

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2011026005801**

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

RE: Banesto Securities, Inc. (BD No. 131165) (now known as Santander International Securities, Inc.), Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondent Banesto Securities, Inc. (now known as Santander International Securities, Inc.) ("Banesto" or the "Firm") 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 Banesto alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Banesto 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

Banesto became a FINRA member firm in September 2004. The Firm was owned by a Spanish bank that had a branch office in New York City (the "NY Bank Branch"). Prior to the creation of Banesto, the NY Bank Branch provided banking and securities services to the bank's clients who generally were and are non-U.S. citizens.

After the Gramm-Leach-Bliley Act of 1999 the bank pushed out its securities business to Banesto, a newly formed wholly owned subsidiary. As the result of a July 2012 re-organization, Banesto's direct ownership changed and its name was changed to Santander International Securities, Inc.

Since its inception, Banesto has been based in New York City and during the period 2005 through 2011 employed approximately nine client-facing registered individuals.¹ Banesto is not a registered investment advisor.

RELEVANT DISCIPLINARY HISTORY

Banesto has no relevant formal disciplinary history with the Securities and Exchange Commission, any state securities regulator or any self-regulatory organization.

OVERVIEW

Since its inception as a FINRA member, and previously through the NY Bank Branch, the Firm charged its clients commissions for brokerage transactions and an asset-based fee, which was deducted from client accounts on a quarterly basis.² Upon the opening of their accounts, Banesto provided a written fee schedule to clients stating that they would be charged a commission for transactions and a "Custody Fee." The Firm never provided clients with a description of the purpose of the fee; rather, clients were simply provided the method in which the fee was calculated. Reference to the fee as a "Custody Fee" was misleading and inaccurate, in that the Firm did not act as custodian for any client assets. Rather, all custody services were provided by the Firm's clearing firm. In addition, on client monthly account statements, the quarterly fee was called a "Fee Based Brokerage Charge." This label was also inaccurate.

The revenue generated from the "Custody Fee" regularly accounted for a significant percentage of Banesto's total revenue. In 2011, Banesto earned almost \$2.5 million from the fee.

Banesto's written supervisory procedures mandate that fees charged to customers for services performed be reasonable; however, Banesto has never had a system in place to review the reasonableness of fees and has never performed a reasonableness test concerning the fee charged on an individual account basis.

FACTS AND VIOLATIVE CONDUCT

1. During the period 2005 through 2011, the Firm consistently failed to disclose to clients the purpose and nature of the "Custody Fee."

¹ The Firm currently employs eighteen registered individuals.

² Clients were not told that they could opt out of the fee, but clients who requested it were sometimes able to negotiate fee discounts or waivers.

At account opening, the Firm notified clients of all fees charged through the use of a Commission Schedule. The Commission Schedule disclosed, among other things, that all clients were charged a "Custody Fee." There was no description of the purpose or nature of the fee; rather, clients were provided with the mathematical formula used to determine the amount of the fee.

Clients were charged the fee at the beginning of each quarter, based on assets from the last day of the prior quarter. The client monthly account statements described the fee as a "Fee Based Brokerage Charge," a term normally associated with accounts that collect all-inclusive "wrap" fees as compensation for transactions and investment advice. The use of two different terms for the same fee, neither of which accurately described the fee, created the potential for confusion as to the nature and purpose of the charge.³

The Firm's use of the terms "custody" and "fee based brokerage" could have led customers to believe that the fee was collected in connection with expenses associated with the Firm's custody of client assets and/or investment advice. However, Banesto has never collected fees as compensation for investment advice. In addition, Banesto did not act as custodian for any client assets. Rather, all custody services were provided by the Firm's clearing firm so the reference to the fee as a "Custody Fee" was misleading and inaccurate. The monies Banesto collected from application of this fee were not for the purpose of paying custody expenses or compensation for investment advice and, as such, were inconsistent with NASD Conduct Rule 2430.

In addition, in December 2007, Banesto sent a letter to clients notifying them of an increase to the fee for clients with combined bank and Banesto account balances below \$250,000. The communication of the increase, which was effective January 1, 2008, only provided clients with 11 days of advance written notification prior to the change of the fee.⁴ As reflected in Notice to Members 92-11, such notice was inadequate.⁵

Also, from 2008 through February 2009, certain customers were subjected to increased fees without being provided with current fee schedules that notified them of the change. Specifically, in late 2007 the Firm implemented a two-tier

³ In December 2011, Banesto changed the name of the asset-based fee to "Administrative Fee" on client monthly account statements and Commission Schedules. The purpose and nature of the fee was not described on either communication.

⁴ The written notification did not contain any explanation of the Custody Fee - only the method of calculation was provided.

⁵ NASD's Notice to Members 92-11 states that customers should be provided with written notification at least 30 days prior to the implementation or change of any service charge. Failure to do so could be construed as conduct inconsistent with just and equitable principles of trade under NASD Conduct Rule 2110 and FINRA Rule 2010.

fee system that increased the rate of the asset-based charge for customers with combined account balances at the parent bank and Banesto below \$250,000, but provided certain customers with an out-of-date fee schedule that failed to reflect an increase in the rate of the fee. The Firm has since reimbursed those customers for the differential between the prior fee and the increased fee.

Based on the foregoing, Banesto violated NASD Conduct Rules 2430 and 2110 (for conduct before December 15, 2008), and FINRA Rule 2010 (for conduct after December 14, 2008).

2. NASD Conduct Rule 3010 requires members to establish and maintain a system to supervise the activities of registered representatives and associated persons which is reasonably designed to achieve compliance with securities laws and regulations and NASD and FINRA rules. NASD Conduct Rule 2430 mandates that fees charged to customers for services performed be reasonable, however, Banesto has never had a supervisory system in place to review the reasonableness of fees and has never performed a reasonableness test concerning the fee charged on an individual account basis. Based on the foregoing, Banesto violated NASD Conduct Rules 3010 and 2110 (for conduct before December 15, 2008), and FINRA Rule 2010 (for conduct after December 14, 2008).

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

- a Censure; and
- a \$650,000 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

Banesto 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, Banesto 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.

Banesto 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

Banesto 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;
- 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 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. 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and

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 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 the Firm to submit it.

Banesto Securities, Inc. (now known as Santander International Securities, Inc.)

12 / 11 / 2013
Date (mm/dd/yyyy)

By: _____

Angel T. Ordonez
Chief Executive Officer
Santander International Securities, Inc.



Counsel for Respondent

Lindi Beaudreault, Esq., Murphy & McGonigle, NY, NY

Russell D. Sacks, Esq., Shearman & Sterling LLP, NY, NY

Accepted by FINRA:

1/6/14
Date

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


William St. Louis
Regional Chief Counsel
FINRA Department of Enforcement
581 Main Street
Woodbridge, NJ 07095