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VIA E-mail and U.S. Mail

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RE: Response to AXA's Cease and Desist Letter

Dear Mr. Ungar:

This letter will respond to your undated cease and desist letter received by my office via electronic mail on Friday, May 3, 2019, at approximately 5:00 p.m. In that letter, you claim that my office and I published statements about AXA Advisors that it believes may be false. We appreciate the opportunity to respond. As discussed below, we stand by our statements, which are correct and truthful statements regarding AXA and its representatives.

For the past two years AXA chose to ratify and approve the obvious misdeeds of one of its former representatives, Francesco Puccio, who is a convicted financial felon. It went so far as to tell FINRA that its conduct with regard to Puccio was "**perfectly suitable**" and "**beyond reproach**." As a result, FINRA ordered AXA to pay what we believe to be the largest FINRA arbitration award ever in Upstate New York. My firm and I are proud that we were able to secure this award on behalf of our elderly clients who suffered as AXA customers.

AXA has yet to apologize to the Fitzpatricks or Shirley Kerwin for the way it treated them. Instead, it now attacks them—accusing them of making false and misleading statements. Despite the $3.2 million FINRA arbitration award, AXA still contends that it had "proper supervisory and compliance procedures in place at all times." Cease and Desist letter, p. 5. Obviously, the FINRA arbitration panel disagreed. It is disappointing and concerning to me that AXA appears to have learned nothing. I fear that many other investors in Upstate New York and around the country are being similarly abused by AXA.

Even AXA's recent public statements about the Fitzpatrick arbitration are contrary to how it continues to treat the Fitzpatricks and Ms. Kerwin. On May 2, 2019, AXA issued a statement for a 13WHAM News story about the Fitzpatrick award and AXA's regulatory issues: "These actions were inconsistent with [AXA's] policies and values. [AXA] remain[s] committed to serving our clients with integrity."

As I now know, while AXA was issuing a statement claiming that the previously "perfectly suitable" was now "inconsistent with [AXA's] policies and values" and that AXA was committed to serving its clients with integrity, you were drafting a letter on AXA's behalf that accuses my elderly and victimized clients of lying about the way AXA treated them. This, despite a $3.2 million award for the Fitzpatricks and a felony conviction of AXA's broker obtained based on Shirley Kerwin's criminal complaint.

Obviously, AXA has a greater interest in hiding its misconduct than it does in treating its clients with integrity. Investors in my hometown deserve to know that.

Furthermore, and also on May 2, 2019, I received a daily email from Investment News summarizing its headlines. The subject line of that email stated: "More bad news for AXA." In fact, while you were drafting your threatening letter to me, my firm and my clients, the Financial Industry Regulatory Authority ("FINRA") announced that AXA had been fined $600,000 for yet additional regulatory failures. In fact, the FINRA fine was so close in time to the Fitzpatrick award, I was able to take a screenshot of the Investment News headlines about both. *See* Exh. A. If this were not such a serious matter, it would be comical that AXA is so tone deaf that it was threatening my law firm and my clients for informing our community of AXA's past regulatory issues at the very instant that its regulator was announcing yet another fine. In response to that fine, AXA stated that it: "remain[s] committed to transparency." As evidenced by your letter, AXA is not committed to transparency. It will resort to threatening its elderly clients in an attempt to keep it from getting further bad press.

Since you did not represent AXA at the *Fitzpatrick v. AXA* hearing, and have not read the full transcript, I will briefly summarize some of the damning evidence. Simply put, we could have said much more about AXA's abuse of the Fitzpatricks and AXA's (non-)supervision of a convicted financial felon.

- Puccio's scheme to steal from Shirley Kerwin began only a few months after he was re-hired by AXA and ended a few months after he left AXA. As such, Puccio's felony scheme was on-going the entire time he recommended the five AXA transactions to the Fitzpatricks. Puccio was, in fact, a felonious financial advisor at all times relevant to the Fitzpatricks and for almost the entire time he was purportedly being supervised – albeit negligently – by AXA and its branch manager, Tom Queri.

- AXA knew about some of Puccio's financial troubles before it re-hired him in 2011. When it learned of other, previously undisclosed large financial liens against Puccio, AXA took *six* months to place him on heightened supervision. Tom Queri admitted that not putting Puccio on heightened supervision initially was a violation of AXA policy. He could not explain the six-month delay after AXA discovered Puccio's tens of thousands of dollars of tax liens. Tom Queri could only acknowledge that the delay was concerning.

- AXA branch manager Tom Queri struggled to explain why it is important for him to know if a broker has financial problems before a brokerage firm hires that broker.

- Puccio converted suitable mutual funds and four paid-up, dividend producing life insurance policies from the 1980's into two large variable annuities. The second of these transactions was so bad that AXA CFP, Koen Goorman, admitted it was unsuitable.

- AXA's own expert witness agreed with us that "a variable annuity is not a great investment for the Fitzpatricks."

- Puccio sold two enormous life insurance policies but admitted that he had no estate planning credentials whatsoever. Nor did Puccio involve other professionals who did have an estate planning background.

- Those two enormous life insurance policies alone paid Puccio close to $200,000 in commissions.

- With respect to one of those policies, there was *zero* evidence that suggested AXA took *any* steps to supervise what Puccio admitted was the largest life insurance policy he ever sold. Despite this, AXA insisted that its supervision of the transactions was "beyond reproach." If that is AXA's A-game supervision, AXA's clients are in worse shape than we previously thought.

- Despite its knowledge of Puccio's rules violations, AXA did not make any disclosures on Puccio's U-5 when he resigned. Puccio continued to abuse the Fitzpatricks – including, but not limited to, the infamous call where Puccio impersonated Kerry Fitzpatrick – while he was registered with Cambridge. It is my belief that Puccio would still be selling large annuities and life insurance policies to unsuspecting clients if Shirley Kerwin did not ensure that Puccio was prosecuted. AXA should thank Shirley Kerwin. Instead, it threatens her.

- After Puccio's arrest, according to Koen Goorman, the Fitzpatricks asked AXA to review "the totality of their portfolio" to determine "any improprieties, unsuitabilities, or any other issues with" Puccio-recommended transactions. Koen Goorman reached "troubling" findings about what Puccio had done to the Fitzpatricks, but ultimately "stuck [his memo] in the file" and never informed the Fitzpatricks of his "troubling" findings.

After eight hearing days, 25-page post-hearing briefs, and attorneys' fees briefs, the Panel awarded the Fitzpatricks $3.2 million. As we have stated repeatedly, we believe that this is the largest FINRA arbitration award ever awarded to a customer in Upstate New York. AXA now has the distinction of being the subject of the largest fine ever levied by the New York State Department of Financial Services and the largest FINRA arbitration award in Upstate New York. Our opinion of AXA is colored by those two facts, among others we have learned throughout our investigation. It is important for investors who are investing their life savings to know those facts.

I will now briefly address AXA's specific accusations against my law firm and my clients.

AXA's Accusations	PWCK's Response
1. AXA claims that PWCK's opinion about AXA pushing VA's on unwary investors is false because "AXA takes great care to ensure that products are recommended to clients only if they are suitable. AXA Advisors takes suitability analyses very seriously, and it implements and enforces strict guidelines and procedures regarding the sale of products." AXA Cease and Desist letter, p. 3.	1. The statement that "AXA takes great care" to only recommend suitable products is contrary to the evidence established at hearing in *Fitzptrick v. AXA*. 100% of the annuities and life insurance policies sold to the Fitzpatricks were unsuitable. Moreover, we *proved* that VAs were pushed on unwary AXA customers and that this conduct has triggered widespread concerns.
2. AXA claims that PWCK's statement pertaining to the fact that it was fined $20 million by New York State is misleading because it was "issued over five years ago" and "related only to a specific product design feature in variable annuities" and "had nothing to do with questionable sales tactics." AXA Cease and Desist letter, p. 4.	2. There is nothing misleading about PWCK's statement that AXA's failure to report changes to its annuity structure led to the largest fine ever issued by the NYS Department of Financial Services - $20 million. Moreover, the *Fitzpatrick* hearing certainly revolved around questionable sales tactics, and AXA has been ordered to pay $3.2 million because of it.
3. AXA claims that PWCK's statement pertaining to AXA's 2010 $1.9 million fine pertaining to replacement annuities was misleading because the violations ended in 2006 and AXA had not received any customer complaints. AXA Cease and Desist letter, p. 4.	3. AXA's accusation does not point to any statement that is inaccurate or false pertaining to that 2010 fine. Everything we cite is accurate. Furthermore, Puccio was allowed to replace numerous life insurance policies to sell more annuities and life insurance policies. It then defended those replacements, despite the previous fine, as "perfectly suitable" and "beyond reproach." Based on the evidence established at hearing, as well as AXA's strident defense of obviously unsuitable

	transactions, it is our opinion that replacements are still a problem at AXA.
4. AXA claims that PWCK's statement that "AXA has consistently attracted the attention of the industry self-regulatory organization FINRA" is misleading but then only references one of the regulatory actions we list and claims it only describes an AXA broker operating an undetected Ponzi scheme (not AXA's supervisory system). AXA Cease and Desist letter, p. 4.	4. There is nothing misleading about PWCK's statement about AXA consistently attracting FINRA's attention. The fact that in one of our cited references an AXA broker was accused—and FINRA chose not to censure AXA for failing to supervise that broker—is hardly a feather in AXA's cap. Literally the day after news of the Fitzpatrick award broke, FINRA announced it was fining AXA yet again. It is a well-founded opinion that AXA consistently attracts FINRA's attention.
5. AXA claims that PWCK's statement that there are "serious problems in Upstate New York that may only be the tip of the iceberg of AXA sales abuses related to annuities" is misleading. AXA Cease and Desist letter, p. 4.	5. PWCK and the Fitzpatricks just completed a hearing involving AXA's convicted felon's obvious commission grabbing. It was incredibly troubling to us—and apparently to the FINRA panel, as well—that AXA defended its conduct with respect to its felonious broker as "perfectly suitable." That, in and of itself, is a serious problem. The branch manager testified that he was supervising approximately 50 brokers, despite the fact that he could not tell us why it was important to know about brokers' financial liens. That, too, is a serious problem. A brief review of AXA's brokers' broker check reports reveals dozens of customer complaints involving annuities and life insurance policies. That is yet more evidence of a serious problem. It is our opinion that it is a serious problem that AXA still does not consider all of the above serious problems.
6. AXA claims that PWCK's statement that "[c]ompounding the problem is that AXA has shown no hesitancy to employ … problem brokers with troubled backgrounds" is false because "AXA Advisors thoroughly investigates all	6. We are incredibly troubled that AXA continues to claim that it "thoroughly investigates all individuals before they become employed or registered with AXA." Let us be clear: AXA did not vet Puccio "thoroughly" before he came back

individuals before they become employed or registered with AXA Advisors." AXA Cease and Desist letter, p. 4.	on board with AXA. Moreover, AXA's very shoddy investigation of Puccio did reveal some, but not all, of his financial issues, and yet AXA chose to ignore those issues. He was not, for instance, immediately placed on heightened supervision. Moreover, in addition to Puccio, AXA does employ brokers with as many as eight customer complaints, which easily places AXA toward the top of complained-about brokers in the United States. In fact, some of those customers were paid thousands of dollars to settle their claims against AXA.
7. AXA claims that PWCK's statement that "[t]here is troubling additional evidence that consumers in the Buffalo/Rochester/Syracuse region are being exposed routinely by AXA to other brokers with backgrounds that raise multiple red flags" is false because AXA runs routine background checks on all brokers and promptly addresses any concerns related to its brokers. You also claim that client well-being is AXA Advisors' top concern. AXA Cease and Desist letter, p. 5.	7. Having witnessed what AXA did to the Fitzpatricks and Shirley Kerwin, AXA's defense of their claims and the attacks they now lodge at the Fitzpatricks and Shirley Kerwin, it is quite clear that client well-being is not AXA's top concern. Moreover, there was nothing prompt about the way AXA addressed known concerns about Puccio. AXA broker Ronald Hicks in Buffalo has eight customer complaints which puts him in the top percentiles of complained about brokers in the country. He also has four financial liens and one criminal disposition. AXA is proud of the fact that its *internal* investigation led to a conclusion of "no basis" for six of those complaints. I will remind you the its internal investigation of Puccio reached the same conclusion. Your letter does not reference AXA broker, Richard Hazard, from just outside Utica. He also has eight customer complaints. Six of those customer complaints resulted in a total of over $500,000 being paid to customers. We have serious doubts about how AXA "found no basis to the customer complaint" for the two most recent complaints. This is all very troubling to us. It should be troubling to AXA but apparently it is not.

8. AXA claims that PWCK's statement that "AXA sent a felonious broker to serve unsophisticated and elderly clients and then completely abdicated its supervisory obligations" is false. AXA Cease and Desist letter, p. 5.	8. First, Puccio was literally committing financial felonies by the time AXA sent him to Whitesville, New York to sell the Fitzpatricks annuities and life insurance policies. Our description of him as felonious is fair. We could have said much worse. Furthermore, there were numerous instances where AXA simply failed to supervise large insurance policies and annuities, even after AXA finally put Puccio on heightened supervision. It was clear at the hearing that AXA abdicated its supervisory obligations. The Panel certainly thought so.
9. AXA claims that Sandra Fitzpatrick's statement that "I'm not happy at all about the way AXA treated us" is misleading. AXA Cease and Desist letter, p. 5.	9. This is an appalling accusation. Sandra is a 77-year-old victim who just won \$3.2 million from AXA because it treated her so badly. She is certainly "not happy" with AXA. Moreover, AXA did fail to properly help the Fitzpatricks when they asked it for help after Puccio was arrested. That request was met with Koen Goorman sticking his "troubling" memo in the file and not sharing it with Mrs. Fitzpatrick and her husband.
10. AXA claims that Shirley Kerwin's statement that "When Puccio stole my money, I was shocked. I turned to AXA. When they refused to help, I was devastated" is false. AXA Cease and Desist letter, p. 6.	10. You are falsely accusing AXA's 81-year-old victim of lying. She has in fact filed a customer complaint against AXA. Moreover, she literally filed felony charges against Puccio. And she testified at the *Fitzpatrick* hearing that she called AXA for help around the time of Puccio's arrest, but AXA refused, claiming it had no record of Ms. Kerwin being a customer of AXA. AXA chose not to cross-examine Shirley. Only now do you call her a liar. This is shameful.
11. AXA claims that PWCK's statement that a "disturbing pattern of AXA problems throughout Rochester, Syracuse, Buffalo, and upstate New York" exists is	11. While you reference Mr. Puccio's "alleged" misconduct toward AXA customers, let us be clear: his abuse of multiple AXA clients has now been proven. Moreover, we have fielded

misleading. AXA Cease and Desist letter, p. 6.	multiple calls—before and after the Fitzpatrick award was issued—that highlighted very troubling information about serious problems at AXA. Let us not forget, too, that AXA defended Puccio's and its own conduct toward the Fitzpatricks as "perfectly suitable" for two years. If AXA is willing to describe Puccio as "perfect," we have legitimate concerns about what average looks like at AXA.
12. AXA claims that PWCK's statement that "AXA Advisors, shares the blame. When the Fitzpatricks went to the top with their concerns, the company denied their complaint." AXA Cease and Desist letter, pp. 6-7.	12. As noted above, the Fitzpatricks asked for a suitability review. That review was conducted in August 2015 by Koen Goorman. He stuck his "troubling" findings memo in the file and did not share it. In September 2015, the Fitzpatricks complained. In October, AXA denied that complaint while Goorman's troubling memo was stuck in the file.
13. AXA claims the Joseph Peiffer's quote in the Investment News is misleading because it implies that "AXA Advisors does not have proper suitability-related procedures in place and does not treat its customers properly." AXA Cease and Desist letter, p. 7.	13. We have now tried an arbitration for 2 years that resulted in a $ 3.2 million award. Our opinion that AXA does not follow appropriate suitability standards is well founded.
14. AXA takes issue with a statement in the Life Annuity Specialist because you think it suggests Puccio was still with AXA in 2015 when he sold an additional large annuity to the Fitzpatricks. AXA Cease and Desist letter, p. 8.	14. We have been clear in our public disseminations, as we were at the arbitration, about the dates of Puccio's multiple periods of employment with AXA. I do not believe the article makes much of a suggestion at all about where Puccio was registered by 2015, but I did not write the article. The article does outline some very troubling facts about Puccio, a broker AXA hired not once, but twice and chose not to make any U-5 disclosures when he left to become registered at Cambridge despite its knowledge by that time that he had

	violated FINRA rules while registered with AXA.

Simply put, everything we have disseminated is true – backed up by awards, regulatory findings and broker check reports. Our opinions were formed over the past two years while watching a brokerage firm go to the mat defending the obviously unsuitable conduct of a convicted financial felon against the claims of its most vulnerable customers.

My firm and my clients are not going to be intimidated into silence when we know what AXA is doing is wrong. If AXA wishes to challenge the Fitzpatricks, their FINRA award, Ms. Kerwin's veracity or our other statements regarding AXA's misconduct, we cannot stop it. But, AXA proceeds with these frivolous accusations at its own peril.

Sincerely,

JJK

Jason J. Kane

CC: Shipra Rege, Esq. (srege@ulmer.com)

EXHIBIT A

Morgan Stanley terminated Michael Wu in March after he did not cooperate with the firm's investigation.

Finra fines AXA $600,000 over misclassified bond funds

THE INSIDER

Alexander Acosta is the Night King from 'Game of Thrones'

Reg BI may come sooner than expected: 'You won't have to wait long'

Cresset acquires $500 million Cypress Wealth Advisors

Elderly investors win $3.2 million Finra arbitration award against AXA Advisors