

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 59090 / December 12, 2008**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 2820 / December 12, 2008**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13308**

**In the Matter of**

**Gary J. Gross,**

**Respondent.**

**ORDER INSTITUTING PUBLIC  
ADMINISTRATIVE PROCEEDINGS  
PURSUANT TO SECTION 15(b) OF THE  
SECURITIES EXCHANGE ACT OF 1934  
AND SECTION 203(f) OF THE  
INVESTMENT ADVISERS ACT OF 1940,  
MAKING FINDINGS, AND IMPOSING  
REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”) against Gary J. Gross (“Gross” or “Respondent”)

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment

Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions (“Order”), as set forth below.

### III.

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

1. Gross, 56, is a resident of Far Rockaway, New York. From January 2003 through early January 2007, Gross lived in Boca Raton, Florida and was associated as a registered representative with Axiom Capital Management, Inc., a Delaware corporation registered with the Commission as a broker-dealer since June 22, 1990, and as an investment adviser from June 2004 through October 2006. Gross still maintains Series 7, 63 and 65 securities licenses.

2. On November 25, 2008, the United States District Court for the Southern District of Florida entered a judgment by consent against Gross in the civil action entitled Securities and Exchange Commission v. Gary J. Gross., Case No. 08-CIV-81039-MARRA, permanently enjoining him from violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) and Rule 10b-5 of the Exchange Act, ordering him to pay disgorgement and a civil penalty pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act, and barring him from participating in an offering of penny stock as defined by Exchange Act Rule 3a51-1.

3. The Commission’s Complaint alleged that from early 2004 through approximately September 2006, while he was a registered representative with Axiom, Gross defrauded multiple customers by making material misrepresentations and omissions about the risks and suitability of securities he bought for them, churning customer accounts, and fabricating customer account values. The Complaint further alleged Gross convinced customers to open accounts at Axiom by promising greater income from and safety in their investments than their prior brokers, but that he then frequently disregarded the customers’ conservative investment objectives in favor of unsuitable mutual and closed-end funds without disclosing the associated risks.

### IV.

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

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Gross be, and hereby is, barred from association with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially

waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

For the Commission, by its Secretary, pursuant to delegated authority.

Florence E. Harmon  
Acting Secretary