

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9270 / October 24, 2011

SECURITIES EXCHANGE ACT OF 1934
Release No. 65608 / October 24, 2011

INVESTMENT ADVISERS ACT OF 1940
Release No. 3304 / October 24, 2011

ADMINISTRATIVE PROCEEDING
File No. 3-14599

In the Matter of

BANCO ESPIRITO SANTO S.A.

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933, SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, AND
SECTIONS 203(e) AND 203(k) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”), Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”), and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Banco Espirito Santo S.A. (“Respondent” or “BES”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act

of 1933, Sections 15(b) and 21C of the Securities Exchange Act of 1934, and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

Summary

This matter concerns BES’s violations of the broker-dealer and investment adviser registration provisions, as well as the securities transaction registration provisions, of the federal securities laws. BES, a commercial bank headquartered in Portugal, maintained relationships with approximately 3,800 U.S. residents, primarily Portuguese immigrants, who held products deemed to be securities under U.S. law in their brokerage and advisory accounts with BES between 2004 and 2009 (“U.S. Customers” and “U.S. Clients”), and offered the U.S. Customers brokerage services and the U.S. Clients investment advice. However, BES was not registered with the Commission as a broker-dealer or investment adviser, and it offered and sold securities to U.S. Customers and U.S. Clients without the intermediation of a registered broker-dealer. None of these securities transactions was registered and many of the securities offerings did not qualify for an exemption from registration, as applicable.

By acting as a broker-dealer and investment adviser to U.S. Customers and U.S. Clients without registering with the Commission, BES violated Section 15(a) of the Exchange Act and Section 203(a) of the Advisers Act. BES also violated Sections 5(a) and 5(c) of the Securities Act by offering and selling securities in the U.S. without registration and without an exemption from registration.

Respondent

1. Respondent is the principal subsidiary of Espirito Santo Financial Group, a company based in Luxembourg that owns the financial services-based businesses of Espirito Santo Group. Respondent is a commercial bank headquartered in Lisbon, Portugal with more than 700 branches located throughout the world. Although BES does not have a retail branch office in the U.S., it does operate a state-licensed money transmission service, Espirito Santo e Comercial Lisboa, Inc. (“ESCLINC”). Respondent’s stock is listed on the Euronext stock exchange.
2. Respondent’s U.S. Customers and U.S. Clients consist almost exclusively of Portuguese immigrants residing in the U.S. These individual U.S. Customers and U.S. Clients are clustered in urban areas in the Northeast; as of November 2009, approximately eighty-five percent of BES’s U.S. Customers and U.S. Clients lived in the states of New Jersey, New York, Connecticut, Massachusetts, and Rhode Island.

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

BES's Business Activities in the U.S.

3. Respondent provided brokerage and advisory services to U.S. Customers and U.S. Clients through several avenues.
4. BES had a department located in Portugal — *Departamento de Marketing de Comunicacao & Estudo do Consumidor* (Department of Marketing, Communications, and Customer Research) — responsible for mailing marketing materials, including materials marketing securities to Respondent's customers who resided outside of Portugal. These materials, while not tailored specifically to U.S. residents, were sent to Respondent's U.S. Customers.
5. Beginning in 2004, BES retained a third party to operate a customer service call center, the ES Contact Center. Beginning in 2007, the ES Contact Center had two employees located in Portugal who were dedicated to servicing BES's U.S. Customers ("U.S. Representatives"). The U.S. Representatives offered various financial products to Respondent's U.S. Customers over the phone, including securities.
6. The U.S. Representatives were not registered as representatives of a broker-dealer, nor were they associated with a Commission-registered broker-dealer. These individuals were not residents of the U.S. and did not hold any U.S. securities licenses.
7. BES offered brokerage services from time to time to U.S. Customers through its money transmitter business, ESCLINC, which had locations in Connecticut, New Jersey, and Rhode Island. In addition to its primary function as a money transmitter, ESCLINC also served as a point of contact for BES's U.S. Customers' banking and investment activities.
8. None of the persons who worked for ESCLINC was registered as an investment adviser representative or a representative of a broker-dealer, nor were they affiliated with a Commission-registered investment adviser or broker-dealer.
9. In 2004, BES created an International Private Banking ("IPB") division based in Portugal to primarily service and provide advisory services to affluent clients residing outside of Portugal, including in the U.S. The IPB serviced Respondent's clients by dedicating one or more IPB relationship managers to a geographic region. The IPB relationship managers were primarily responsible for marketing Respondent's entire portfolio of financial services, including offering securities and providing advice regarding these securities, to IPB clients. These clients were offered a greater variety of investment products, including bonds, than regular retail customers typically were, and were also provided with BES's market research.
10. Starting in 2005, BES dedicated one IPB relationship manager ("IPB RM") to the U.S. market. Approximately 225 U.S. Clients were serviced by the IPB RM ("U.S. IPB Clients"). The U.S. IPB RM visited the U.S. approximately twice a year for two to three weeks at a time, meeting with approximately 30-50 U.S. IPB Clients. The U.S.-dedicated IPB RM also serviced U.S. IPB Clients from Portugal by telephone, facsimile, and email. During these communications, the IPB RM discussed the U.S. IPB Clients' BES accounts and financial products, including securities; helped to effect transactions in financial

products; and urged U.S. IPB Clients to buy, sell, or hold certain financial products.

11. None of the persons who served as the U.S.-dedicated IPB RM was registered as an investment adviser representative or a representative of a broker-dealer, or associated with a Commission-registered investment adviser or broker-dealer. These individuals were not residents of the U.S. and did not hold any U.S. securities licenses.
12. BES offered and sold a variety of securities to U.S. Customers and U.S. Clients. Prior to ceasing this conduct in 2009, Respondent sold securities and provided investment advice to approximately 3,800 U.S. Customers and U.S. Clients. BES sold several different types of securities to U.S. Customers and U.S. Clients, including:
 - a) debt securities issued by third-party entities such as the Royal Bank of Scotland, HBOS plc, Lloyds Bank, Prudential, Limited Brands, Europe Immobiliere, HSH Nordbank, Old Mutual, Banco Panamericano, Banco do Brasil, and Banco Mercantilo do Brasil;
 - b) debt and other group-guaranteed securities issued by BES and BES-affiliated entities;
 - c) interests in Portuguese analogs to mutual funds (these funds were sponsored by BES and BES-affiliated entities);
 - d) *Planos Poupanca Reforma* (“PPRs”) – tax advantaged retirement products linked to the performance of a specified index or basket of securities;
 - e) other securities held in *Gestao Discricionaria de Carteiras* (“GDC”) accounts – customer accounts over which BES had discretionary authority to purchase securities, based on the investment profile agreed upon between BES and the GDC account holder; and
 - f) guaranteed interest rate products that are linked to the performance of a specified index or basket of securities.
13. There was no registration statement filed or in effect for securities issued or sponsored by BES and BES-affiliated entities. Registration statements also were not filed or in effect for substantially all of the other securities BES offered and sold to U.S. Customers and U.S. Clients.
14. BES knew or should have known of its need to comply with the federal securities laws when providing brokerage and advisory services to U.S. Customers and U.S. Clients. For example, in 2007, BES identified the need to research the laws of other jurisdictions where it operated and consulted with counsel regarding its compliance with the laws of these certain other jurisdictions. At the same time, despite a significant presence in the U.S., BES failed to conduct such an analysis for its U.S. operations. BES has a U.S.-based wholly-owned subsidiary that is a member of FINRA and has been registered with the Commission as a broker-dealer since at least 2004. Despite having this U.S.-based wholly-owned subsidiary at its disposal, BES did not use this wholly-owned

subsidiary as an intermediary for any of the offers or sales of securities referenced above.

15. BES charged U.S. Customers and U.S. Clients various commissions and fees on their accounts (including management fees on GDC accounts) and for securities transactions. The commissions and fees charged depended on the type of account (*i.e.* brokerage or advisory), security, and transaction. Between 2004 and 2010, Respondent received approximately \$1,650,000 in commissions and fees from U.S. Customers' and U.S. Clients' securities accounts and transactions.
16. As a result of the conduct described above, BES willfully² violated Sections 5(a) and 5(c) of the Securities Act, Section 15(a) of the Exchange Act, and Section 203(a) of the Advisers Act.

BES's Remedial Efforts

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertaking

Respondent has undertaken to pay to each U.S. Customer and U.S. Client interest on securities purchased by the U.S. Customer or U.S. Client through BES, less any payments, other than principal payments on such securities, received pursuant to the terms of such securities, and to compensate each U.S. Customer and U.S. Client for any realized or unrealized losses with respect to securities purchased through BES. The interest shall accrue from the date of purchase of such securities by the U.S. Customer or U.S. Client until (and including) the last day of the fiscal quarter immediately preceding the date that an offer for payment conducted pursuant to this Order is mailed to the U.S. Customer or U.S. Client in a given state or, in the case of securities that have previously matured or been sold, until the date of maturity or sale, and the rate shall be set at the greater of the interest rate determined pursuant to 28 U.S.C. § 1961 or by the applicable interest rate prescribed by the law of the state in which the U.S. Customer or U.S. Client resides. Any payment made by BES to (i) U.S. Customers or U.S. Clients who have sold or returned their securities to BES for a consideration equivalent to at least the purchase price of such security, or (ii) as part of a settlement with a U.S. Customer or U.S. Client arising from their purchase of securities from or through BES shall be deemed to be a payment in satisfaction of this undertaking as to that U.S. Customer or U.S. Client.

In determining whether to accept the Offer, the Commission has considered this undertaking.

² A willful violation of the securities laws means merely “that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 8A of the Securities Act, Sections 15(b) and 21C of the Exchange Act, and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act, Section 15(a) of the Exchange Act, and Section 203(a) of the Advisers Act.

B. Respondent shall, within 7 days of the entry of this Order, pay disgorgement of \$1,650,000, prejudgment interest of \$363,518, and a civil money penalty in the amount of \$4,950,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment shall be: (A) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Securities and Exchange Commission, Office of Financial Management, 100 F St., NE, Stop 6042, Washington, DC 20549; and (D) submitted under cover letter that identifies BES as the Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and wire transfer, money order or check shall be sent to Associate Director Sanjay Wadhwa, Division of Enforcement, Securities and Exchange Commission, Three World Financial Center, Suite 400, New York, NY 10281.

By the Commission.

Elizabeth M. Murphy
Secretary