, even if Berman's reasons for doing so were as he claims to help a friend. This raises serious questions whether Berman may disregard securities rules in the future. Further, various states placed conditions on Berman's registrations as a result of his regulatory history.

Second, Axiom has failed to show that it can effectively supervise Berman under its proposed plan of heightened supervision. The record shows that Berman has been under some form of special supervision since shortly after joining Axiom, yet several customer complaints occurred during this period, as did the misconduct underlying the Vermont Order. Moreover, the Vermont Order found that Axiom and Berman failed to comply with the Vermont Registration Order, which does not instill confidence that Axiom will be able to provide stringent supervision to Berman and assure his compliance with the heightened supervisory plan. *See Timothy H. Emerson Jr.*, Exchange Act Release No. 60328, 2009 SEC LEXIS 2417, at *18 (July 17, 2009) (holding that an applicant must establish that it will be able to adequately supervise a statutorily disqualified individual by imposing a stringent plan of heightened supervision).[17]

We further find that Miller has never directly supervised an individual. Miller's inexperience with direct supervision is problematic in the context of supervising a statutorily disqualified individual such as Berman. *See Morton Kantrowitz,* 55 S.E.C. 98, 102 (2001) ("In determining whether to permit the employment of a statutorily disqualified person, the quality of the supervision to be accorded that person is of the utmost importance. We have made it clear that such persons must be subject to stringent oversight by supervisors who are fully qualified to implement the necessary controls."); *see also Pedregon*, 2010 SEC LEXIS 1164, at *27-28 (finding troubling the assignment of an unqualified individual to serve as a supervisor for a statutorily disqualified individual). Miller's inexperience directly supervising anyone at a broker-dealer is exacerbated by Berman's many years in the industry and importance to Axiom as one of its largest producers.

Third, we are troubled by Berman's outstanding loans to Martino, the president, chief executive officer, and 49% owner of Axiom, and the conflicts that these loans present. Although Miller will serve as Berman's immediate supervisor, Miller reports to Martino and Dalton. Martino used funds borrowed from Berman to purchase a portion of Dalton's interests in the Firm. Berman is one of Axiom's largest producers, and his importance to the Firm's bottom line, coupled with the fact that Axiom's minority owner Martino owes a large amount of money to Berman (and that Martino used such funds to pay Dalton, the majority owner of the Firm), at a minimum present the potential for conflicts. This is particularly true in the context of a statutorily disqualified individual, where stringent supervision free of any conflicts of interest between the supervised individual and his supervisor (and, in turn, firm management) is of the

---

[17] We also do not take any comfort, in light of Berman's history and Axiom's past inability to ensure Berman's compliance with supervisory procedures, in Berman's assurance that he is "going to agree to anything that would help keep me in the business."

utmost importance. Nothing in the record assuages us that the impact of Berman's outstanding loans to Martino can be safely minimized or contained.[18]

VII. Conclusion

Accordingly, we find that it is not in the public interest, and would create an unreasonable risk of harm to the market or investors, for Berman to continue to associate with Axiom as a general securities representative. We therefore deny the Application.

On Behalf of the National Adjudicatory Council,

Marcia E. Asquith

Marcia E. Asquith
Senior Vice President and Corporate Secretary

---

[18] We agree with Axiom that the fact that FINRA's Department of Enforcement examined the same underlying conduct as the Vermont Order and decided to issue Berman and Axiom Cautionary Actions undercuts Member Regulation's argument concerning the seriousness of the Vermont Order. The misconduct underlying the Vermont Order, however, is just one factor that we weigh in determining whether to approve or deny the Application. Even taking this into account, we find that a number of other factors, including Berman's disciplinary and regulatory history, the Firm's inability to supervise Berman effectively, and the conflicts created by Berman's loans to Martino, warrant denial of the Application. Further, we note that Item 11 of the proposed plan is deficient in that it is unclear in Miller's absence who, if anyone, will ensure that Berman complies with the provisions of the plan not delineated in Item 11. Were we otherwise inclined to approve this Application, which we are not, we would have given the Firm an opportunity to cure this deficiency.

Financial Industry Regulatory Authority

Andrew J. Love
Associate General Counsel

Direct: (202) 728-8281
Fax: (202) 728-8264

December 11, 2014

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: SD-1997: In the Matter of the Association of Ronald M. Berman with Axiom Capital Management, Inc.

Dear Mr. Fields:

Enclosed please find notice pursuant to Section 19(d) of the Securities Exchange Act of 1934 in the matter of the association of Ronald M. Berman as a general securities representative with Axiom Capital Management, Inc.

Very truly yours,

Andrew J. Love

cc: Michael Unger, Esq.
Mikalen Howe, Esq.
Maria DiChiara
Ann-Marie Mason, Esq.
Bernard Canepa, Esq.
Lorraine Lee-Stepney
Lawrence E. Fenster