

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 2007009520203

RECEIVED
2007 JAN 14 P 8:00
REGISTRATION & DISCLOSURE

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

RE: Francisco P. Esparza, Respondent
Registered Representative
CRD No. 4420477

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, I, Francisco P. Esparza ("Esparza"), submit 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 me alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. I hereby accept and consent, 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

Esparza has been registered as a general securities representative since May 2001, and has been registered in that capacity as follows:

Firm

Morgan Stanley DW Inc.
Citicorp Investment Services
UBS Financial Services Inc. ("UBS or the "Firm")
LPL Financial Corporation ("LPL")

J.P. Turner & Company, L.L.C.

Dates

May 2001 to March 2003
March 2003 to January 2004
January 2004 to October 2005
October 2005 to September
2009
September 2009 to present

Esparza has no prior disciplinary history.

FACTS AND VIOLATIVE CONDUCT

UBS's Closed End Funds Offerings

From January 2004 to December 2005 (the "Relevant Period"), UBS participated in the sale of 34 closed end fund ("CEF") offerings, which were generally designed as long-term investments. CEFs are investment companies that sell a fixed number of shares in an initial public offering ("IPO"), after which the shares typically trade on a secondary market. The expenses to the customer are built into the offering price. These expenses were generally 4.5% of the amount invested and include a sales load from which the underwriter's fees and broker's sales concession were paid. The proceeds, after the expenses, were then invested based on the investment objectives of the fund.

CEF IPOs had a penalty bid period, which was the period of time imposed by the underwriters following the initial public offering during which the selling concession received by the broker could be reversed if a sale of a CEF occurred. The penalty bid period varied by fund, but was generally 30 to 90 days after the IPO.

CEFs also had a stabilization period, which was the time frame directly after the IPO when the lead underwriter theoretically supported the price of the fund. The prospectuses indicated that purchases of the common shares to stabilize the price or to reduce short positions could cause the price of the common shares to be higher than it might otherwise be. The maximum time for the stabilization period was 90 days, but it was generally shorter.

Following the stabilization period, the price of CEF shares in the secondary market was determined by the market and could be greater or less than the net asset value. Without trading at a discount or a premium, all other factors being equal, it would be reasonable to expect the market price to be approximately 4.5% below the offering price at the end of the stabilization period.

Esparza's Unsuitable Recommendations

During the Relevant Period, Esparza recommended that certain of his customers purchase CEFs in the IPO. Generally, he received a production credit of 3% of the value of the shares his customers purchased at IPO. These production credits were applied to his commission grid which paid Esparza approximately 40% of the production credits, equaling approximately 1.2% of the value of the shares purchased by his clients.

Despite the generally long term nature of these investments, Esparza employed a short term trading strategy for portions of the customers' overall portfolios involving CEFs purchased at IPO and consistently recommended his customers sell CEFs in the short term, less than six months, and in many cases, within one month of their purchase at the IPO.

Esparza had 15 customer accounts that purchased CEFs at IPO during the Relevant Period. In those 15 accounts, Esparza recommended and effected 135 sales of CEFs within six months of its purchase at IPO. These sales accounted for customer losses totaling approximately \$73,290,

including sales fees and depreciation of the securities. They also accounted for approximately 22.3% of Esparza's total compensation received during the Relevant Period.

Esparza made the recommendations to buy the CEFs in the IPO and sell them in the short term *without sufficient understanding* of the pricing considerations of the investment. During the Relevant Period, Esparza did not fully understand how the issuer or UBS intended the product to be used when purchased at IPO or the potential risks associated with the product. Among other things, Esparza did not understand the fee structure inherent in new issue CEFs and mistakenly believed that the customers were not charged the 3% sales charge if they sold the CEFs purchased at IPO within a short period after its purchase at IPO.

Before recommending a transaction, NASD Rule 2310 requires a broker to "have reasonable grounds for believing that the recommendation is suitable for such customer based upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs." A registered representative cannot determine whether a recommendation is suitable for a specific customer unless he understands the nature of the product, as well as the potential risks and rewards associated with the product. Because Esparza failed to fully understand the fee structure of CEFs and the risks and rewards of the investment, Esparza did not have reasonable grounds for believing that his recommendations that his customers purchase CEFs in the IPO and sell them in the short term were suitable.

By engaging in the course of conduct described above, Esparza violated NASD Conduct Rules 2310 and 2110.

B. I also consent to the imposition of the following sanctions:

1. A 15 business day suspension from association with any FINRA member firm in any capacity; and
2. A fine in the amount of \$10,000

I agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. I have submitted an Election of Payment form showing the method by which I propose to pay the fine imposed.

I specifically and voluntarily waive any right to claim that I am unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

I understand that if I am barred or suspended from associating with any FINRA member, I become subject to a statutory disqualification as that term is defined in Section 3(a)(39) of the Securities Exchange Act of 1934, as amended. Accordingly, I may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension (see FINRA Rules 8310 and 8311)

II.

WAIVER OF PROCEDURAL RIGHTS

I specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against me;
- B. To be notified of the 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, I specifically and voluntarily waive 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.

I further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

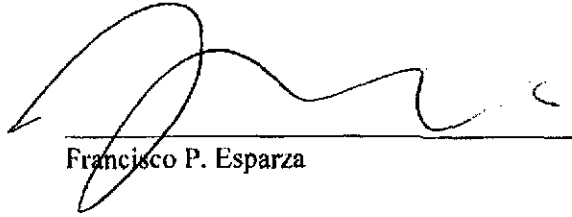
I understand that:

- 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 me; and
- C. If accepted:
 - 1. this AWC will become part of my permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about my disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. I 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. I 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 my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. I may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. I understand that I 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.

I certify that I have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 me to submit it.

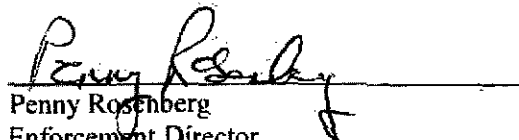
11-10-09
Date


Francisco P. Esparza

Accepted by FINRA:

1/14/10
Date

Signed on behalf of the
Director of ODA, by delegated authority


Penny Rosenberg
Enforcement Director
FINRA Department of Enforcement
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New York, New York 10005
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