

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2015045608701**

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

RE: E.S. Financial Services, Inc., n/k/a Brickell Global Markets, Inc., Respondent
CRD No. 104316

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, E.S. Financial Services, Inc., n/k/a Brickell Global Markets, Inc. ("ESF" or "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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. We hereby accept and consent, 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

Respondent has been a FINRA member since March 6, 2001. The firm is headquartered in Miami, Florida, has one branch location, approximately 20 registered representatives and is approved to conduct business in corporate debt, equities, mutual funds, municipal debt/bonds, options, private placements, proprietary trading and underwriting. Respondent was previously known as E.S. Financial Services, Inc.¹

RELEVANT DISCIPLINARY HISTORY

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

¹ Subsequent to the time period relevant to the matters set forth in this AWC, E.S. Financial Services, Inc. was renamed Brickell Global Markets, Inc.

15c3-3 and NASD Rule 2110.

On December 14, 2012, in connection with ESF's sale of commercial paper, the firm was censured and fined \$200,000 for making false, exaggerated and unwarranted statements to clients, failure to conduct adequate due diligence and failure to adopt, maintain, and enforce adequate written supervisory procedures ("WSPs") pertaining to its sales of the commercial paper.

OVERVIEW

Between September 1, 2011 and October 31, 2012 (hereinafter the "postage and handling review period"), ESF charged its customers a transaction fee and a custody fee in addition to a commission on fixed income transactions. The foregoing charges were not reasonably related to any direct handling-related services performed by the firm, or handling-related expenses incurred by the firm, in processing transactions, but rather, were effectively additional commissions for the firm. Based on the foregoing, ESF violated NASD Rule 2430, FINRA Rule 2010 and Exchange Act Rule 10b-10. During the time period of February 2012 to February 2014, ESF failed to deliver prospectuses to 10 out of 40 customers who had purchased commercial paper of ESF's affiliate and failed to establish, maintain and enforce a supervisory system and WSPs to ensure prospectus delivery, in contravention of Section 5 of the Securities Act of 1933 (hereinafter the "Securities Act") and in violation of FINRA Rule 2010 and NASD Rule 3010(a) and (b). During the time period of November 2012 through December 2013, ESF also failed to establish, maintain and enforce a supervisory system and WSPs regarding email review, in violation of FINRA Rule 2010 and NASD Rule 3010(a),(b) and (d). From 2003 through 2013, ESF allowed persons without trading authority in a brokerage account opened by a Central American bank to direct trading in the account, in violation of NASD Rules 2110, 3010(a) and (b) and FINRA Rule 2010. During the time period from June 2013 through August 2013, ESF maintained inaccurate books and records reflecting that transactions were solicited, when in fact, the transactions were unsolicited, in violation of FINRA Rules 4511(a), 2010, Exchange Act Section 17(a), and Exchange Act Rule 17a-3. Last, in 2013, ESF inaccurately computed its customer reserve formula which resulted in hindsight deficiencies and filed inaccurate FOCUS reports, in violation of Exchange Act Rules 15c3-3, 17a-3, 17a-5 and FINRA Rules 4511(a) and 2010.

FACTS AND VIOLATIVE CONDUCT

Unreasonable Handling Fee Charges

NASD Rule 2430 (Charges for Services Performed) requires charges, if any, for services performed, including miscellaneous services such as collection of moneys due for principal, dividends, or interest; exchange or transfer of

securities; appraisals, safe-keeping or custody of securities, and other services, shall be reasonable and not unfairly discriminatory between customers.

Exchange Act Rule 10b-10 (Confirmation of Transactions) requires broker-dealers to disclose specified information in writing to customers at or before the completion of a transaction. Pursuant to Rule 10b-10, it shall be unlawful for any broker or dealer to effect for or with an account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than U.S. Savings Bonds or municipal securities) unless such broker or dealer, at or before completion of such transaction, gives or sends to such customer written notification disclosing, among other things, if the broker or dealer is acting as agent for such customer, for some other person, or for both such customer and some other person, the source and amount of any other remuneration received or to be received by the broker in connection with the transaction.

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade) requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

During the postage and handling review period, ESF charged its customers a fixed transaction fee of \$75.00 in addition to mark-ups or mark-downs on all fixed income transactions. ESF characterized the transaction fee on customer trade confirmations as "MISC" and the charge was reflected on the firm's fee schedule as a "transaction fee." During the postage and handling review period, ESF generated \$225,695.32 in transactions fees. The fee was not reasonably related to any direct transaction-related services performed by the firm, or transaction-related expenses incurred by the firm in processing transactions. Instead, the fee was effectively an additional commission for the firm. By designating the charge on trade confirmations as "MISC" in addition to a designated mark-up or mark-down, ESF mischaracterized and understated the amount of the total commissions charged by the firm.

During the postage and handling review period, on fixed income transactions the firm also charged customers who maintained more than \$500,000 with the firm 15 basis points on the market value of the customer's securities, while customers who maintained under \$500,000 were charged 25 basis points. The charge was identified as a "custody fee" on the firm's fee schedule and the amount was deducted from the customers' accounts automatically on a quarterly basis. During the postage and handling review period, the firm generated \$1.3 million dollars in custody fees; however, the firm's custodial agent only charged ESF approximately \$70,000 in custody fees for the same time period. By indicating the fee as a "custody fee" on the firm's fee schedule, ESF gave customers the false impression that the amount was related to custody fees incurred by the firm, when the firm was actually generating a significant additional source of revenue from the "custody fee" that far exceeded the amount of fees the firm had actually paid.

As a result of the foregoing, ESF violated NASD Rule 2430, FINRA Rule 2010, and Exchange Act Rule 10b-10.

Failure to Deliver Prospectuses

Section 5(b)(2) of the Securities Act requires, among other things, any person who sells securities to provide a copy of the prospectus for these securities at the time they are delivered unless the prospectus was delivered beforehand. As stated above, FINRA Rule 2010 requires that a member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade. Acting in contravention of Section 5 of the Securities Act constitutes a violation of FINRA Rule 2010.

During the time period of February 2012 to February 2014, ESF sold commercial paper for one of its indirect affiliates known as ESFIL (hereinafter the commercial paper will be referred to as “ESFILCP”). The firm sold approximately \$331 million worth of ESFILCP to approximately 40 investors. During the same time period, the firm’s supervisory system and WSPs required ESF’s registered representatives to provide prospectuses to customers prior to the sale of ESFILCP. Ten of the 40 ESFIL investors did not receive a prospectus in connection with their ESFILCP purchases. ESF did not have a supervisory system or WSPs to ensure that registered representatives had delivered prospectuses to ESFILCP customers.

As a result of the foregoing, ESF acted in contravention of Section 5 of the Securities Act, and violated FINRA Rule 2010 and NASD Rule 3010(a) and (b).

Inadequate Supervisory System Regarding Review of Electronic Communications and Failure to Implement the Firm’s WSPs

During the time period from November 2012 through December 2013 (hereinafter the “email review period”), the firm had an inadequate supervisory system of reviewing its employees’ emails and failed to implement the firm’s WSPs regarding email review. Specifically, during the email review period, the firm’s WSPs required designated principal review of one percent of all emails that had been selected by the firm’s email retention provider for random-based screening and the reviews were required to be conducted on a weekly basis. FINRA staff reviewed 78 of the reviews that were queued to designated principals for review during the email review period. Out of the 78 queued email reviews that FINRA staff reviewed, only one was completed in accordance with ESF’s WSPs. In 14 instances, designated principals failed to review any of the flagged emails assigned to them. ESF’s supervisory system in this area was inadequate because the firm did not dedicate enough personnel and resources to ensure that the individuals assigned to conduct the reviews could comply with the requirements of the WSPs.

As a result of the foregoing, ESF violated NASD Rule 3010(a), (b) and (d) and FINRA Rule 2010.

Accepting Orders from Persons Without Trading Authority

A Central American financial institution and indirect affiliate of ESF (the “Central American Bank”) maintained a brokerage account at ESF for many years (the “Central American Bank Brokerage Account”). By virtue of the nature of the account, there were approximately 1 individual and 8 entity clients of the Central American Bank that engaged in securities transactions through the Central American Bank Brokerage Account. Approximately 18 individual beneficial owners of the 8 entity clients of the Central American Bank interfaced with ESF personnel to effect securities transactions through the Central American Bank Brokerage Account. Thirteen of the 18 individual beneficial owners had accounts at ESF, however, the other five never had an account at ESF. Between April 2003 and August 2013, three of the clients of the Central American Bank directed transactions in the Central American Bank Brokerage Account in which some or all of the beneficial owners had never maintained an ESF account. During this time period, ESF relationship managers accepted orders and executed approximately 130 unauthorized transactions in the Central American Bank Brokerage Account for individuals without trading authority over the account. During this time period, ESF did not establish, maintain and enforce a supervisory system or WSPs to prevent unauthorized trades in the Central American Bank Brokerage Account.

As a result of the foregoing, ESF violated NASD Rules 3010(a) and (b), 2110 (for misconduct between April 2003 and December 14, 2008) and FINRA Rule 2010 (for misconduct between December 15, 2008 and August 2013).²

Inaccurate Books and Records

One of the Central American Bank clients that directed transactions in the Central American Bank Brokerage Account was an entity called WB, which accounted for 64 transactions in the Central American Bank Brokerage Account over a ten-year time period. During the time period of June through August 2013, ten order tickets for WB transactions that were directed by WB incorrectly indicate that the transaction was solicited, when in fact, the transactions were unsolicited.³

As a result of the foregoing, ESF violated FINRA Rules 4511(a) and 2010, Exchange Act Section 17(a) and Exchange Act Rule 17a-3.

² NASD Rule 2110 was superseded by FINRA Rule 2010 effective December 15, 2008.

³ ESF self-reported, among other issues, the orders from persons without trading authority and the inaccurate order tickets to FINRA in early 2014.

Erroneous Customer Reserve Formula Computations and Inaccurate FOCUS Filings

Exchange Act Rule 15c3-3 is designed to ensure protection of customer funds by requiring a separate bank account to be maintained for customer funds. Broker-dealers must maintain a separate bank account entitled "Special Reserve Bank Account for the Exclusive Benefit of Customers," (the "Reserve Bank Account") into which they must deposit cash and/or qualified securities in amounts computed in accordance with a specific formula. Under Exchange Act Rule 15c3-3, broker-dealers are required to utilize this formula to make a weekly computation of the amount to be deposited into the Reserve Bank Account and to make requisite deposits on a timely basis. Exhibit A to Exchange Act Rule 15c3-3 sets forth a formula for determination of reserve requirement for broker-dealers. As of October 31, 2013, the customer reserve formula for ESF disclosed adjustments and a hindsight deficiency of \$567,892. As of November 30, 2013, the customer reserve formula for ESF disclosed adjustments and a hindsight deficiency of \$1,710,769. The hindsight deficiencies resulted from the firm erroneously including commercial paper maturities that were pending a sweep to the customers' bank account at ESF's affiliate in the reserve formula as a debit.

Exchange Act Rule 17a-5 requires that broker-dealers file periodic FOCUS reports of the firm's financial status. ESF failed to comply with Exchange Act Rule 17a-5 in that the firm's FOCUS reports filed as of October 31, 2013 and November 30, 2013 were inaccurate with respect to the customer reserve formula computation.

As a result of the foregoing, ESF violated Exchange Act Rules 15c3-3, 17a-3, 17a-5 and FINRA Rules 4511(a) and 2010.

B. We also consent to the imposition of the following sanctions:

A censure and a \$275,000 fine.

We agree to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. We have submitted an Election of Payment form showing the method by which we propose to pay the fine imposed.

We specifically and voluntarily waive any right to claim that we are 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

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 us;
- 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, we specifically and voluntarily waive any right to claim bias or prejudice 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 acceptance or rejection of this AWC.

We further specifically and voluntarily waive 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

We understand that:

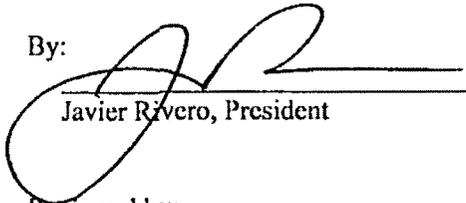
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against us; and

- C. If accepted:
1. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against me;
 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 the subject matter thereof in accordance with FINRA Rule 8313; and
 4. We 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. We 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 our: (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.
- D. We may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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 Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that I have 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 Respondent to submit it.

E.S. Financial Services, Inc., n/k/a Brickell Global Markets, Inc., Respondent

By:



Javier Rivero, President

11/23/2015
Date

Reviewed by:

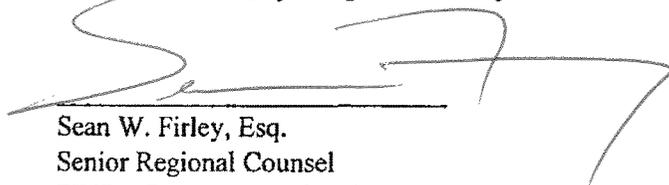


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Accepted by FINRA:

11/23/15
Date

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



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