

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100235451**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Santander Investment Securities, Inc. 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 SIS alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. SIS 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

SIS has been a FINRA member since December 1996. The Firm is owned by Santander Investment S.A. which in turn is owned by Banco Santander, S.A. The Firm operates from its office located in New York, New York and employs approximately 120 registered individuals and approximately 30 non-registered individuals. The Firm's business activities include investment banking, institutional sales, and trading of Latin American and European equity and fixed income securities.

RELEVANT DISCIPLINARY HISTORY

SIS has no relevant disciplinary history.

OVERVIEW

Effective September 7, 2004, the Securities and Exchange Commission adopted 17 CFR Part 242 ("Reg SHO") under the Securities Exchange Act of 1934 ("Exchange Act") and designated January 3, 2005 as the commencement date for compliance. Reg SHO was, among other things, designed primarily to control the harmful effects on market prices and the volatility caused by

naked short selling. With this primary goal in mind, Reg SHO was designed to create uniform order marking requirements for sales of equity securities and reduce the number of potential failures to deliver (hereinafter referred to as a “fail” or “fail to deliver”) by means of a “locate” requirement. As set forth below, the Firm failed at times to comply with certain requirements of Reg SHO and FINRA Rules during the period covering, in whole or in part, January 3, 2005 through approximately March 2010 (the “Relevant Period”).

First, SIS marked short sales in American Depositary Receipts (“ADRs”) as “long” at a time when the Firm did not own the ADRs. In addition, the Firm did not secure locates¹ prior to executing the short sales in the ADRs.

Second, in facilitating customer transactions, SIS effected short sales from its customer facilitation account, but did not secure locates prior to effecting the short sales by erroneously relying upon the market-making exception within Reg SHO.

Finally, in connection with the points above, the Firm failed to implement procedures that were reasonably designed to ensure compliance with the relevant sections of Reg SHO.

FACTS AND VIOLATIVE CONDUCT

SIS Violated Reg SHO by Marking Short Sales of Certain ADR Transactions as “Long” and Failing to Obtain Locates for Mismarked ADR Short Sales

SIS Mismarked Short Sales in ADRs.

Rule 200(g) of Reg SHO requires a broker-dealer to mark sell orders in any equity security as “long” or “short.” Rule 200(a) defines a short sale as “any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” Rule 200(g)(1) provides that “[a]n order to sell shall be marked ‘long’ only if the seller is deemed to own the security being sold.”

During the Relevant Period, SIS sold ADRs to its customers.² The Firm’s procedures provided that, when the Firm received a market order from a customer to purchase ADRs, the Firm would look to the United States markets to determine if the subject ADRs were available to fill the customer order. The Firm’s procedures also allowed the Firm, depending on the availability of the ADRs on the U.S. markets, to look to foreign markets to purchase the underlying common shares on a local (foreign) market if that market provided a better price to the customer. In that case, the Firm would place an order for the corresponding number of common shares in the local

¹ With respect to short sales and the “locate” requirement, Reg SHO requires a broker-dealer to have reasonable grounds to believe the security can be borrowed so that it can be delivered in time for settlement before effecting a short sale in that security. Identifying a source from which to borrow such security is referred to as having a “locate.” Reg SHO requires that such locate be obtained and documented prior to effecting the short sale.

² The stocks of most foreign companies that trade in the U.S. markets are traded as ADRs issued by U.S. depository banks. A depository bank issues the ADR upon receipt of the underlying shares. The ADR gives the holder the right to obtain the shares it represents.

market through a local executing broker, with settlement instructions directing the executing broker to deliver the shares to a transfer agent. The transfer agent, upon receipt of the shares, would then issue ADRs representing the common shares and deliver the ADRs to SIS.

During the Relevant Period, the Firm filled customer buy orders for ADRs by selling the ADRs at a time when it did not own the ADRs. The Firm effected these sale transactions *after* its purchase orders in the local markets for the ordinary shares were executed and filled, but *before* receiving delivery of the ADRs. The Firm marked the sale of the ADRs “long” because it believed that it owned the ADRs based on its purchase of the underlying local shares. The Firm, however, did not own the ADRs at the time that it sold the ADRs and should have marked the sale as “short.”

SIS Did Not Obtain Locates

Rule 203(b)(1) of Reg SHO requires that a broker dealer obtain locates prior to effecting short sales. It states that, subject to certain exceptions, a “broker or dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker or dealer has: (i) borrowed the security, or entered into a bona-fide arrangement to borrow the security; or (ii) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due; and (iii) documented compliance with this paragraph (b)(1).”

As described above, SIS effected short sales in ADRs. Because the Firm treated the transactions as long sales, the Firm did not obtain locates prior to effecting those short sales.

Summary of ADR-Related Violations of Reg SHO

Based upon the foregoing conduct, the Firm violated Rule 203(g) of Reg SHO during the Relevant Period by, in certain instances, marking certain ADR short sales “long.” The Firm violated Rule 203(b)(1) by, in certain instances, failing to obtain locates prior to effecting short sales in ADRs.

SIS Violated Reg SHO by Effecting Short Sales Without Obtaining Locates in Erroneous Reliance on the Market-Making Exception

As discussed above, subject to certain exceptions, Rule 203(b)(1) of Reg SHO requires a broker or dealer, prior to effecting a short sale from its own account, to borrow the security, or enter into a bona-fide arrangement to borrow the security, and to document compliance with the “locate” requirement. Rule 203(b)(2)(iii) provides an exception from this locate requirement for short sales effected by market makers, but only in connection with bona-fide market making activities. Rule 203(c)(1) provides that the term “market maker” has the same meaning as in Section 3(a)(38) of the Exchange Act, which defines “market maker” as “any specialist permitted to act as a dealer, any dealer acting in the capacity of a block positioner, and any dealer that, with respect to a security, holds itself out (by entering quotations in an inter-dealer communications

system or otherwise) as being willing to buy and sell such security for its own account on a regular or continuous basis.”

During the Relevant Period, SIS sold securities to its customers from its proprietary account to facilitate customer transactions in the after-hours market. On those occasions when the Firm did not hold a position in the subject security, the Firm sold the securities short to the customer from the customer facilitation account, but did not borrow or arrange to borrow the shares before effecting the sale, in reliance on Reg SHO’s market-making exception. The transactions were not market-making transactions because the Firm was not holding itself out to the public as willing to buy and sell such securities, but, rather, was facilitating the transactions of its customers.

Based upon the foregoing conduct, SIS violated Rule 203(b)(1) of Reg SHO when it misused the market-making exception in Reg SHO and failed to obtain locates for short sales that it effected to facilitate customer transactions in the after-hours market.

SIS’s Supervisory Procedures Were Deficient

NASD Rule 3010 requires that firms establish, maintain and enforce a supervisory system, including written supervisory procedures, related to a firm’s business that are reasonably designed to ensure compliance with the applicable securities laws and regulations.

As described above, the Firm’s procedures were deficient in that they allowed the mismarking of certain short sales in ADRs. Specifically, as described above, the Firm’s procedures did not require the Firm to mark sales of ADRs “short” when the Firm had purchased the underlying common shares in the local (foreign) market for delivery to the transfer agent to exchange into the ADRs but did not yet own the ADRs. This conduct violated Rule 203(g) of Reg SHO. As these transactions were short sales in the Firm’s account, it was required to then obtain a locate, which the Firm did not do in violation of Rule 203(b)(1) of Reg SHO.

In addition, the Firm’s supervisory procedures were deficient during the Relevant Period in that they allowed the Firm, with respect to certain short sales effected to facilitate customer transactions, to misuse Reg SHO’s market-maker exception and fail to obtain locates as a result, in violation of Rule 203(b)(1) of Reg SHO.

Based on the foregoing, the Firm violated NASD Rule 3010.

B. SIS also consents to the imposition of the following sanctions:

Censure

and fine of \$50,000.

SIS agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment is due and payable. SIS has submitted an Election of Payment form showing the

method by which it proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

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

SIS 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

SIS 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

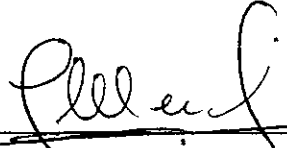
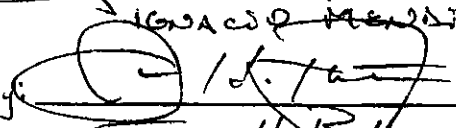
the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- 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 SIS'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. SIS 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. SIS 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. SIS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. SIS 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 has 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.

02/29/2012
Date (mm/dd/yyyy)

Santander Investment Securities, Inc.

By: 
Ignacio Menendez, CEO
By: 
James D. Bachon, General Counsel

Reviewed by:

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Accepted by FINRA:

3-16-12
Date

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


Richard R. Best
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