

State of Missouri  
Office of Secretary of State

Case No. AP-10-24

IN THE MATTER OF:

AXA ADVISORS, LLC, CRD# 6627

Respondents.

Serve AXA ADVISORS, LLC at:  
1290 Avenue of the Americas  
New York, New York 10104

**CONSENT ORDER**

**SUMMARY OF ENFORCEMENT SECTION'S ALLEGATIONS**

1. The Enforcement Section of the Missouri Securities Division ("Enforcement Section") has alleged that AXA Advisors, LLC ("Respondent") was affiliated with a Missouri-registered agent who engaged in dishonest and unethical practices in violation of Section 409.4-412(d)(13), RSMo. (Cum. Supp. 2009). Pursuant to Section 409.4-412(h), RSMo. (Cum. Supp. 2009), Respondent may be disciplined for the dishonest or unethical practices of this agent.
2. Respondent and the Enforcement Section desire to settle the allegations and the matters raised by the Enforcement Section relating to the Respondent's association with a registered agent who offered and sold unregistered securities and sold securities that were not recorded on Respondent's books and records.

**CONSENT TO JURISDICTION**

3. Respondent and the Enforcement Section stipulate and agree that the Commissioner has jurisdiction over the Respondent and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
4. Respondent and the Enforcement Section stipulate and agree that the Commissioner has authority to enter this Order pursuant to Section 409.6-604(h), RSMo. (Cum. Supp. 2009), which provides:

"The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

**WAIVER AND EXCEPTION**

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any right that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order.
7. Respondent stipulates and agrees with the Enforcement Section that, should material facts supplied by Respondent herein prove to be false, the Enforcement Section reserves the right to pursue any and all legal or administrative remedies at its disposal.

**CONSENT TO COMMISSIONER'S ORDER**

8. Respondent and the Enforcement Section stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without factual basis. Nothing in this paragraph affects Respondent's (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual.
10. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.
11. Respondent neither admits nor denies the allegations made by the Enforcement Section, but consents to the Commissioner's Findings of Fact, Conclusions of Law, and Order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order, and without any adjudication of any issue of fact or law.

**COMMISSIONER'S FINDINGS OF FACT,**

## **CONCLUSIONS OF LAW, AND ORDER**

### **I. FINDINGS OF FACT**

12. Respondent is a Missouri-registered broker-dealer with an address of 1290 Avenue of the Americas, New York, New York 10104. Respondent is registered in Missouri through Central Registration Depository System ("CRD") with CRD number 6627. Respondent has a branch office located at 8235 Forsyth Blvd. Suite 800, Clayton, Missouri 63105 ("AXA Branch Office").
13. Kenneth Neely ("Neely") was registered as a securities agent in Missouri through the CRD with CRD number 1586038. Neely was registered in Missouri as a securities agent with Respondent from December 2007 to July 2009.
14. Prior to his association with Respondent, Neely was registered with UBS Painewebber, Inc. ("UBS") from May 1999 to October 2002, and with Stifel, Nicolaus & Company, Inc. ("Stifel") from October 2002 to January 2007.
15. While associated with Stifel and, later, Respondent, Neely offered and sold investments in a fraudulent investment scheme. These investments were in a purported St. Charles REIT (Real Estate Investment Trust). Neely deposited funds he received from investors into his personal bank accounts that he controlled. Neely used investor funds from these personal accounts to pay for his personal expenses. The fraudulent securities Neely sold were not recorded on the books and records of, or otherwise disclosed to, Respondent.
16. While Neely was associated with Respondent, Neely raised over fifty-six thousand dollars (\$56,000) from at least three (3) investors in this fraudulent investment scheme.
17. Neely received a felony mail fraud conviction as a result of these activities and is currently in a correctional facility.

#### **Neely's Registration with Respondent**

18. In January 2007, Stifel terminated Neely. This was listed on Neely's Uniform Termination Notice for Securities Industry Registration ("Form U-5") as a voluntary termination.
19. In February 2007, Neely visited the AXA Branch Office and met with the Respondent's branch manager regarding association with Respondent.
20. Representatives at Respondent reviewed Neely's background information and also reviewed information about Neely contained on the CRD.
21. On March 6, 2007, Respondent denied Neely's request to join the firm based upon Neely's credit problems and three customer complaints.
22. Over the course of the next few months, Neely asked Respondent to reconsider its decision.
23. On August 2, 2007, following the submission and review of additional documentation relating to the complaints and satisfaction of outstanding credit issues, Respondent agreed to offer Neely a position to become a registered agent.
24. On August 8, 2007, Respondent submitted registration paperwork to the CRD to register Neely as a securities agent.
25. On October 17, 2007, Respondent sent a proposal to the Missouri Securities Division for Neely's supervision and included, among other things, that:
  - a. Neely follow Respondent's compliance and supervisory procedures, especially those relating to variable annuity sales, their suitability criteria, restrictions (if any), and firm requirements;
  - b. Neely complete on-line training courses offered by Respondent;
  - c. Respondent's branch manager would serve as Neely's direct supervisor;
  - d. each year Neely would receive an annual compliance interview and attend an annual compliance meeting;
  - e. each year Neely would be audited by a Series 24 professional; and
  - f. the firm would conduct an unannounced audit on Neely in 2008.
26. In early July 2009, the Financial Industry Regulatory Authority ("FINRA") Enforcement Division spoke with Respondent regarding Neely. On July 8, 2009, FINRA and Respondent's personnel met at Neely's branch office, and FINRA interviewed Neely regarding Neely's offer and sale of the St. Charles REIT.
27. During the July 8, 2009, interview Neely stated, among other things, that:
  - a. Neely solicited approximately twenty-five (25) investors in the St. Charles REIT;<sup>1</sup>

- b. Neely provided investors with fictitious certificates and other financial documents;
  - c. Neely deposited funds from investors in his personal Regions bank account;
  - d. Stifel's branch manager intercepted a check from one of these investors and questioned Neely about the check;
  - e. the branch manager at Stifel requested a bank statement from Neely; and
  - f. when Neely did not produce this statement, Neely was "allowed to resign" from Stifel.
28. On July 8, 2009, Respondent terminated Neely for commingling and converting funds.
29. In August 2010, the Enforcement Section requested information from Respondent about its hiring policies and procedures and the circumstances surrounding the hiring of Neely and in particular any conversation representatives of Respondent had with Neely's previous employers.
30. In response to the Enforcement Section's August 2010 request, Respondent stated, among other things, that:
- a. CRD filings help brokerage firms make informed registration decisions; and
  - b. Neely's Form U-5 stated that Neely had voluntarily resigned from his previous broker-dealer, and had the Form U-5 indicated that Neely had been permitted to resign or was terminated for any reason other than "voluntary", Respondent would have more critically evaluated the decision to hire Neely.
31. Respondent has cooperated with the Enforcement Section and has agreed to continue cooperating in this matter.
32. Respondent has made enhancements to its policies and procedures, including among other things, the following:
- a. enhanced its policies and processes to better facilitate review of credit reports for new hire candidates and existing associates with financial concerns;
  - b. enhanced existing supervisory tools to enable supervisors to have automated access to client account withdrawal information; and
  - c. enhanced its branch examination program, which included revising the Respondent's audit guide and annual compliance interview forms. The changes provide for greater focus on financial professionals with financial issues and customer complaints.

## **II. CONCLUSIONS OF LAW**

33. The Commissioner finds Respondent was affiliated with a Missouri-registered agent who engaged in dishonest and unethical practices in violation of Sections 409.3-301 and 409.4-412(d)(13), RSMo. (Cum. Supp. 2009) by offering and selling unregistered securities and failing to advise Respondent about these sales so that Respondent could record the securities on its books and records. Respondent is subject to discipline for its agent's dishonest and unethical activities pursuant to Section 409.4-412(h), RSMo. (Cum. Supp. 2009).
34. The Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Enforcement Section, finds and concludes that the Commissioner has jurisdiction over Respondent and this matter and that the following Order is in the public interest, necessary for the protection of public investors and consistent with the purposes intended by Chapter 409, RSMo. (Cum. Supp. 2009).
35. The Commissioner considered the Respondent's cooperation in determining the amount of any sanction against Respondent.

## **Order**

**NOW, THEREFORE**, it is hereby Ordered that:

1. Respondent pay fifty-six thousand dollars (\$56,000) in restitution, plus seven thousand five hundred and fifteen dollars and forty-one cents (\$7,515.41) in interest. These payments shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Restitution Fund. These payments will be distributed by that Fund to the investors in the amounts as identified in Exhibit A;
2. Respondent pay twenty-five thousand dollars (\$25,000), which shall be sent within ten (10) days of the effective date of this Consent Order to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund;
3. Respondent pay three thousand five hundred dollars (\$3,500) as the costs of this investigation, which shall be sent within ten (10) days to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101, and shall be payable to the

Missouri Secretary of State's Investor Education and Protection Fund; and

4. Respondent pay its own costs and attorneys' fees with respect to this matter.

**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 28<sup>TH</sup> DAY OF OCTOBER, 2010.

ROBIN CARNAHAN  
SECRETARY OF STATE

(Signed/Sealed)  
MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES

Consented to by:  
MISSOURI SECURITIES DIVISION

Mary S. Hosmer  
Assistant Commissioner of Securities

AXA ADVISORS, LLC

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

Attorney for Respondent

**EXHIBIT A**

MR1---\$10,180.38

MR2---\$24,989.97

MR3---\$28,345.06

[1] Three (3) of those twenty-five (25) investors made their investments while Neely was affiliated with Respondent.