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**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCE AND CORPORATE SECURITIES
BEFORE THE DIRECTOR OF THE DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES**

**In the Matter of:
AXA ADVISORS LLC**

Respondent.

) **No. IT-08-0043-2**
)
)
) **ORDER TO CEASE AND DESIST
AND
ASSESSING CIVIL PENALTIES**

) **Entered By Consent**
)
)
)

9 WHEREAS, the Director of the Department of Consumer and Business Services for the
10 State of Oregon (hereafter the "Director"), acting pursuant to the authority granted by the Oregon
11 Securities Law (ORS 59.005 *et seq.*) and Insurance Law (ORS 744.001 *et seq.*) has conducted an
12 investigation into the activities of JACQUELINE ATKINSON (hereinafter "ATKINSON") and
13 AXA Advisors LLC (hereinafter "Respondent") the Company with whom Atkinson was
14 affiliated from March 5, 1984 through March 12, 2007;

15 Whereas the Director recognizes that Respondent reported the fraud outlined in this case
16 to the Director, immediately undertook its own investigation while cooperating with the
17 Director's investigation, made the affected customers financially whole, and expanded and
18 improved its agent supervision and monitoring systems;

19 Whereas Respondent, without admitting or denying the Findings of Fact and
20 Conclusions of Law stated hereinafter, wishes to resolve and settle this matter with the Director;

21 Whereas the Director agrees that this Consent Order fully and finally resolves all
22 matters relating to the investigation;

23 Whereas the Director and Respondent stipulate and agree that the Director has
24 jurisdiction over the Respondent and these matters pursuant to ORS 59.235 including the
25 authority to enter this Order;

26 **NOW THEREFORE**, as evidenced by the authorized signature subscribed on this

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Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 Order, Respondent hereby Consents to entry of this Order to Cease and Desist, Order
2 Assessing Civil Penalty, and Consent to Entry of Order upon the Director's Findings of Fact
3 and Conclusions of Law as stated hereinafter:

4 **FINDINGS OF FACT**

5 The Director **FINDS** that:

6 **A. Parties**

7 1. Respondent (CRD# 6627) and its predecessor was, at all times material herein, a
8 broker-dealer licensed by the State of Oregon.

9 2. Respondent maintains its headquarters at 1290 Avenue of the Americas New York,
10 New York, 10104. Respondent's Oregon office is located at One SW Columbia, Suite 1550, and
11 Portland OR 97258.

12 3. Atkinson was a registered agent of Respondent from March 5, 1984 through March
13 12, 2007 (CRD #1260521).

14 4. From September 1987 until Respondent terminated her employment on March 12,
15 2007, Atkinson conducted business from a home office located in Bend, Oregon 97701
16 (hereafter "Bend office").

17 **A. Fictitious Investments, Statements and Lulling Payments**

18 5. From December 1989 through October 2006, Atkinson sold fictitious investments to a
19 number of different persons (individual and married) totaling over \$1,900,000. See Director's
20 Notice Order No. IT-08-0043-1 incorporated herein by reference.

21 6. Some of the funds were withdrawn from legitimate insurance products purchased
22 through Respondent and deposited into Atkinson's fictitious investments. Atkinson encouraged
23 customers to rollover these funds with the promise to earn higher rates of return without
24 incurring any tax liability. In reality these customers were withdrawing funds from legitimate
25 insurance products, receiving the proceeds, then writing checks to Respondent's affiliated
26 insurance company and delivering them to Atkinson who then altered the payee on the checks

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1 and deposited the checks into her own bank account. Instead of forwarding the funds to a bona
2 fide investment, Atkinson used the proceeds for own personal purposes.

3 7. In some instances, Atkinson's customers requested that Atkinson produce
4 documentation reflecting their investments with her. In response, Atkinson fabricated
5 statements reflecting the fictitious investments using her company issued workstation located in
6 her Bend office. Atkinson modified real account statements on company letterhead and bearing
7 the Respondent's logo. Atkinson sent copies of fabricated statements to customers. Copies of
8 these fabricated statements were later discovered in customer files located in Atkinson's Bend
9 office.

10 8. Some of Atkinson's customers requested withdrawals of funds they had invested.
11 Atkinson complied with these requests by purchasing and sending a Wells Fargo cashiers check
12 to the requesting customer. Copies of these checks were later discovered in customer files
13 located in Atkinson's Bend office.

14 **B. Respondent's Audits of Atkinson**

15 9. As part of their protocol from at least 2002 through 2006, Respondent conducted on-
16 site inspections and annual compliance reviews of Atkinson at her Bend Office. As these were
17 routine inspections, Atkinson was notified by Respondent of these reviews in advance. These
18 reviews included an examination of a sample of customer files.

19 10. On more than one occasion, Atkinson was unable to produce all of the customer files
20 requested by the compliance and supervisory staff during the examinations. Examination reports
21 noted that some files produced did not contain all required documents such as customer funds
22 receipts received by Atkinson.

23 11. Respondent did not schedule follow-up, additional or enhanced compliance reviews
24 of Atkinson nor did Respondent detect that customers had received fabricated statements for
25 fictitious products.

26 **C. Discovery of Fraud by Respondent**



1 12. In early 2007, Atkinson was hospitalized for a serious medical condition. In February
2 2007, Atkinson’s son contacted Respondent’s local branch office and requested that the branch
3 direct Atkinson’s Bend office calls to the branch office. Branch staff agreed to do so and had
4 Atkinson’s calls routed to another associate. On February 13, 2007, that associate met with one
5 of Atkinson’s customers and was provided with a statement that the customer had received from
6 Atkinson. Upon review of this statement the associate was able to determine that it was not
7 legitimate. The letterhead was outdated, the type set was not uniform, and the product listed
8 (“7% Guaranteed interest annuity”) did not exist. The associate referred the matter to the Branch
9 Controls Specialist (“BCS”) for further review.

10 13. On February 23, 2007, the BCS retrieved ten boxes of client files from Atkinson’s
11 Bend office. The BCS conducted a thorough file review and segregated files that contained
12 fabricated client statements. In certain files, Atkinson had maintained the originals and copies
13 of the fabricated statements. The BCS was also able to identify copies of cashier’s checks that
14 had been sent to customers by Atkinson.

15 14. On March 16, 2007, Respondent on its own initiative began sending “outreach
16 letters” to Atkinson’s customers. The outreach letters informed customers that Atkinson had
17 been terminated from her position with the Company. Respondent also attached account
18 statements for all existing Company accounts. The letter asked customers to compare the
19 attached statements with their records. As a result of their efforts, the Respondent was able to
20 identify 29 separate individuals who invested in Atkinson’s fictitious accounts.

21 **D. Compensation of Customers**

22 15. Immediately upon the discovery of the fraud perpetrated by Atkinson, Respondent
23 contacted the Oregon Department of Consumer and Business Services, Division of Finance and
24 Corporate Securities (hereinafter “DFCS”). Respondent cooperated with DFCS throughout the
25 investigation.

26 16. Respondent restored each of Atkinson’s customer accounts to the position they would

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1 have been in if no withdrawal had been made from the legitimate products.

2 17. Respondent also identified customers who had invested funds drawn from other
3 sources. Although the funds did not originate from any Company product, Respondent still
4 compensated affected customers with monetary payouts. The payouts were equal to the initial
5 investment plus interest.

6 **E. Respondent's Procedural Enhancements**

7 18. During and after the investigation, of its own volition, Respondent enhanced and
8 expanded its supervisory and controls processes by: making available supervisory review tools
9 that both enable supervisors to have automated access to client account withdrawal information
10 and electronically track and trend activities in order to assist in identifying suspicious patterns;
11 enhancing its Field Examination Program to expand the number of customer files reviewed;
12 adding components to the pre-examination preparation and agent interview questionnaires to
13 better detect outside business or other potential red flags; and developed a fraud awareness
14 training that agents and their supervisors must take annually.

15 19. Respondent took additional steps to protect against agent fraudulent activity by
16 including a letter in its annual mailings that contains information directed to customers about
17 how to protect against fraudulent activity, including direct contact information for customers to
18 share any concerns about their agent or investments directly with Respondent.

19 **CONCLUSIONS OF LAW**

20 The Director **CONCLUDES** that:

- 21 1. All of the investments sold by Atkinson and described herein are securities, as defined
22 by ORS 59.015(19)(a).
- 23 2. Atkinson is a salesperson as defined by ORS 59.015(18) (a) formerly affiliated with
24 Respondent.
- 25 3. Respondent is a broker-dealer as defined by ORS 59.015(1).
- 26 4. Respondent did not adequately supervise Atkinson, a salesperson, in violation of ORS

1 59.205(13) by failing to identify Atkinson's ongoing fraudulent sale of unregistered securities to
2 Respondent's customers.

3 **ORDER**

4 Therefore, the Director **ORDERS:**

5 1. Respondent shall cease and desist from violating Oregon Securities Law ORS 59.005 *et*
6 *seq* and related administrative rules by complying with supervision requirements for their
7 associated persons.

8 2. Respondent is ordered to pay the sum of \$75,000 as a civil penalty for the continuing
9 violation of ORS 59.205(13) for failing to adequately supervise Atkinson.

10 3. Respondent agrees to contribute \$5,000 to the DCBS Consumer Financial Education
11 Account to further the Department's outreach efforts to help consumers avoid financial fraud.

12 4. Starting 2011 and for at least two years thereafter? Respondent shall send a
13 communication annually to each Oregon customer including information about how to protect
14 against fraudulent activity and contact information for the customer to use to advise
15 Respondent's management of any concerns with their account. This communication shall be
16 included with the customers' annual compiled statement describing in detail each account held,
17 the balance of each account, and all significant account activity including any purchases or sales
18 attributed to each account.

19 5. Respondent shall conduct at least semi-annual examinations of all Oregon based
20 salespersons who are not housed in the Office of Supervisory Jurisdiction beginning July 1, 2011
21 and ending December 31, 2013. In addition to the Respondent's usual procedures, examinations
22 shall consist of an enhanced review of customer files, and will include no less than 15 customer
23 files per examination.

24 The entry of this Order in no way limits further remedies which may be available to the
25 Director under the Oregon Law for new or repeated violations.

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Dated this 2nd day of June, 2011 at Salem, Oregon.

SCOTT L. HARRA, Director
Department of Consumer and Business Services

/s/ David Tatman
David Tatman, Administrator
Division of Finance and Corporate Securities

APPROVED AS TO FORM:

/s/ Mary Jean Bonadonna

Attorney for AXA Advisors LLC

Dated: 5/3/11

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CONSENT TO ENTRY OF ORDER

AXA Advisors LLC states that as the Respondent, its President has read the foregoing Order and fully understands the contents thereof; that Respondent has been advised of the right to a hearing and of the right to be represented by counsel in this matter; that Respondent, voluntarily, and without any force or duress, consents to the entry of this Order, expressly waiving any right to a hearing in this matter; that the Order contains the complete agreement of the parties, and that no additional promises or assurances have been made to Respondent by the Division with respect to matters covered by the Order; that it understands that the Director reserves the right to take further actions to enforce this Order or to take appropriate action upon discovery of other violations; and that it will fully comply with the terms and conditions stated herein.

Respondent understands that this Consent Order is a public document.

Dated this 31st day of May 2011.

For AXA Advisors LLC

By: /s/ Christine Nigro

Christine Nigro, President

AXA Advisors LLC

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ENTITY/OFFICER ACKNOWLEDGMENT

There appeared before me this 31 day of May 2011, Christine Nigro, who was first duly sworn on oath, and stated that she is an officer of AXA Advisors LLC and that she is authorized and empowered to sign this Consent to Entry of Order on behalf of AXA Advisors LLC, and to bind AXA Advisors LLC to the terms hereof.

/s/ Erna Flores

Notary Public for the State of New York

My commission expires: August 22, 2013

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