

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2009016628401**

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

RE: Santander Investment Securities, Inc. (the "Firm"), Respondent
CRD. No. 37216

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent 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. The Firm 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

The Firm has been a FINRA member since 1994. The Firm operates from its office located in New York, New York and employs approximately 95 registered and 15 non-registered individuals. The Firm's business includes institutional brokerage, institutional trading, underwriting and dealing, and the publication of fixed income and equity research reports.

RELEVANT DISCIPLINARY HISTORY

The Firm does not have any relevant disciplinary history.

OVERVIEW

From at least March 2006 until at least October 2007 (the "Relevant Period"), the Firm failed to implement an adequate supervisory system or to assign appropriately registered persons to monitor the sales and marketing activities of a

registered principal ("AB"). AB had been tasked with assessing interest within the U.S. institutional investor community for funds managed by a non-FINRA regulated fund manager (the "Fund Manager") that was affiliated with the Firm, but located outside of the United States. AB did not act in the capacity of a principal or have supervisory responsibilities over other Firm personnel as it related to these tasks. The Firm failed to review fund fact sheets, presentations, and brochures (the "Fund Materials") prepared by the Fund Manager that were disseminated to U.S. institutional investors and their representatives.

During the Relevant Period, the Firm, through AB, also distributed Fund Materials of the Fund Manager to U.S. institutional investors that failed to provide a balanced presentation or sound basis for evaluating the investments discussed in the communications. In addition, certain of the communications presented unwarranted statements and exaggerated claims.

Based on the foregoing, the Firm violated NASD Rules 3010, 2210, 2211, and 2110.

FACTS AND VIOLATIVE CONDUCT

Background

In 2006, the Fund Manager was the investment manager of a portfolio of funds that were being sold and marketed to non-U.S. investors (the "Non-U.S. Funds"). The Fund Manager did not have offices in the United States. In 2006, the Firm and the Fund Manager sought to determine whether there would be interest from U.S. institutional investors for the Non-U.S. Funds if they were offered to qualified, accredited investors in the United States pursuant to an exemption from registration.

To assess that interest, the Firm assigned to AB the task of contacting U.S. institutional investors. During the Relevant Period, AB, along with other registered representatives and several non-registered personnel, contacted U.S. institutional investors concerning the future purchase of the Non-U.S. Funds. Despite the efforts of AB and these individuals to sell the Non-U.S. Funds, none of the institutional investors agreed to purchase the Non-U.S. Funds.

In the course of contacting U.S. institutional investors and their representatives, AB sent Fund Materials to those investors and their representatives. AB distributed Fund Materials to a substantial number of potential U.S. institutional investors.

Failure to Supervise Certain of the Firm's Registered Employees by an Appropriately Registered Principal

NASD Rule 3010(a)(5) requires that a member's supervisory system provide, at a minimum, for the "assignment of each registered person to an appropriately registered representative(s) and/or principal(s) who shall be responsible for supervising that person's activities." In addition, the Firm's written supervisory procedures specifically referred to this rule and required registered principals to supervise registered persons in accordance with NASD Rule 3010(a)(5).

As "registered persons," AB and the other registered personnel, who contacted U.S. institutional investors concerning the future purchase of the Non-U.S. Funds, were required to be supervised by an appropriately registered principal employed by the Firm. Despite this requirement, other than certain administrative reviews and getting status updates from AB related to his efforts, the Firm did not supervise AB and the other registered personnel in these activities.

Accordingly, the Firm violated NASD Rule 3010(a)(5) by failing to have an appropriately registered person supervise AB and other registered personnel in connection with contacting U.S. institutional investors concerning the purchase of the Non-U.S. Funds.

Failure to Supervise Contacts Related to the Fund Manager's Products

NASD Rule 3010(a) requires each member to establish and maintain a supervisory system that is reasonably designed to ensure that associated persons comply with applicable laws and rules. NASD Rule 3010(b) requires each member to establish, maintain, and enforce written supervisory procedures that are reasonably designed to ensure such compliance.

NASD Rule 3010(d)(1) requires each member to establish procedures for the review and endorsement by a registered principal, in writing, of incoming and outgoing written and electronic correspondence of its registered representatives with the public relating to the Firm's securities or investment banking business.

NASD Rule 2211(b)(1)(B) requires each member to establish written procedures that are appropriate to its business, size, structure, and customers for the review by a registered principal of institutional sales material used by the member and its registered representatives. Such procedures should be in writing and be designed to reasonably supervise each registered representative. Where such procedures do not require review of all institutional sales material prior to use or distribution, they must include provision for the education and training of associated persons as to the firm's procedures governing institutional sales material, documentation of such education and training, and surveillance and follow-up to ensure that such procedures are implemented and adhered to. Evidence that these supervisory

procedures have been implemented and carried out must be maintained and made available to FINRA upon request.

NASD Rule 2211(b)(2)(A) requires members to maintain all institutional sales material in a file for a period of three years from the date of last use, and the file must include the name of the person who prepared each item. NASD Rule 2211(b)(2)(B) requires members to maintain in a file information concerning the source of any statistical table, chart, graph or other illustration used by the member in communications with the public.

In addition, the Firm's policies specifically stated:

Sales literature is defined by [FINRA] as any written communication other than advertising, which is distributed or made generally available to the public. . . . All advertising and sales literature, with the exception of research reports, must be approved prior to distribution, in writing, by the Chief Compliance Officer. In the Chief Compliance Officer's absence, the Compliance Officer may approve advertising and sales literature. Copies of the advertising and/or sales literature, as well as name(s) of the Supervisory Principal approving its use and the Registered Person who prepared the material, will be maintained by the Compliance Department in an Advertising File for a period of 3 years, 2 years readily accessible.

During the Relevant Period, the Firm did not have a system to adequately supervise communications between AB, other registered representatives, several other non-registered employees of the Firm and U.S. institutional investors concerning the purchase of the Non-U.S. Funds. The communications occurred at presentations to potential U.S. institutional investors where certain of the registered and non-registered personnel supported AB's sales and marketing efforts. The registered and non-registered personnel also contributed to the Fund Materials that AB provided to certain U.S. institutional investors.

In addition, the Firm did not designate an appropriate registered individual at the Firm to ensure that its policies and procedures were enforced in this area. In fact, the Firm did not apply its existing policies and procedures related to, among other areas, communications with the public and the review and approval of the Fund Materials and presentations described above.

As an example, during the Relevant Period, AB distributed to U.S. institutional investors the Fund Materials that described the Non-U.S. Funds. None of the materials were reviewed or approved by the Firm's Compliance Department. Instead, the Firm relied upon supervision by the Fund Manager to ensure the materials were fair and balanced when describing the investments. As a

consequence, the Firm's Compliance Department failed to maintain copies of the sales and marketing material distributed to U.S. institutional investors as required.

By failing to have an adequate supervisory system related to the review and approval of the communications and materials described above, the Firm violated NASD Rules 3010(a) and (b). The Firm also violated NASD Rules 3010(d)(1) and 2211(b)(1)(B), 2211(b)(2)(A) and 2211(b)(2)(B) by failing to supervise the distribution of institutional sales material to U.S. institutional investors.

The Dissemination of Violative Marketing Material

NASD Rules 2210(d)(1)(A) and (B) requires, in pertinent part, that:

- (A) All member communications must be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a sound basis for evaluating the facts in regard to any particular security or type of security, industry, or service;
- (B) No member may make any false, exaggerated, unwarranted, promissory or misleading statement or claim in any communication. No member may publish, circulate or distribute any communication that the member knows or has reason to know contains any untrue statement of a material fact or is otherwise false or misleading;

NASD Rule 2211 provides that all institutional sales material and correspondence must also meet the requirements of NASD Rule 2210(d)(1).

As described below, on at least 40 instances, AB distributed communications to the investing public that contained the Fund Materials, which did not provide a sound basis for evaluating the facts and contained exaggerated and unwarranted claims:

- Certain of the Fund Materials contained fund information that appeared to be materially contradictory. In this regard, some of the Fund Materials presented a fund's investment objective in a manner that appeared to contradict (or fail to adequately capture) the fund's stated investment objective as disclosed in its private placement memorandum. In addition, some Fund Materials presented what appeared to be inconsistent fund performance numbers. For example, a 13.47% performance was listed for a fund on one page and then pages later the same fund's *pro forma* performance was listed as 15.39% for the same time period. The basis for the backward-looking *pro forma* projection was not described within the material.
- Certain communications contained unsubstantiated and unwarranted claims about fund goals or targets, expected return, competitors, peers and

analysts. For example, AB distributed Fund Materials in the middle of 2006 that stated that the fund had an "EXPECTED RETURN: 10-15%."

- Certain Fund Materials contained exaggerated claims that did not give any basis for the claims that were made. For example, the Fund Manager's marketing material claimed distinctive access to prominent managers, or an international network that provided access to the world's best talent and strategies, without providing any factual basis for this claim.
- Certain Fund Materials did not provide a sound basis for evaluating the facts because they contained statements that were promissory of investment success and did not adequately acknowledge the inherent risks associated with investing in the funds or strategies being discussed. For example, one Fund Material contained the statement, "The performance profile will likely be much more lumpy . . . but the reward for this extra volatility should be significantly higher returns over time."
- Certain Fund Materials did not adequately disclose the general and/or specific risks associated with investing in the funds and/or investment strategies or managers being discussed. In addition, certain of the Fund Materials failed to adequately explain the basis for certain statements and facts.
- AB sent the following email to a potential institutional investor, "[T]he attached year end summary is just an estimate and I have found at least one mistake so please read knowing that I will send the audited results shortly." AB should not have distributed Fund Materials which he knew contained an error.

By distributing the foregoing materials, the Firm violated NASD Rules 2210, 2211 and 2110.

B. The Firm also consents to the imposition of the following sanctions:

- Censure; and
- a \$350,000 fine.

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

The Firm 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

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

- A. To have a Complaint issued specifying the allegations against the Firm;
- 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, the Firm 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.

The Firm further specifically and voluntarily waives 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.

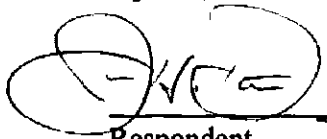
OTHER MATTERS

The Firm 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 the Firm; and
- C. If accepted:
 - 1. this AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's 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. The Firm 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. The Firm 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 the Firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The Firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firm 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.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that the Firm 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 the Firm to submit it.

11/28/12
Date (mm/dd/yyyy)


Respondent
Santander Investment Securities, Inc.

By: James H. Barth Ignacio Menante
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Reviewed by:


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Accepted by FINRA:

12-11-12
Date

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


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