

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065142001**

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

RE: Santander US Capital Markets LLC, formerly known as Santander Investment Securities Inc. (Respondent)
Member Firm
CRD No. 150696

Pursuant to FINRA Rule 9216, Respondent Santander US Capital Markets LLC, formerly known as 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 accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Santander US Capital Markets LLC has been a FINRA member since December 2009. Santander US Capital Markets is headquartered in New York and has approximately 340 registered representatives and maintains 11 branch offices. Santander Investment Securities Inc. (CRD No. 37216), a predecessor to Santander US, became a FINRA member in 1994. Prior to the merger in February 2023 and during the relevant period, Santander Investment Securities had approximately 180 registered representatives and maintained one branch office in New York.¹

OVERVIEW

From April 2019 through December 2021, Santander failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to prevent the misuse of material non-public information (MNPI). Santander also failed to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Section 5 of the

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

Securities Act of 1933. As a result of the foregoing, the firm violated FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's 2020 exam of the firm.

FINRA Rule 3110(a) requires members to "establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules."

FINRA Rule 3110(b) requires members 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." A firm's supervisory system, including its written supervisory procedures, must be tailored to the business in which the firm engages.

A violation of FINRA Rule 3110 is also a violation of FINRA Rule 2010, which requires a member, in the conduct of its business, to "observe high standards of commercial honor and just and equitable principles of trade."

Santander failed to establish, maintain, and enforce a supervisory system reasonably designed to prevent the misuse of material non-public information.²

From April 2019 through December 2021, the firm conducted investment banking business as an underwriter in debt and equity offerings along with its global affiliates. In the following respects, however, the firm's systems were not reasonably designed to prevent the misuse of MNPI.

First, the firm did not have procedures in place to ensure that supervisors responsible for reviewing the emails of employees who temporarily were granted access to MNPI related to specific transactions were themselves approved to access MNPI. At least one supervisor who was not approved to access MNPI reviewed the emails of two employees who were temporarily approved to have access to MNPI, thereby potentially exposing the supervisor to MNPI.

Second, the firm did not have reasonably designed systems and procedures to ensure that employees of its affiliates with access to the firm's MNPI were appropriately identified so they could be monitored by the firm's affiliate. The firm's procedures relied on a manual process requiring affiliate employees with access to MNPI to be identified to firm personnel responsible for monitoring and managing the flow of MNPI. Once the affiliate employees with access to MNPI were identified, the firm's procedures required the

² Section 15(g) of the Securities Exchange Act of 1934 requires broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of MNPI by the broker-dealer or its associated persons.

affiliate be notified so that the affiliate could monitor the employees' communications to ensure the employees were not disseminating or trading on the basis of MNPI.

The firm frequently engaged in cross-border investment banking deals, and the firm's employees involved in those deals included employees of the firm's foreign affiliates. At least seven employees of the firm's foreign affiliates had access to MNPI but were not identified for the affiliate to monitor, and at least 45 affiliate employees who had access to MNPI were not identified for the affiliate to monitor until two to 18 days after the employees were exposed to MNPI.

Third, the firm did not have a reasonable system to ensure that, when firm employees gained access to MNPI, the relevant issuers were added in a timely manner to the firm watch list, which the firm used to monitor certain activities, such as trading, sales, and research activities, related to the issuers' securities. Specifically, the manual nature of the process led to failures and gaps in adding issuers to the list in a timely manner. In November 2020, the firm failed to add five issuers to the firm's watch list after the firm had MNPI about the issuers. For two other issuers, the firm did not add them to the watch list until more than 70 days after the firm gained access to potential MNPI about the issuers.

Fourth, the firm's system was not reasonably designed to review securities transactions in employee outside brokerage accounts that were maintained at a foreign broker-dealer. The firm monitored employee outside brokerage accounts for compliance with firm trading restrictions, including restrictions relating to trading based on MNPI. The firm's procedures allowed its employees under certain circumstances to maintain outside accounts at foreign brokerage firms so long as the employees manually uploaded their account statements. Four employees did not timely upload their account statements. In some instances, due to the firm's failure to monitor and respond to the timeliness of account statement uploads, several months passed before the firm discovered that employees had not timely uploaded their account statements, preventing the firm from timely monitoring these employees' trading.

Certain deficiencies in the firm's systems and procedures relating to preventing potential misuse of MNPI were identified by another regulator and communicated to the firm in March 2019. The firm then began to remediate by engaging an outside consultant to help implement and improve its control room policies, implementing a new conflicts management system used for the maintenance of restricted and watch lists, and updating the way information is entered into that system. FINRA subsequently identified ongoing deficiencies that had not yet been fully remediated during the period April 2019 through December 2021, as described above. The firm has since completed its remediation.

As a result of its failure to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to prevent the misuse of MNPI the firm violated FINRA Rules 3110 and 2010.

Santander failed to establish, maintain, and enforce a supervisory system reasonably designed to achieve compliance with Section 5.

The Securities Act, including Section 5, prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption or safe harbor available for that securities transaction. In January 2009, FINRA issued Regulatory Notice 09-05, which reminded firms to “have procedures reasonably designed to avoid becoming participants in the potential unregistered distribution of securities” and cautioned that “firms may not rely solely on others, such as clearing firms, transfer agents, or issuers’ counsel, to fulfill these obligations.”

Regulation S (17 C.F.R. § 230.901) provides a safe harbor from the registration requirements of the Securities Act for offers and sales of securities that occur outside the United States. Securities Act Rule 144A (17 C.F.R. § 230.144A) provides a safe harbor for the sale of unregistered securities in private sales to qualified institutional buyers (QIBs).

From April 2019 through December 2021, a substantial portion of the firm’s business involved offerings pursuant to Regulation S and Rule 144A. The firm’s primary procedure to ensure that sales pursuant to Regulation S and Rule 144A safe harbors met the requirements of those rules was the requirement that the firm obtain certifications from potential investors that the investors fell within the confines of Regulation S or were a QIB at the time of the transaction and keep copies of those certifications in the firm’s files.

In at least 50 transactions, the firm failed to obtain Regulation S or QIB certifications from potential investors at the time of the transactions. The firm also failed to contemporaneously document the steps it took to ensure sales pursuant to the Regulation S and Rule 144A safe harbors were made to qualified investors. Consequently, the firm did not have records demonstrating it had a reasonable process at the time of the transactions to confirm its compliance with Section 5.

Certain deficiencies in the firm’s systems and procedures relating to ensuring offerings pursuant to Regulation S and Rule 144A met the requirements of those safe harbors were identified by another regulator and communicated to the firm in March 2019. The firm then began to remediate, hiring an associate whose role includes assisting in obtaining required customer documentation for Regulation S and Rule 144A transactions and implementing a centralized program for maintaining this documentation. FINRA subsequently identified issues related to the firm’s supervisory system to achieve compliance with Section 5 that had not yet been remediated during the period April 2019 through December 2021, as described above. The firm has since completed its remediation.

As a result of its failure to establish, maintain, and enforce a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with Section 5, the firm violated FINRA Rules 3110 and 2010.

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

- a censure and
- a \$100,000 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

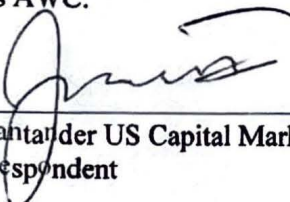
Respondent understands that:

- 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 right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.
- 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.

September 26, 2023

Date


Santander US Capital Markets LLC
Respondent

Print Name: Joseph Walsh

Title: CEO, Santander US Capital Markets LLC

Reviewed by:

Susan Schroeder

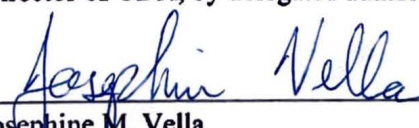
Susan Schroeder
Counsel for Respondent
WilmerHale
7 World Trade Center
250 Greenwich Street
New York, NY 10007

Accepted by FINRA:

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

September 29, 2023

Date


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