

**FINAL – EXECUTION**

**STATE OF VERMONT  
DEPARTMENT OF FINANCIAL REGULATION**

IN RE: AXIOM CAPITAL )  
MANAGEMENT, INC. and )  
RONALD M. BERMAN )

DOCKET NO. 12-022-S

**STIPULATION AND CONSENT ORDER**

This Stipulation and Consent Order is entered this 16th day of January, 2013 by and among Axiom Capital Management, Inc. (the "Company"), Ronald M. Berman ("Berman"), and the State of Vermont Department of Financial Regulation ("DFR").

WHEREAS, the Commissioner of DFR is responsible for administering and enforcing the Vermont Uniform Securities Act ("VUSA"), Title 9, Chapter 150 of the Vermont Statutes Annotated, pursuant to which DFR has conducted an investigation of the circumstances involving certain transactions and related matters during the period from and including January 2005 through July 2009; and

WHEREAS, as a result of DFR's investigation, DFR has alleged that the Company and Berman, who is an employee of the Company, violated the VUSA as a result of: (i) dishonest and unethical practices (unauthorized trading) by both Berman and the Company; (ii) the Company's failure to properly supervise the subject trading activity; (iii) the Company's violation of an outstanding Consent Order; and (iv) the Company's violation of post-registration recordkeeping requirements; and

WHEREAS DFR commenced an action in Vermont Superior Court entitled *Vermont Department of Financial Regulation v. Axiom Capital Management, Inc., Ronald Berman, Maria Wilson-DiChiara and Eric Miller (Docket No. 600-8-12 Wncv)*, and, wishing to resolve this dispute without extensive litigation, the Parties to that docket have agreed to dismiss that lawsuit with prejudice in exchange for the entry of this Stipulation and Consent Order; and

WHEREAS DFR has commenced an administrative proceeding against the Company and Ronald Berman which is resolved by this Stipulation and Consent Order.

WHEREAS, the Company and Berman contend that the father of the two account

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holders had authorized all transactions, but there was a failure to maintain written documentation permitting the father to place trades, which DFR disputes; and

WHEREAS, DFR has accordingly sought, and the Company and Berman, while neither admitting nor denying any violation and without the necessity of further formal proceedings, have agreed to take corrective and remedial measures as more specifically described herein; and

WHEREAS, the Company and Berman elect to permanently waive any right to a hearing and appeal under: the VUSA; the Vermont Administrative Procedure Act, 3 V.S.A. Chapter 25; the rules, regulations, and orders of the Commissioner; and any right the Company and/or Berman may have to judicial review by any court with respect to this Consent Order.

NOW THEREFORE, the parties so stipulate, and the Commissioner makes findings and conclusions as follows:

### FINDINGS OF FACT

The Company and Berman admit and subject themselves to the jurisdiction of the Commissioner and DFR, and neither respondent admits nor denies the Findings of Fact contained in this Order; and each of them consents to the entry of this Order by the Commissioner.

1. The Company is engaged in the business of acting as a broker-dealer.
2. Gregory John and Eric John maintained brokerage accounts with the Company, and during the period set forth in the recitals hereof, both persons were residents of the State of Vermont.
3. The Company engaged in unauthorized trades on the aforementioned brokerage accounts, failed to properly supervise, violated an outstanding Consent Order with the State of Vermont, and failed to properly maintain required books and records.
4. Berman engaged in unauthorized trades on the aforementioned brokerage accounts and violated an outstanding Consent Order with the State of Vermont.
5. As a result of the aforementioned violations, Gregory John and Eric John

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incurred individual losses in their portfolios for which they have not been fully compensated.

6. Under 9 V.S.A. § 5604(a), the Commissioner, after determining that a person has engaged in an act that constitutes a violation of the VUSA, may issue a final order directing the person to cease and desist from engaging in the act, to pay a civil penalty, to make restitution, and to pay the costs of an investigation.

The Company and Berman contend that the father of the two account holders had authorized all transactions, but there was a failure to maintain written documentation permitting the father to place trades.

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CONSENT ORDER

NOW, THEREFORE, based on the stipulation of the parties, and on the basis of the findings, the Commissioner issues the following Order:

1. The Company shall pay restitution to Gregory John in the amount of \$902.98, and to Eric John in the amount of \$48,575.94.
2. Mr. Berman shall withdraw his Vermont registration no later than February 1, 2013, and shall not apply for reinstatement for a period of five (5) years from January 16, 2013.
3. The amount of \$10,000 shall be paid to the DFR to reimburse the DFR for its costs in this investigation.
4. The amount of \$75,000 shall be paid to the DFR, to be apportioned as follows:
  - (i) Berman shall pay an administrative penalty in the amount of \$25,000;
  - (ii) The Company shall pay an administrative penalty in the amount \$20,000; and
  - (iii) The Company shall donate \$30,000 to the Vermont financial services education and training special fund, pursuant to 9 V.S.A. § 5601 (d) and (e).
5. All payments required hereunder shall be effected no later than February 1, 2013.
6. The Company and Berman will otherwise in all respects abide by the provisions of the Vermont Uniform Securities Act and related provisions of Vermont law with respect to securities practices.
7. This Stipulation and Consent Order documents the resolution of all matters arising from DFR's above-referenced investigation and will not be a basis for action against the Company and/or Berman by DFR arising out of these same events except in determining any action or penalty that may be imposed by DFR for any future violations of law or this Consent Order by the Company and/or Berman.
8. In consideration of this Stipulation and Consent Order and the Company's and Berman's undertakings hereunder, DFR elects to exercise its discretion to decline to pursue further or additional action under the securities laws arising out of its investigation of these facts.

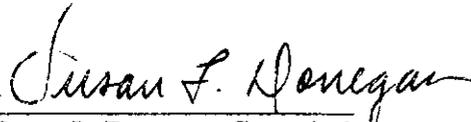
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9. If the Company and/or Berman fail or neglect to comply with any of the terms, conditions or undertakings set forth in this Stipulation and Consent Order, DFR may upon written notice to the Company and/or Berman institute any legal or administrative proceedings it deems appropriate to enforce same and to seek such other appropriate sanctions.

This ORDER shall become effective immediately upon the date set forth below.

BY ORDER OF THE COMMISSIONER

Entered at Montpelier, Vermont, this 17<sup>th</sup> day of January, 2013.

  
Susan L. Donegan, Commissioner  
Vermont Department of Financial  
Regulation

**CONSENT TO STIPULATION AND CONSENT ORDER AND ENTRY OF  
ADMINISTRATIVE ORDER BY  
AXIOM CAPITAL MANAGEMENT, INC. AND RONALD M. BERMAN.**

AXIOM CAPITAL MANAGEMENT, INC. and RONALD M. BERMAN  
("Respondents"), hereby admit the jurisdiction of the Commissioner over the subject  
matter of this proceeding, and solely with respect to this matter knowingly and  
voluntarily waive any and all rights to a hearing before the Commissioner or his  
designee and all other procedures otherwise available under the VUSA, and any  
successor act, or the rules, regulations, and orders of the Commissioner.  
Respondents also waive compliance with the provisions of 3 V.S.A., Chapter 25  
regarding contested cases. Respondents acknowledge that this Consent Order  
constitutes a valid order duly rendered by the Commissioner.

1. Respondents by their signatures below enter into the foregoing Stipulation  
and Consent Order.
2. Respondents voluntarily and knowingly waive any rights they may have to  
judicial review by any court by way of suit, appeal, or extraordinary remedy resulting  
from the issuance of the Consent Order.
3. Respondents acknowledge and agree that the Stipulation and Consent Order is  
entered into freely and voluntarily and with the advice of counsel.
4. Respondents acknowledge their understanding of all terms, conditions, and  
obligations contained in the Stipulation and Consent Order and further acknowledge  
that should they fail to comply with any provisions of the Consent Order, the

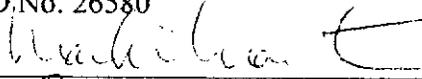
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Commissioner may impose additional sanctions and seek other appropriate relief subject to the Respondents' rights pursuant to the VUSA and any successor act.

5. Respondents neither admit nor deny the Findings of Fact (except as to jurisdiction) contained in the Stipulation and Consent Order, but consent to the issuance of this Consent Order and agree to be fully bound by the terms and conditions of the Stipulation and Consent Order.

Dated this 16th day of January, 2013.

AXIOM CAPITAL MANAGEMENT, INC.  
CRD.No. 26580

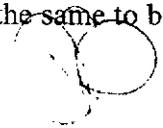
By:   
Its: President

  
Ronald M. Berman – CRD No. 19728

STATE OF NY )  
COUNTY OF Orange ) ss.

ON THIS 16<sup>th</sup> DAY OF JANUARY, 2013, before me personally appeared Ronald M. Berman, to me known to be the person who executed, on behalf of Axiom Capital Management, Inc., the foregoing document, and such person duly acknowledged to me that he/she is duly authorized to act for and on behalf of Axiom Capital Management, Inc. and executed the same to be his/her free act and deed.

ON THIS 16<sup>th</sup> DAY OF JANUARY, 2013, before me personally appeared RONALD M. BERMAN, to me known to be the person who executed the foregoing document, and he duly acknowledged to me that he executed the same to be his free act and deed.

  
Notary Public

## ESCROW AGREEMENT

This Agreement is dated January 16, 2013. The parties to this Agreement are: Vermont Department of Financial Regulation ("DFR"); Axiom Capital Management, Inc., Ronald Berman, Maria Wilson-Dichiara and Eric Miller (the "defendants"); and Michael Marks, Esq. (the "Escrow Agent").

### *Recitals*

- A. The Department has commenced an action in Vermont Superior Court (Docket No. 600-8-12 Wncv). The Department has also commenced an administrative proceeding (Docket No. 12-022-S).
- B. The parties have agreed to settle the Superior Court action and the administrative action.
- C. The parties have agreed to implement their settlements by means of escrow as set forth herein.

### *Terms and Provisions*

In consideration of Ten and More Dollars and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree as follows:

- 1. The following documents, duly signed, are herewith delivered to the Escrow Agent:
  - (a) five copies of the Stipulation and Consent Order (administrative action); and
  - (b) two stipulations of dismissal (Superior Court action).
- 2. The Escrow Agent shall hold and dispose of the documents as set forth herein.
- 3. If the Escrow Agent does not receive, prior to January 25, 2013, confirmation from the Commissioner of DFR that, upon satisfaction of the conditions of Section 4(a) and 4(b), the DFR will remove all conditions set forth in the November 17, 2005 Order in BISHCA Docket No. 05-059-S on a prospective basis, then this Agreement shall be null and void, and the Escrow Agent shall destroy the documents listed in Section 1 and return any payments received by that date to the Party delivering such payment.
- 4. If this Agreement is not terminated under Section 3 and if the Escrow Agent receives, prior to February 1, 2013,
  - (a) Mr. Berman's withdrawal of his Vermont registration; and
  - (b) a check, in the amount of \$902.98, payable to Gregory John, a check, in the amount of \$48,575.94, payable to Eric John, and a check, in the amount of \$85,000, payable to the Vermont Department of Financial Regulation;

then the Escrow Agent shall (x) deliver an executed copy of the Stipulation and Consent Order to

each party; and (y) deliver the stipulations of dismissal (Superior Court action) to counsel for the defendants to be filed by him on consecutive days with the Superior Court.

If the Escrow Agent does not receive the items listed in Section 4(a) and 4(b) prior to February 1, 2013, he shall notify the parties and destroy the documents listed in Section 1.

VERMONT DEPARTMENT OF FINANCIAL  
REGULATION

AXIOM CAPITAL MANAGEMENT, INC.,  
RONALD BERMAN, MARIA WILSON-  
DICHARA AND ERIC MILLER

By:   
\_\_\_\_\_  
Thomas J. Candon  
Deputy Commissioner for Banking  
and Securities

By   
\_\_\_\_\_  
Carl H. Lisman, Esq.

ESCROW AGENT:

  
\_\_\_\_\_  
Michael Marks, Esq.

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