

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007008341901**

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Banorte Securities International, Ltd., Respondent
Member Firm
BD No. 30648

Pursuant to Rule 9216 of FINRA Code of Procedure, Banorte Securities International, Ltd. (Respondent or BSI), submits this Letter of Acceptance, Waiver and Consent (AWC) for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

BSI, headquartered in New York, is part of an affiliated group of companies that includes a Mexican broker-dealer and a Mexican bank. The clients of BSI are predominantly high net-worth Mexican residents who are also clients of the Mexican broker-dealer and the bank.

BSI has been a member of FINRA (formerly known as NASD) since August 30, 1993. It operates a broker-dealer business with its retail sales force largely in Mexico. BSI has no relevant disciplinary history with FINRA or any other self-regulatory organization, the Securities & Exchange Commission, or any state securities regulator.

OVERVIEW

The majority of BSI's clients live in Mexico and are Mexican citizens. Accordingly, BSI may market off-shore mutual funds to those customers. These funds are exempt from certain requirements imposed on mutual funds sold inside the United States.¹ Between

¹ All of the transactions at issue in this matter involved off-shore mutual funds.

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January 1, 2003 and May 26, 2004, BSI discussed with and presented to its customers different mutual funds and share classes. However, most customer sales were in Class B shares, despite the fact the firm's negotiated sales charges for Class A shares generally made them more advantageous to the customer. In addition, BSI earned more money by selling Class B shares of off-shore mutual funds than it would have if its customers had purchased Class A shares.

FACTS AND VIOLATIVE CONDUCT BY RESPONDENT

Class B Share Review of Off-Shore Mutual Funds

This matter arises from a review of BSI's sale of Class B shares of off-shore mutual funds between January 1, 2003 and May 26, 2004 (the review period). During the review period, in the course of discussing different mutual funds and share classes, BSI recommended Class B shares of off-shore mutual funds to its customers for certain transactions in which contemporaneous projections would have shown that the customers would have financially benefited from purchasing Class A shares. BSI applied sales charges for off-shore mutual fund Class A shares that were less than the maximums set forth in the fund prospectuses². BSI had negotiated these sales charges with the mutual fund companies. BSI should have executed a more robust program to inform its sales force and customers of the impact that share-class pricing and ongoing fees could have on investment performance. Accordingly, BSI will undertake a remediation plan that will include at least 1,400 transactions involving more than 330 customer households.

In addition, BSI's supervisory and compliance policies and procedures were not reasonably designed to ensure that the benefits of the various off-shore mutual fund share classes were considered for each transaction.

Share Classes

BSI sold off-shore mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of sales charges paid directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment.

For example, Class A shares are subject to a front-end load, or initial sales charge, when originally purchased and have annual fund expenses that are typically lower than Class B shares. BSI earned the front-end sales load as a commission. The front-end load paid by a BSI customer decreased as the size of the investment increased. This concept applied to both single purchases and to multiple purchases in the same family of funds, which could be aggregated with the customer's other investments, as well as investments by that customer's household, as permitted by the fund family. These discounts are commonly referred to as breakpoints. BSI customers reached breakpoints at investment levels of \$250,000 and \$500,000.

Unlike Class A shares, Class B shares did not carry any front-end sales charge and did not have breakpoints regardless of the size of the investment. Instead of a front-end sales charge, Class B

² As used in this AWC, the term prospectus means a prospectus or any similar off-shore fund offering document.

shares were subject to contingent deferred sales charges (CDSCs) for a period of time, as well as higher ongoing fees than Class A shares. The CDSCs and the higher ongoing fees affect the return on mutual fund investments.

For the off-shore mutual funds sold by BSI, Class B share annual expenses were typically between 70 and 145 basis points more than the annual expenses for the corresponding Class A share. In addition, Class B shares were subject to a CDSC if redeemed prior to the expiration of a holding period, which ranged between three and five years for the relevant funds sold by BSI. Generally, the amount of the CDSC declined each year until it expired. Some of the Class B shares sold by BSI automatically converted to Class A shares after seven or more years.

The different sales charges, availability of breakpoints and fees associated with different share classes had a direct effect on a mutual fund investment's return. The significance of these differences was that an equal investment in Class A shares generally yielded a better return than a similar investment in Class B shares.

Suitability Violations

On certain occasions during the review period, in the course of discussing different mutual funds and share classes, BSI recommended and sold Class B shares of off-shore mutual funds to customers who would have benefited had they purchased Class A shares of the same fund because of the low front-end loads available to them and comparatively lower ongoing expenses for Class A shares. As a result of the customers' purchases of Class B shares BSI received higher commissions than it would have received had the customers purchased Class A shares.

NASD Conduct Rule 2310 requires that, before recommending a transaction, a member firm and its registered representatives shall have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is suitable for the customer. Further, FINRA has long held that in recommending share classes of a mutual fund, a registered representative has an obligation to avoid unnecessarily increasing the costs that his or her customers pay. Also, a registered representative's recommendations must be consistent with his or her customer's best interests.

In recommending the purchase of mutual funds, a member firm and its registered representatives must determine the suitability of the class of shares to be purchased as well as the suitability of the particular mutual fund. Primary considerations include the investment amount, the expected term of the investment, the applicable sales loads, fees and expenses associated with each class of shares, and the effect of such factors on the ultimate return on the investment to the investor, and the customer's personal and financial circumstances and investment objectives. These individual considerations must be balanced at the point of purchase by the member firm.

In determining the suitability of a particular share class, registered representatives must weigh the consequences of the share class selection by considering the effect of the comparative sales loads and annual expenses for the customer's contemplated duration of the investment.

In certain instances during the review period, BSI did not adequately consider these elements when discussing Class A and Class B shares with customers. For the transactions included in

BSI's remediation, a quantitative analysis at the time of sale would have revealed that, had the firm's customers directed an identical dollar amount toward the purchase of Class A shares, at the end of each year until the Class B shares convert into Class A shares, the redemption value of the Class A share investment would have been more than the same Class B share investment, for any reasonably assumed rate of return.

By virtue of the above conduct in connection with Class B share recommendations, BSI violated NASD Conduct Rules 2110 and 2310.

BSI's Supervisory and Compliance Policies and Procedures Regarding Class B Shares Were Deficient

These share class suitability violations occurred because BSI failed to establish, maintain and enforce supervisory and compliance policies and procedures that were reasonably designed to achieve compliance with the NASD rules described above. In particular, BSI's procedures did not set forth a means to adequately identify purchases of Class B shares by customers for whom Class A shares would have been more economically beneficial.

During the review period, BSI's written policies and procedures did not require its registered representatives to weigh the economic consequences to a customer of purchasing different share classes or to explain those consequences to customers. BSI failed to provide guidelines that instructed that Class A share off-shore mutual fund purchases eligible for low front-end loads were generally cheaper for customers than Class B shares.

BSI's procedures were not sufficient to ensure that its registered representatives adequately informed customers when recommending Class B shares (i) such shares were subject to higher ongoing fees that could have lowered the customers' investment return, or (ii) due to the low front-end loads available to BSI customers, an investment in Class A shares could yield a higher return and/or (iii) quantified the potential monetary difference between purchasing Class B shares and Class A shares for the period their customers' anticipated holding the investment.

By virtue of the above conduct in connection with the supervision of Class B share recommendations, BSI failed to establish, maintain and enforce supervisory and compliance policies and procedures that were reasonably designed to achieve compliance with NASD Conduct Rules 2110, 2310, and 3010.

SANCTIONS

B. Respondent also consents to the imposition, at a maximum, of the sanction of:

- a censure,
- a fine of \$1,100,000, and
- Respondent agrees to complete the following undertakings:

BSI will provide remediation to certain customers who, during the period January 1, 2003 through the Notice of Acceptance (the effective date) of this AWC (the relevant period), purchased Class B off-shore mutual fund shares.

- i. BSI shall create a list of customers who purchased \$50,000 or more of Class B shares in any single fund family during the relevant period, which shall be aggregated by household and fund family in determining if the \$50,000 threshold is met. The list must include at least the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol, number of shares purchased, and the gross principal amount invested for every purchase. Every purchase transaction on the list is deemed a "Qualifying Class B Share Purchase." When determining the list of Qualifying Class B Share Purchases, BSI shall make such calculations based on the effective date of this AWC. However, Qualifying Class B Share Purchases shall not include the following items (1) and (2), and may not, at BSI's option, include the following items (3) to (6):

- (1) Purchases of Class B shares for which customers have previously settled and signed releases of claims against BSI;
- (2) Purchases of Class B shares which were later cancelled at no cost to the customer, or were cost-free exchanges;
- (3) Purchases of Class B shares which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the relevant period, total less than \$100,000, and where the customer (1) entered into a systematic withdrawal plan at the time of the Class B share purchase, and immediately began receiving systematic withdrawals from the Class B share purchase without incurring CDSCs, or (2) chose not to reinvest all capital gains and dividends from the Class B share purchase;
- (4) Purchases of Class B shares which, are projected to have a higher redemption value, *determined as of the end of each year following the purchase date*, than Class A shares in two or more years until the date the Class B shares are scheduled to automatically convert to Class A shares. This determination must assume a 5.00 percent annual rate of return and consider all annual on-going expenses disclosed in the relevant prospectuses/statements of additional information (SAIs), and the load schedule attached as Exhibit A;
- (5) Purchases of Class B shares which are projected, as of the date on which the Class B shares are scheduled to automatically convert to Class A shares, to have a value within \$100 of the projected value of Class A shares had the customers purchased Class A shares instead of Class B shares. This projection must assume a 5.00 percent annual rate of return and consider all annual on-going expenses disclosed in the relevant prospectuses/SAIs and the load schedule attached as Exhibit A; and

- (6) Purchases of Class B shares where the gross principal amount invested was \$250 or less.
- ii. BSI may further remove Qualifying Class B Share Purchases as long as it provides FINRA with quantitative proof that the customer could not materially benefit³ from having the particular transaction converted to Class A shares and the removal of such Qualifying Class B Share Purchase is not unacceptable to FINRA.
- iii. Within 120 days from the effective date of this AWC, BSI shall offer any customer, who made a Qualifying Class B Share Purchase(s) and still holds all or any portion of such shares the option of converting such Class B shares into Class A shares in such a manner that each customer is placed in substantially the same financial position, based on actual fund performance, in which such customer would have been with respect to the Qualifying Class B Share Purchase(s) had the customer purchased Class A shares instead of Class B shares.⁴
- iv. Customers electing to convert any Qualifying Class B Share Purchase shall receive:
- (1) an amount of Class A shares equal to what the customer could have purchased on the date of the Qualifying Class B Share Purchase utilizing the same amount of money invested in the Qualifying Class B Share Purchase and applying the Class A share breakpoint sales charges negotiated by BSI with the mutual fund distributors and attached as Exhibit A and calculated as described herein; and
- (2) an additional amount of Class A shares equal to the number of reinvestment shares (as of a trading day sufficiently preceding the conversion date to allow the execution of the necessary transactions) the customer acquired in connection with the Qualifying Class B Share Purchase, converted on a share-for-share basis.
- v. Also, BSI shall pay cash to put those customers who made a Qualifying Class B Share Purchase(s) and sold some or all of their Class B shares comprising the Qualifying Class B Share Purchase(s) into substantially the same financial position, based on actual fund performance and redemption value, in which such customers would have been had the customers purchased Class A shares instead of Class B shares. In the event that a customer is entitled to a cash payment as specified in this sub-paragraph, and is also eligible to convert Class B shares that the customer continues to hold, BSI shall specify in its communication to the customer that the cash payment is not in lieu of the customer's right to convert all remaining eligible Class B share holdings.

³ BSI will not be required to offer a customer conversion if the customer would not materially benefit from an offer of conversion because either the annual expense differential between Class A shares and Class B shares, the CDSC schedule, and/or the conversion year quantitatively are such that Class B shares would be substantially equal to Class A shares of the same fund.

⁴ In addition to the Qualifying Class B Share Purchase, any conversion will also take into account any shares acquired through reinvestment of distributions paid on the Qualifying Class B Share Purchases.

- vi. In performing the undertakings set forth in paragraphs iv and v, above, each customer shall be entitled to the lowest sales loads in Exhibit A calculated based on the total of all opening Class B share balances, aggregated by household and fund family, plus the total of all respective Class B share purchases aggregated by household and fund family during the relevant period, without respect to any fund family limitation as to time less than the full relevant period.
 - vii. In the event that any customer who made a Qualifying Class B Share Purchase(s) elects to convert any of those Qualifying Class B Share Purchase(s) to Class A shares from Class B shares, and BSI is unable to effectuate such conversion for any reason, BSI shall pay cash to such customer in an amount that will place the customer in substantially the same financial position, based on actual fund performance and liquidation value, that such customer would have been in as of the effective date of this AWC had the customer made his or her Qualifying Class B Share Purchase(s) in Class A shares instead of Class B shares.
 - viii. When calculating the financial position of any customer for purposes of conversion, BSI shall make such calculation based on the date of conversion, or on such date immediately prior to the date of conversion sufficient to allow the execution of the necessary transactions. When calculating the financial position of any customer for purposes of a cash payment, BSI shall make such calculation as of the date the Qualifying Class B Share Purchase was redeemed, in the case of closed or partially closed positions, or, in the event that the cash payment is required as a substitute for conversion, as close as practical to the date of remediation.
- b. Within 60 days from the date of the effective date of this AWC, and prior to any remediation payment, BSI shall submit to FINRA for review a sample letter in plain English and the same letter translated into Spanish: (i) offering customers, according to the particular characteristics of their account and purchases, the opportunity to convert their Qualifying Class B Share Purchases; (ii) explaining the economic advantages and disadvantages to the customer of the options; and (iii) stating that the customer should consult with a tax advisor to determine any tax consequences. The letter shall not be unacceptable to FINRA. Customers who accept BSI's conversion offer with respect to their Qualifying Class B Share Purchases must agree to convert all of the Qualifying Class B Share Purchase shares held by the customer as of the date of the offer, and may not elect a partial conversion. Customers shall have 60 days from the mailing of the letters to accept the offer and advise BSI of their decision to accept.
 - c. Within 60 days from the Notice of Acceptance of this AWC, BSI shall designate and train staff (the Response Team) to field and respond to customer inquiries in connection to the Class B Share remediation process.
 - d. Within 60 days from the Notice of Acceptance of this AWC, BSI shall retain at its own expense, a Third Party Examiner, not unacceptable to FINRA, to examine the firm's performance of its obligations under the terms of this AWC as reflected in its certified, Initial Report(s) to FINRA as described below in paragraph i.

- e. BSI shall exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Third Party Examiner.
- f. BSI: (i) shall not have the authority to terminate the Third Party Examiner without the prior written approval of FINRA; (ii) shall compensate the Third Party Examiner, and persons engaged to assist the Third Party Examiner, for services rendered pursuant to this AWC at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Third Party Examiner and shall not seek to invoke the work product, attorney-client or any other doctrine or privilege to prevent the Third Party Examiner from transmitting any information, reports or documents to FINRA.
- g. BSI shall cooperate fully with the Third Party Examiner and shall provide the Third Party Examiner with prompt access to BSI's files, books, records and personnel as the Third Party Examiner reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.
- h. BSI shall complete the Class B Share remediation processes within 270 days from the effective date of this AWC.
- i. Within 330 days following the effective date of this AWC, BSI shall file a report (the "Initial Report") with FINRA, and simultaneously with the Third Party Examiner, through which it will provide a detailed description of the following:
 - i. The Qualifying Class B Share Purchases, including the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol, number of shares purchased, and the gross principal amount invested for each Qualifying Class B Share Purchase;
 - ii. The transactions the firm removed from the list of Qualifying Class B Share Purchases and the specific basis for each removal;
 - iii. Those transactions for which customers received a letter offering conversion;
 - iv. Those transactions for which customers received a cash payment, including details concerning the amount paid. Any cash payments resulting from the firm's inability to effect conversion shall be duly noted;
 - v. How the firm created and staffed the Response Team to field and respond to customer inquiries, including, the number of individuals used to staff the Response Team, how the Response Team staff members were trained to respond to customer inquiries, how and by whom the Response Team was supervised, and what tools and information were used to respond to customer inquiries;
 - vi. Each customer who had a Qualifying Class B Share Purchase and contacted the firm concerning remediation, and that the firm maintained a record of each customer inquiry; and

- vii. Each transaction for which the customer accepted the firm's offer of conversion and/or cash, including the material terms thereof, number of shares and value transferred.
- j. The firm's Initial Report must be submitted to FINRA, certified to, and signed by an officer of BSI who is registered with FINRA at the time of the certification. BSI shall preserve for a period of not less than three years from the effective date of the AWC and make available to FINRA the records underlying the certification as FINRA shall request.
- k. At the conclusion of the examination, but not later than 420 days following effective date of this AWC, BSI shall require its Third Party Examiner to submit a written Final Report to BSI, and to FINRA. The Final Report must recite the efforts the Third Party Examiner undertook to examine BSI's certified Initial Report, as well as the Examiner's findings. The Final Report shall address, at a minimum, (i) the Examiner's assessment of the firm's performance of the remediation processes (including the identification of customers eligible for remediation, exchange offers made and accepted, and cash payments), as reflected in the Initial Report, and whether such performance was consistent with the remediation described above, and (ii) a description of the review performed and the conclusions reached.

For good cause shown, and upon receipt of a timely request from BSI, FINRA may extend any of the procedural dates set forth above.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which Respondent proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against it;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have

a written record of the hearing made and to have a written decision issued; and

- D. To appeal any such decision to the National Adjudicatory Council (NAC) and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the *ex parte* prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (ODA), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
- C. If accepted:
1. This AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;
 2. This AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-3; and
 4. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Respondent may not take any position in any proceeding

brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that a duly authorized officer has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

Banorte Securities International, Ltd.

7-30-2008
Date

By:

Name: CARLOS A. MENA

Title: MANAGING DIRECTOR & CEO

Reviewed by:
Kelley Drye & Warren, LLP

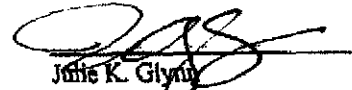
Paul F. McCurdy
By: Paul F. McCurdy, Esq.

Counsel for Banorte Securities International, Ltd., Respondent

October 16, 2008

Date

Accepted by FINRA:



Julie K. Glynn
Senior Regional Counsel
Department of Enforcement
Signed on behalf of the Director of
ODA, by delegated authority

Exhibit A

Monto a Invertir		Cobro	
Desde	Hasta	Fidelity	Otras Familias
\$0.00	\$249,999.00	2.75%	2.50%
\$250,000.00	\$499,999.00	2.25%	2.00%
\$500,000.00	En Adelante	1.25%	1.00%