

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2019061735701**

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

RE: Santander Investment Securities Inc. (Respondent)
Member Firm
CRD No. 37216

Pursuant to FINRA Rule 9216, Respondent 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 Respondent alleging violations based on the same factual findings described in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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

Santander has been a member of FINRA since December 1994. Santander is wholly owned by Santander Holdings USA, Inc., which in turn is wholly owned by Banco Santander, S.A., a Spanish banking corporation. Santander's principal place of business is in New York, NY and it employs 136 registered representatives. Santander's business activities include investment banking, institutional sales, trading, and offering research reports of Latin American equity securities. Respondent does not have any relevant disciplinary history.

OVERVIEW

From January 2014 through January 2019, Santander failed to capture approximately 6 million emails from 109 employee email accounts for supervisory review due to a coding error. The error was not identified and instead persisted because Santander did not reasonably monitor and test its system to ensure that emails were properly routed to the firm's email review platform. As a result, Santander violated NASD Rule 3010 and FINRA Rules 3110 and 2010.¹

¹ FINRA Rule 3110 superseded NASD Rule 3010 on December 1, 2014. Because the conduct at issue in this AWC occurred before and after this date, both rules are applicable.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a Rule 4530 disclosure report that Santander filed with FINRA in February 2019.

FINRA Rule 3110(b) and its predecessor, NASD Rule 3010(b), require each member to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” FINRA Rule 3110(b)(4) requires member firms to review the incoming and outgoing electronic correspondence of its associated persons relating to its securities business. Before December 1, 2014, NASD Rule 3010 imposed similar requirements. Violations of FINRA Rule 3110 and NASD Rule 3010 also constitute violations of FINRA Rule 2010.

Prior to the relevant period, when Santander hired a new employee, the firm’s information technology staff created a new user email account and the emails were stored on its local server. Information technology staff also updated the system so the employee’s emails from the local server were journaled to its email review platform. In January 2014, Santander changed its email server. Following the server switch, the existing process to ensure emails were journaled to the email review platform from the new server did not work as it had before. Santander had no process in place to ensure that emails from the new server were journaled to its email review platform as intended. For example, the firm did not conduct an initial test to make sure that the process worked and that each new employee’s emails were in fact journaled to the review platform. Nor did the firm monitor the volume of email ingested into its review platform for irregularities or conduct any reconciliation of the email addresses to be monitored with the emails that were ingested. As a result, the firm did not discover the issue until January 2019.

The firm identified this issue in January 2019, when searching for a specific email within its review platform system. After identifying the issue, Santander self-reported it pursuant to Rule 4530. The firm then investigated the underlying causes of the failure and implemented changes to its policies and procedures to prevent a similar issue going forward. The firm also conducted a lookback review of a sample of the emails not initially captured.

During the relevant period, the firm failed to journal approximately 6 million emails from 109 employee email accounts to its email review platform for supervisory review. In 2018, this failure affected more than three quarters of the firm’s employees subject to supervisory review.

Therefore, Santander violated NASD Rule 3010 (for conduct before December 1, 2014), FINRA Rule 3110 (for conduct between December 1, 2014 and January 24, 2019) and 2010.

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

- a censure and
- a \$150,000 fine.

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

Respondent specifically and voluntarily waives any right to claim an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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 its acceptance or rejection.

Respondent 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

Respondent 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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 - 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and its subject matter in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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 Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than

the terms set forth in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

November 3, 2020

Date

Mr. A. Achón

Santander Investment Securities Inc.
Respondent

Print Name: Marco Antonio Achón

Title: CEO

Accepted by FINRA:

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

November 24, 2020
Date

Josephine Vella

Josephine M. Vella
Counsel
FINRA
Department of Enforcement
200 Liberty Street, 11th Floor
New York, NY 10281