

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF BUSINESS REGULATION - SECURITIES DIVISION
1511 PONTIAC AVENUE – BUILDING 69-1
CRANSTON, RI 02920**

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IN THE MATTER OF: : :
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BANCO ESPÍRITO SANTO S.A. : **CONSENT ORDER**
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PRELIMINARY STATEMENT

WHEREAS, this Consent Order is entered into by the Rhode Island Department of Business Regulation (the “Department”) and Banco Espírito Santo S.A. (“BES”) in connection with an investigation conducted by the Department concerning whether BES and its affiliates sold unregistered securities in the State of Rhode Island through its agents and/or representatives who were not registered to sell securities in Rhode Island in violation of the Rhode Island Uniform Securities Act (the “Act”);

WHEREAS, BES is a commercial bank headquartered in Lisbon, Portugal. BES is the principal subsidiary of Espírito Santo Financial Group (ESFG), a Luxembourg-based company that owns the financial services-based business of the broader Espírito Santo Group. BES is not presently, nor has it ever been registered as a broker-dealer or as an investment adviser under the Act;

WHEREAS, in or about 2009, BES notified the Securities Division (the “Division”) of the State of Rhode Island Department of Business Regulation, along with the Division of Banking Regulation and Insurance Regulation that certain transactions effected by BES and its affiliates failed to comply with applicable state and federal laws. BES self-reported that certain of its employees and employees of its affiliates offered and sold unregistered non-exempt securities and provided investment advice to Rhode Island residents and various other states absent compliance with applicable securities registration and licensing requirements;

WHEREAS, BES advised affected regulators that it had engaged an outside law firm (“Outside Counsel”) to conduct an internal investigation to: (1) assess what types of investment products BES and/or its affiliates had sold to U.S. customers and the means by which such products were sold; (2) review whether those activities violated applicable federal and states securities laws and regulations; (3) determine the number of affected U.S. customers as well as the nature of the securities and other investment products involved; and (4) determine whether such U.S. customers were entitled to any compensation for related investment losses;



WHEREAS, BES communicated to affected regulators that Outside Counsel had concluded that BES and/or its affiliates had failed to comply with applicable federal and state requirements relating to: (1) the registration of securities offered and sold to Rhode Island residents; (2) broker-dealer registration requirements; and (3) investment adviser registration requirements;

WHEREAS, BES has cooperated with the Division by responding to inquiries, providing documentary evidence and other materials, and providing the Division with access to facts relating to the investigation;

WHEREAS, in resolution of the matters described herein, BES has represented to the Division that it will offer rescission to Rhode Island customers for losses sustained as a result of the violations of the Act articulated in the report by Outside Counsel, as set forth in more detail in this Consent Order;

WHEREAS, Section 7-11-602 of the Act authorizes the Director to order any person who has violated, is violating or is about to violate any provision of the Act or any regulation, rule or order adopted or issued under the Act to cease and desist from such violation;

WHEREAS, Section 7-11-602 of the Act authorizes the Director to impose a fine of up to Ten Thousand Dollars (\$10,000) per violation against any person who has violated any provision of the Act or any regulation, rule or order adopted or issued under the Act;

NOW, THEREFORE, the Director hereby enters this Consent Order.

I. FINDINGS OF FACT

The Business of Banco Espírito Santo S.A.

1. BES is a commercial bank headquartered in Lisbon, Portugal with a large network of branches. BES is listed on the Euronext Stock Exchange.

2. BES is the principal subsidiary of Espírito Santo Financial Group (“ESFG”), a Luxembourg-based holding company for the financial services-based business of the broader Espírito Santo Group. ESFG is a diversified financial services group that engages in a wide range of banking and insurance activities throughout the world through its subsidiaries, which are primarily located in Portugal.

3. BES is authorized by the Portuguese authorities, central banks and other regulatory authorities to operate in Portugal and in those countries where its international branches are located.

4. BES has a network of more than 700 branches throughout Portugal, a branch in Madeira, international branches in London, Madrid, New York, Nassau, the Cayman Islands and Cape Verde, and 12 overseas representative offices.

5. BES does not have a U.S. representative office and the activities of its New York branch are limited to wholesale banking services.

6. Although BES has a New York branch, and BES's affiliates have various other U.S. operations, including a bank and a broker-dealer, none of those U.S. operations were involved in the activities that are the subject of this Consent Order.

7. BES and its affiliates offered products to their customer base, including a number of products that would be classified as securities under the Act.

8. Such securities included: (1) stocks and other similar equity securities; (2) bonds and other similar debt securities, including those issued by BES and its affiliates; (3) Portuguese tax-advantaged retirement products known as *Planos Poupanca Reformas* ("PPRs") that are linked to the performance of a specified index or basket of securities or other securities-based benchmark; (4) guaranteed interest rate products ("GIRPs") that are linked to the performance of a specified index or basket of securities or other securities-based benchmark; (5) interests in Portuguese mutual funds; and (6) discretionary portfolio management accounts known as *Gestao Discrecionista de Carteiras* accounts ("GDCs").

9. The securities identified in the previous paragraph were not registered under Section 7-11-301 *et seq.* of the Act, and they were not marketed and sold in this state through any broker-dealer registered under the Act.

The Business Activities of BES in Rhode Island

10. BES primarily used five (5) points of contact to reach U.S. customers. These included the ES Contact Center in Lisbon, representatives at branches of BES in Portugal and the island of Madeira, direct mailings from Portugal, U.S. relationship managers based outside of the U.S. who visited the U.S. and the offices of Espirito Santo e Comercial de Lisboa Inc. ("ESCLINC") in the U.S., including the ESCLINC office in East Providence, Rhode Island.

11. BES is a 41.7% indirect owner of ES Contact Center, which BES uses as a customer call center. BES's ownership interest in the ES Contact Center is indirect in that the interest is held by BES's wholly owned subsidiary, ES Tech Ventures.

12. The ES Contact Center provides services to BES, and other corporate clients, pursuant to a contractual arrangement. The ES Contact Center handles account-related inquiries and requests for all BES customers worldwide. Until October 2009, the ES Contact Center had two representatives dedicated to receiving and making calls to and from U.S. customers.

13. BES, through its ES Contact Center in Portugal and through ESCLINC, solicited American account holders to invest in securities.

14. Rhode Island customers were contacted via telephone calls initiated by the ES Contact Center, which sought to inform them that certain of their BES banking investments, such as certificates of deposit, were maturing.

15. Other times, Rhode Island customers that had received either telephone calls from the ES Contact Center or other direct mailings from BES, visited the East Providence, Rhode Island ESCLINC office, where an ESCLINC representative also assisted in, where applicable, processing orders for the sale of the securities described above.

16. Although BES was authorized to perform such activities under applicable Portuguese law, at all relevant times, BES and its agents and employees of the ES Contact Center and ESCLINC were not registered in the U.S. as either broker-dealer agents or as investment adviser agents with any duly registered firms. Furthermore, BES was not registered as either a broker-dealer or as an investment adviser in the U.S.

BES's Sales Organization

A. ES Contact Center

17. One avenue through which BES personnel sold securities products to U.S. customers from within Portugal, was the ES Contact Center. The Departamento de Gestores de Relacao a Distancia (i.e., the Remote Relationships Department) (hereinafter the "GRD Department") of the ES Contact Center was tasked with communicating telephonically with BES's customers residing outside of Portugal.

18. The representatives in the GRD Department were typically dedicated to customers from specific countries. Prior to October 2009, there were two representatives dedicated to receiving and making calls to and from U.S. customers.

19. Most of the conversations between the ES Contact Center representatives and U.S. customers were in Portuguese, and ES Contact Center representatives who interfaced with U.S. customers received on average approximately 5-6 calls per day from the U.S.

20. The U.S. dedicated representatives were responsible, among other things, for initiating telephone calls to U.S. customers to alert them of maturing investments.

21. During these phone calls, the ES Contact Center representatives would inform U.S. customers of available financial products in which they could reinvest their funds.

22. The products that the representatives identified came from BES's standard retail offering, a list of products that were offered to all BES retail customers, which included traditional deposit accounts, demand and term deposits, savings accounts, certificates of deposit, Portuguese mutual funds, GDCs and PPRs.

B. ESCLINC

23. ESCLINC began its U.S. operations in New Jersey as a licensed money transfer company in 1983 and provided money remitter services to the Portuguese immigrant community living in the United States.

24. Over time, ESCLINC expanded its base to include offices in Bridgeport, Connecticut and East Providence, Rhode Island.

25. Over the course of time, ESCLINC's role *vis à vis* U.S. customers expanded from providing money remitting services to assisting BES customers with additional administrative functions such as processing securities transactions.

26. U.S. customers, in some instances, filed complaints with BES that ESCLINC representatives made material misrepresentations concerning the purchase or sale of securities; some U.S. investors alleged they were told their investments were guaranteed or would not lose value.

27. BES engaged Outside Counsel to conduct an internal investigation relating to BES's activities concerning current, former and prospective customers resident in the United States. In response, Outside Counsel prepared an Investigation Report which was provided to the Division.

28. While the Investigation Report could not substantiate the allegations of these alleged material misrepresentations, it did determine that BES could not demonstrate that it had adequately explained the nature of these securities and the potential risk of loss to the customers.

29. The Investigation Report determined that the likely failures on BES's part to comply with U.S. securities statutes and regulations appeared to have occurred out of ignorance of U.S. laws and/or incorrect beliefs about the reach of U.S. laws.

30. The results of an internal investigation commissioned by BES regarding the bank's business practices in the U.S. concluded that approximately three hundred and seventy five (375) customers with a Rhode Island address had purchased securities from BES.

31. The internal investigation noted the following examples of securities (and/or other products likely constituting securities) in the accounts of U.S. customers: (1) stocks and other similar equity securities; (2) bonds and other similar debt securities, including those issued by BES and its affiliates; (3) PPRs that are linked to the performance of a specified index or basket of securities or other securities-based benchmark; (4) GIRPs that are linked to the performance of a specified index or basket of securities or other securities-based benchmark; (5) interests in Portuguese mutual funds; and (6) GDCs.

32. The internal investigation found that since November 1, 2004, there were approximately 3,800 U.S. customers with securities positions in the investment vehicles noted in paragraph 31 above.

Complaints from BES's U.S. Customers Concerning the Offer and/or Sale of Securities

A. BES's Internal Structure for Processing Customer Complaints

33. During the course of the internal investigation, BES discovered that certain U.S. customers had complained regarding the securities in their accounts. Certain of these complaints alleged that BES personnel made false or misleading statements and/or sold unsuitable securities to BES customers.

34. BES's Quality Service Department ("QSD") is based in Lisbon and is the central repository for complaints made by BES Customers. QSD is staffed with approximately thirty-six (36) employees, and is also responsible for developing protocols and procedures for customer service. QSD logs BES customer complaints and also coordinates BES's response to customer complaints.

35. With the exception of certain easily resolvable complaints that could be handled without the involvement of QSD, customer complaints received by BES representatives and entities, including but not limited to, BES's branches, the ES Contact Center, ESCLINC and the U.S. relationship managers, were forwarded to QSD for review and resolution.

36. QSD maintains an electronic database of all complaints received. The database can be searched by, *inter alia*, name and residence address. A separate hard copy file is also kept for each complaint.

37. QSD reviews each complaint, determines whether BES was at fault and, if appropriate, assesses the cost to resolve the complaint. To facilitate the review and resolution of customer complaints, QSD consults with the relevant BES employees and departments that communicated with the customer prior to the filing of the complaint to determine whether they may have knowledge of the matters discussed in the customer complaint.

38. Typically, upon reaching the appropriate determination as to resolution of the complaint, QSD contacts the customer (usually by letter) with an explanation of the review and, if appropriate, the proposed remedy. To the extent that QSD decides that the complaint has no merit, a letter is sent explaining why BES is unable to take further action on the complaint.

39. Alternatively, if QSD determines that a particular complaint has merit, it is authorized to resolve low-value claims without the intermediation of BES management. Resolutions above a nominal amount must be authorized by a branch level manager or other senior executive, while resolutions of complaints that involve significant payments – generally around one hundred thousand dollars (\$100,000) level – require authorization by BES's senior management.

B. Complaints by U.S. Customers

40. As part of BES's internal investigation, it reviewed U.S. customer complaints dating back to 2004. Several of the complaints involved allegations that BES personnel made misrepresentations in connection with the purchase and/or sale of securities or insurance products or the alleged unauthorized sale of such products.

BES Self-Reports Potential Violative Conduct to U.S. Regulatory Authorities

41. As noted previously in this Consent Order, BES engaged Outside Counsel to conduct an internal investigation relating to BES's activities concerning current, former and prospective customers resident in the United States.

42. Among other things, BES asked the Outside Counsel to review the bank's general interactions with U.S. customers and was directed by BES's senior management to review whether those activities violated applicable federal and state securities laws and regulations. BES requested that Outside Counsel then determine the number of potentially affected U.S. customers and whether those U.S. customers were entitled to any compensation for investment losses. At that time, BES senior management also directed that any and all activities that failed to comply with U.S. law must cease immediately.

43. On or about May 17, 2010, Outside Counsel completed its internal investigation.

44. In 2010, Outside Counsel, on behalf of BES, contacted the Division and voluntarily reported the results of its internal investigation and informed the Division that BES's unregistered securities activities, including the offer and sale of unregistered securities by unregistered agents, included Rhode Island residents who had accounts with BES.

II. CONCLUSIONS OF LAW

1. The Commissioner has jurisdiction over this matter pursuant to the Act.
2. As described in the Findings of Fact above, BES and its affiliates violated Section 7-11-201 of the Act by effecting transactions in securities for Rhode Island residents absent registration as a broker-dealer.
3. BES and its affiliates violated Section 7-11-201 of the Act by employing unregistered agents.
4. BES and its affiliates violated Section 7-11-203 of the Act by rendering investment advice for compensation absent registration as an investment adviser under the Act.
5. BES and its affiliates violated Section 7-11-301 of the Act by offering and selling unregistered non-exempt securities to Rhode Island customers.
6. The Commissioner finds that the entry of this Consent Order and the following relief are necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of the Act.

III. CONSENT ORDER

On the basis of the Findings of Fact, Conclusions of Law, and the consent of BES to the entry of this Consent Order,

IT IS HEREBY ORDERED THAT:

1. Entry of this Consent Order concludes the investigation by the Division and any other action that the Director could commence under the Act against BES and its affiliates, relating to the matters described herein; provided, however, that excluded from and not covered by this paragraph are any claims by the Director arising from or relating to violations of the provisions contained in this Consent Order;
2. BES, its affiliates, representatives, agents, assigns, successors in interest and those persons in active concert or participation with them shall cease and desist from violating the Act or any regulation or order under the Act;
3. BES shall remit to the Department of Business Regulation by certified or cashier's check made payable to "Treasurer, State of Rhode Island", the sum of two thousand five hundred dollars (\$2,500) as an administrative fine;

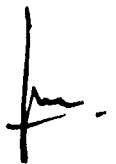


4. BES shall offer all eligible Rhode Island customers (“Rhode Island Eligible Customers”) rescission consistent with Section 7-11-607 of the Act and this paragraph. Such offer of rescission shall be made and redemptions and/or reimbursements shall be carried out in a manner not unacceptable to the Division. The terms of the offer shall include, but not be limited to, the following:

- (a) On or before March 7, 2011, BES shall have identified all Rhode Island Eligible Customers who, on or after November 1, 2004, held securities that were sold by or through BES in violation of applicable law by compiling a list of such customers (the “List”). The List shall contain all necessary contact information for Rhode Island Eligible Customers, including but not limited to, name, last known address, telephone number(s), e-mail addresses (if applicable) and the names and amounts of securities owned by the Rhode Island Eligible Customers.
- (b) The securities identified that are subject to the rescission offer are: (1) stocks and other similar equity securities; (2) bonds and other similar debt securities, including those issued by BES and its affiliates; (3) PPRs that are linked to the performance of a specified index or basket of securities or other securities-based benchmark; (4) GIRPs that are linked to the performance of a specified index or basket of securities or other securities based benchmark; (5) interests in Portuguese mutual funds; and (6) GDCs.
- (c) Valuation of investment positions and statutory interest shall be calculated as of September 30, 2010.
- (d) Upon completion of the compilation of the List, BES shall confirm in writing to the Division that a complete list of Rhode Island Eligible Customers has been completed. BES shall make the List available to the Comissao do Valores Mobiliarios (“CMVM”), and the Division may obtain the List through appropriate means.
- (e) To the extent that present addresses for Rhode Island Eligible Customers are not known, BES shall make all reasonable efforts to identify a valid location for the affected Rhode Island Eligible Customers so that actual notice of the offer may be received. In the event that a valid present address cannot be confirmed for any Rhode Island Eligible Customer, BES shall notify the Division promptly. Upon securing an accurate forwarding address of such customers, BES shall provide the offer of rescission, consistent with terms set forth herein, which offer shall remain open for 30 days after confirmed receipt by the customer.
- (f) On or by March 18, 2011, BES shall have sent, via certified mail or similar means designed to ensure confirmation of receipt, to Rhode Island Eligible Customers an offer of rescission, consistent with Section 7-11-607 of the Act, which shall remain open for 30 days. The language of the offer notice shall be in both Portuguese and English. In addition, the

proposed language of the offer shall be forwarded to the Division prior to use and shall be in a form that is not unacceptable to the Division. The offer of rescission package shall also include an acceptance/rejection form, along with a self-addressed stamped envelope, for completion by the customer. The acceptance/rejection form shall be set out in a manner not unacceptable to the Division.

- (g) BES shall maintain a log of all certified mail or similar confirmations, as well as any other communications with Rhode Island Eligible Customers. BES shall also keep a record of all acceptances and rejections of the rescission offer. BES shall make such information available to the CMVM and the Division may obtain such information through appropriate means.
- (h) A running tally of the number of all acceptances and rejections shall be available to the Division upon its request.
- (i) To assist in the processing of Rhode Island Eligible Customers' inquiries following the publication of the offer of rescission, BES shall establish and maintain a toll-free telephone line. Any scripts, summaries and/or notes created by BES that will be used to assist operators in responding to Rhode Island Eligible Customers' inquiries shall be forwarded to the Division prior to use and shall be in a form not unacceptable to the Division.
- (j) To the extent that formal acceptances of BES's offer of rescission are not received within 21 days of the original notice mail date, BES shall send a reminder notice, via certified mail or similar means designed to ensure confirmation of receipt, to Rhode Island Eligible Customers. The language of the reminder notice shall be written in both Portuguese and English and shall be provided to the Division prior to its use and shall not be in a form that is unacceptable to the Division.
- (k) While BES's obligation to offer rescission shall remain open for a finite period of time to and including May 9, 2011, BES shall make reasonable best efforts to resolve any late acceptances, which may have occurred as a result of ineffective language translation, late receipt of offer notice(s) or other reasonable grounds which resulted in the Rhode Island Eligible Customer's delayed response, in a manner consistent with the wishes of the Rhode Island Eligible Customer.
- (l) If BES does not receive a response from Eligible Customers by May 9, 2011, BES will proceed on the basis that it has received consent and will proceed with the repurchase of all of the securities holdings, including redemption of any PPRs that are linked to the performance of a specified index or basket of securities or other securities-based benchmark.




- (m) Upon acceptance by the Rhode Island Eligible Customer in writing, BES shall complete the rescission within 30 business days of such acceptance by: (1) mailing a bank check via registered mail to the Rhode Island Eligible Customers; or (2) electronic transfer of funds to the Rhode Island Eligible Customer's BES account; or (3) electronic transfer of funds to an alternative bank account at BES or another bank in the Rhode Island Eligible Customer's name. To the extent a relevant account has more than one account holder, BES may hold a check in escrow until it receives proper instructions from all such account holders, including the Rhode Island Eligible Customers, which have or have had, as applicable, authority over the relevant account under applicable law.

NOW THEREFORE, the Director enters the following:

1. The Findings of Fact, Conclusions of Law and Consent Order set forth above, be and are hereby entered;
2. Entry of this Consent Order by the Director is without prejudice to the right of the Commissioner to take enforcement action against BES and its affiliates and successors in interest based upon a violation of this Consent Order or the matters underlying its entry, if the Director determines that compliance with the terms herein is not being observed or if any representations made by BES and reflected herein are subsequently discovered to be untrue; and
3. This Consent Order shall become final when entered.

Dated this 4th day of ~~February~~^{March} 2011



Paul McGreevy, Director
Department of Business Regulation

Order No. 11-013

CONSENT TO ENTRY OF ORDER BY BES

BES hereby acknowledges that it has been served with a copy of this Consent Order, has read the foregoing Consent Order, and is aware of its right to a hearing and appeal in this matter, and has waived the same.

BES admits the jurisdiction of the Department neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order, and consents to entry of this Consent Order by the Department as settlement of the issues contained in this Consent Order.

BES states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Dated this 25th day of February, 2011.

Banco Espírito Santo S.A.

By Jose Daniel Espinoza
Name: JOSE DANIEL ESPINOZA
Title: MEMBER OF EXECUTIVE
COMITE

