

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2023079691201**

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

RE: Elba M. Nogueras (Respondent)
Former General Securities Representative
CRD No. 4459340

Pursuant to FINRA Rule 9216, Respondent Elba M. Nogueras 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

Nogueras first became registered as a General Securities Representative (GSR) in 2002 through an association with a FINRA member. After leaving that firm in 2006, Nogueras was registered as a GSR through associations with three different FINRA members between October 2006 and June 2019. In June 2019, Nogueras became registered as a GSR through an association with FINRA member First Southern, LLC. On October 11, 2021, First Southern filed a Form U5 reporting that Nogueras had voluntarily terminated her association with the firm.

Although Nogueras is not currently registered or associated with a FINRA member, she remains subject to FINRA's jurisdiction pursuant to Article V, Section 4 of FINRA's By-Laws.¹

OVERVIEW

In September 2020, while associated with First Southern, Nogueras recommended that her customer invest 81 percent of his liquid net worth in an illiquid, non-traded real estate investment trust (REIT). Nogueras did not have a reasonable basis to believe this investment was in her customer's best interest. Therefore, Nogueras willfully violated the

¹ For more information about the respondent, visit BrokerCheck® at www.finra.org/brokercheck.

Care Obligation of Rule 15c-1 under the Securities Exchange Act of 1934 (Reg BI) and violated FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination of First Southern.

As of June 30, 2020, broker-dealers and their associated persons are required to comply with Regulation BI under the Securities Exchange Act of 1934. Reg BI requires a broker, dealer, or a natural person associated with a broker or dealer, when making a recommendation of any securities transaction or investment strategy involving securities to a retail customer, to act in the best interest of that retail customer at the time the recommendation is made, without placing the financial or other interest of the broker, dealer, or associated person ahead of the interest of the retail customer. Reg BI's Care Obligation, set forth at Exchange Act Rule 15c-1(a)(2)(ii), requires broker-dealers and their associated persons to exercise reasonable diligence, care, and skill to, among other things, have a reasonable basis to believe that the recommendation is in the best interest of a particular retail customer based on that retail customer's investment profile and the potential risks, rewards, and costs associated with the recommendation. Regulation BI defines a "retail customer investment profile" to include, but not be limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.

A violation of Reg BI also is a violation of FINRA Rule 2010, which requires associated persons to "observe high standards of commercial honor and just and equitable principles of trade" in the conduct of their business.

In September 2020, Nogueras recommended that her customer, a 52-year-old resident of Puerto Rico, invest in a non-traded REIT. The prospectus cautioned that investments in the non-traded REIT involved a high degree of risk and could have resulted in a complete loss of principal. In addition, the non-traded REIT was illiquid, and investors had only limited opportunities, at the issuer's discretion, to redeem their shares. As such, based on guidelines from the Commonwealth of Puerto Rico's Office of the Commissioner of Financial Institutions, the REIT's issuer included in the prospectus a prohibition on investments by Puerto Rico residents that exceed ten percent of the investor's liquid net worth.

Based upon Nogueras's recommendation, her customer invested \$81,000, which represented 81 percent of the customer's liquid net worth, in the non-traded REIT, resulting in Nogueras earning a commission of \$5,670.

Given the risk and illiquidity of investments in the non-traded REIT, Nogueras lacked a reasonable basis to believe her recommendation that her customer invest 81 percent of his liquid net worth in the non-traded REIT was in the best interest of the customer, who had a moderate risk tolerance and limited investment experience.

Therefore, Nogueras willfully violated Exchange Act Rule 15l-1 and FINRA Rule 2010.

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

- a four-month suspension from associating with any FINRA member in all capacities;
- a \$5,000 fine; and
- disgorgement of \$5,670 plus interest as described below.

The fine shall be due and payable either immediately upon reassociation with a member firm or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

Disgorgement of commissions received is ordered to be paid to FINRA in the amount of \$5,670, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2), from September 30, 2020 until the date this AWC is accepted by the National Adjudicatory Council (NAC). Disgorgement shall be due and payable either immediately upon reassociation with a member firm or prior to any application or request for relief from any statutory disqualification resulting from this or any other event or proceeding, whichever is earlier.

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 sanctions imposed in this matter.

Respondent understands that if she is barred or suspended from associating with any FINRA member, she becomes subject to a statutory disqualification as that term is defined in Article III, Section 4 of FINRA's By-Laws, incorporating Section 3(a)(39) of the Securities Exchange Act of 1934. Accordingly, she may not be associated with any FINRA member in any capacity, including clerical or ministerial functions, during the period of the bar or suspension. *See* FINRA Rules 8310 and 8311.

Respondent understands that this settlement includes a finding that she willfully violated Rule 15l-1 of the Securities Exchange Act of 1934 and that under Article III, Section 4 of FINRA's By-Laws, this makes her subject to a statutory disqualification with respect to association with a member.

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 her;
- 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 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

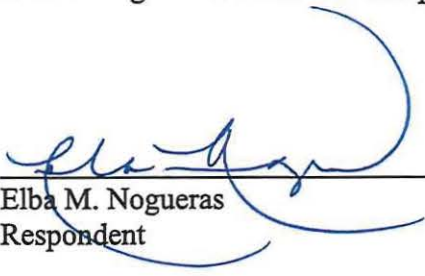
Respondent understands that:

- 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:

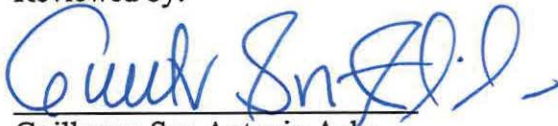
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
 2. this AWC will be made available through FINRA's public disclosure program in accordance with FINRA Rule 8313;
 3. FINRA 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 she 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.

Respondent certifies that she has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; Respondent has agreed to the AWC's provisions voluntarily; and 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 her to submit this AWC.

9/13/23
Date


Elba M. Noguerras
Respondent

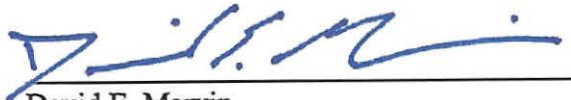
Reviewed by:


Guillermo San Antonio Acha
Counsel for Respondent
GSA Law, LLC
207 Ave. Domenech, Ste. 205
San Juan, PR 00918

Accepted by FINRA:

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

09/18/2023
Date


David E. Marvin
Counsel, Enforcement
FINRA
Department of Enforcement
1735 K Street NW
Washington, DC 20006