

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010024826501**

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

RE: E.S. Financial Services, Inc., Respondent
Member
CRD No. 104316

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E.S. Financial Services, Inc. (hereinafter "ESFS", the "Firm", or "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 the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. ESFS 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

ESFS is a FINRA member and has been such since March 6, 2001. It is a full-service broker-dealer with its principal office located in Miami, Florida. ESFS employs approximately 67 registered individuals.

RELEVANT DISCIPLINARY HISTORY

In December 2007, ESFS was censured and fined \$10,000 for failing to maintain accurate books and records, in violation of Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder and NASD Conduct Rules 3110 and 2110, and failing to establish and maintain adequate customer safekeeping accounts in violation of Section 15c of the Securities Exchange Act of 1934 and Rule 15c3-3 thereunder and NASD Conduct Rule 2110.

FACTS AND VIOLATIVE CONDUCT

ESFS's sales of the GES Finance Commercial Paper Program

From at least January 2003 through July 2010 ("relevant time period"), ESFS served as a placement agent and solicited certain non-U.S. persons to invest in a "Commercial Paper Program" offered by GES Finance Limited, an ESFS affiliate located in, and incorporated under the laws of the British Virgin Islands, and guaranteed by Espirito Santo International S.A., the ultimate parent of the Espirito Santo group. The GES Finance Commercial Paper Program ("GES") was offered and sold exclusively to non-U.S. persons pursuant to Regulation S. As of July 2010, the value of GES investments held by ESFS customers totaled approximately \$140 million, with larger volumes having been held in prior years.

Advertising Deficiencies

At certain times during the relevant time period, in connection with ESFS's sales of the GES investments, ESFS provided a customized document entitled "Investment Proposal" to each of approximately 24 customers and/or prospective customers, in which the Firm included the GES program in the "cash component" of the customer's portfolio alongside U.S. Treasuries and other commercial paper products; placed GES within the group of investment options that were described as "the most conservative of the portfolio"; and said that the "main objective" of the investments in this category—including GES—was "to reduce global risk as well as to generate some income." ESFS also recommended investing in GES, over U.S. treasuries or other commercial paper, if the customer wanted a higher-yielding option, "otherwise the return will be zero or close to zero." Contrary to the contents of the Investment Proposals, GES was not a cash component, nor was it necessarily a conservative, low-risk investment. As such, these representations amounted to false, exaggerated, or unwarranted statements in these materials.

In addition to the "Investment Proposals," ESFS posted an "Information Memorandum" on a password-protected website accessible to customers. The "Information Memorandum" did not adequately detail certain of the risks associated with investing in GES.

As a result of the foregoing conduct, ESFS violated NASD Conduct Rules 2210(d)(1)(A), 2210(d)(1)(B) and 2110 (from January 2003 through December 14, 2008), and FINRA Rule 2010 (from December 15, 2008 through July 2010).

Inadequate Due Diligence and Deficient Written Supervisory Procedures

At various times during the relevant time period, ESFS failed to conduct adequate due diligence relating to its sales of the GES investments. In addition, during the relevant time period, ESFS failed to adopt, maintain, and enforce adequate written supervisory procedures pertaining to its sales of the GES investments.

Specifically, although ESFS had written supervisory procedures relating generally to commercial paper products, ESFS failed to adopt, maintain, and enforce written supervisory procedures specifically pertaining to its sales of the GES investments until January 2007—nearly four years after the Firm began selling the investments. Additionally, during the relevant time period, ESFS failed to adopt, maintain, and enforce written due diligence procedures specifically tailored to its sales of the GES investments. Although all of the GES investments were repaid on a timely basis at maturity and no customer who invested in GES lost money, ESFS's failure to implement written due diligence procedures nevertheless led ESFS to fail to conduct a reasonable investigation concerning various matters concerning the GES investments.

As a result of the foregoing conduct, ESFS violated NASD Conduct Rules 3010 and 2110 (from January 2003 through December 14, 2008), and FINRA Rule 2010 (from December 15, 2008 through July 2010).

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

A censure and a \$200,000 fine.

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

ESFS 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

ESFS 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, ESFS 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.

ESFS 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

ESFS 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 ESFS's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 - 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. ESFS 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. ESFS 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 its right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. ESFS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. ESFS 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 ESFS, 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 ESFS 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.

E.S. Financial Services, Inc.

By: 

Lia Yaffar-Pena
President

Date 12/5/12

Reviewed by: 

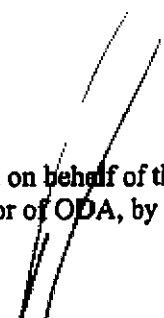
Bradley P. Smith, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, NY 10004
Phone: (212) 558-1660
smithBR@sullcrom.com

Counsel for Respondent

Accepted by FINRA:

12/14/12
Date

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



David B. Klafter, Esq.
Regional Chief Counsel
FINRA Department of Enforcement
2500 N. Military Trail, Suite 302
Boca Raton, FL 33431-6324
Phone: (561) 443-8110
Fax: (561) 443-7998
david.klafter@finra.org

Authorized House Counsel
Admitted in NY and NJ Only