UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 79124 / October 19, 2016

ADMINISTRATIVE PROCEEDING
File No. 3-17637

In the Matter of

Lia Yaffar-Pena

Respondent.

ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934, 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 Sections 15(b), and 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Lia Yaffar-Pena ("Yaffar-Pena" or "Respondent").

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 her and the subject matter of these proceedings, which are admitted, and except as provided herein in Section V., Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, 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 finds[1] that

Summary

From May 2003 through August 2013, while serving as the President, CEO and a Board Member of E.S Financial Services, Inc., ("E.S. Financial" or the "firm") a Miami, Florida-based broker-dealer (n/k/a Brickell Global Markets, Inc.), Lia Yaffar-Pena ("Yaffar-Pena") aided and abetted and caused the firm's violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder, which require broker-dealers to comply with the reporting, recordkeeping, and record retention requirements in regulations implemented under the Bank Secrecy Act, including the customer identification program ("CIP") rule (31 C.F.R. § 1023.220) ("CIP Rule").[2] During this time period, 23 non-U.S. citizens conducted securities transactions through the account of one of the firm's financial affiliates without the firm ever collecting, verifying, or maintaing any identification documentation for these individuals in violation of the federal securities laws and E.S. Financial's own anti-money laundering ("AML") policies and procedures. Yaffar-Pena knew of the existence of the affiliate account and that non-U.S. citizens were trading on their own behalf through the account. In her role as President and CEO, Yaffar-Pena was ultimately responsible for the firm's AML program and AML/CIP procedures, as well as the supervision of E.S. Financial's AML and Chief Compliance Officers. Despite this knowledge and her supervisory responsibilities, Yaffar-Pena permitted the subject trading, which amounted to securities transactions totaling $23.8 million.

Respondent

1. **Yaffar-Pena**, age 49, of Miami Beach, Florida, since May 9, 2016, has been associated with Unimar Financial Services, LLC, a Miami, Florida-based investment adviser not registered with the Commission. Yaffar-Pena was formerly the President, CEO, and a Board Member of E.S. Financial from May 2003 through August 2013.

Relevant Entities

2. **E.S. Financial**, n/k/a as Brickell Global Markets, Inc., is a Miami, Florida-based corporation that became registered with the Commission as a broker-dealer on March 6, 2001, and is a member of FINRA. During the relevant time period, a Portuguese bank with its headquarters in Portugal, was the parent company of E.S. Financial, and the firm's affiliate bank located in Central America ("Central American Bank"). In 2013, when the violations at issue

[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.

[2] Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act and other legislation (commonly referred to as the Bank Secrecy Act), 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959, and 31 U.S.C. §§ 5311–5314 and 5316–5332.

finally ceased, E.S. Financial had approximately 70 dually licensed employees and 1,700 corporate and individual accounts. In mid-2015, E.S. Financial was sold to a Venezuelan banking family and re-named Brickell Global Markets, Inc.

3. The **Central American Bank**, is a foreign-based bank registered in Central America but not licensed to conduct business in the United States. During the relevant time period, the Central American Bank was an affiliate of E.S. Financial due to its common ownership. On July 16, 2014, the government of the Central American country where the bank is located ordered the seizure of the Central American Bank due to concerns about its lack of liquidity and potential insolvency. As of the current date, the Central American Bank is apparently still under operating control of the Central American country's government.

Factual Findings

4. In January 2003, the Central American Bank opened a brokerage account with E.S. Financial, its affiliate, purportedly for the sole purpose of brokerage trading by the Central American Bank itself. No sub-account holders or other beneficial owners were identified on the Central American Bank account application.

5. In actuality, 13 entities that maintained accounts with the Central American Bank ("Corporate Accounts") were sub-account holders of the Central American Bank account. These Corporate Accounts were beneficially owned by 23 non-U.S. individuals ("Beneficial Owners") who interfaced directly with E.S. Financial's registered representatives to solicit securities trading advice and to request account maintenance, securities orders, and execution through the Central American Bank account.

6. From April 15, 2003, through August 19, 2013, the Beneficial Owners executed securities transactions in the Central American Bank account totaling $23.8 million.

7. In her role as President and CEO of E.S. Financial from May 2003 through August 2013, Yaffar-Pena was ultimately responsible for the firm's AML program and the supervision of the firm's AML and Chief Compliance Officers. Throughout this time period, Yaffar-Pena was aware of the Central American Bank account and that the Beneficial Owners were trading on their own behalf through this account.

8. Prior to opening a new individual or corporate account, E.S. Financial's CIP procedures required it to collect and verify certain information regarding the prospective account-holder. For all new accounts, E.S. Financial's CIP procedures required it to collect: (1) name, residence, and contact information; (2) occupation; (3) citizenship; (4) investor profile, financial status, and objectives; (5) tax status; and (6) a completed Know Your Customer ("KYC") form. E.S. Financial's CIP Procedures further stated that the KYC form must contain accurate and complete information about the client, including identification of "all the account principals and beneficial owners."

9. E.S. Financial's CIP procedures also required verification of new corporate and individual accounts through documentary methods. For corporate accounts, E.S. Financial's procedures required it to obtain: (1) a corporate resolution; (2) verification of permanent addresses and identifications on all signers, beneficial owners and at least two directors on the account; (3) a certificate of beneficial owners on all beneficial owners of the account; (4) a certificate of incorporation; (5) articles of incorporation; (6) tax identification documents; and (7) a certificate of good standing. For individual accounts, E.S. Financial's procedures required it to obtain at a minimum: (1) a copy of a valid passport or other government-issued identification; (2) verification of permanent addresses on all parties to the account; (3) tax identification forms; and (4) a U.S. Office of Foreign Assets Control check on the account name, authorized signatories, beneficial owners, and directors.

10. E.S. Financial adopted its CIP procedures in 2005. The Central American Bank account was opened in January 2003, and nine of the 13 Corporate Accounts began interfacing with E.S. Financial prior to April 2005. However, according to E.S. Financial's CIP procedures, the firm was required to satisfy its CIP requirements for both new customers and existing customers as of April 2005. Thus, E.S. Financial was required to follow its CIP procedures for both the Central American Bank account and all of the Corporate Accounts and Beneficial Owners regardless of when they first began interfacing with the firm. From at least August 2006, Yaffar-Pena knew, was reckless in not knowing, and should have known that E.S. Financial was missing certain required documentation related to the Beneficial Owners.

11. The Beneficial Owners of the Corporate Accounts never opened brokerage accounts at E.S. Financial, and instead effectuated their securities transactions through the Central American Bank account. The Beneficial Owners, however, interfaced directly with E.S. Financial's registered representatives and other personnel on their own behalf without any intermediation by the Central American Bank. Thus, the Beneficial Owners were E.S. Financial's customers for purposes of the CIP Rule and the firm's CIP procedures.

12. Likewise, the Corporate Accounts never opened brokerage accounts at E.S. Financial, and instead the Beneficial Owners effectuated securities transactions on behalf of these Corporate Accounts, without any intermediation by the Central American Bank, through the Central American Bank's account.[3] Thus, the Corporate Accounts were E.S. Financial's customers for purposes of the CIP Rule and the firm's CIP procedures.

[3] On October 1, 2003, staff from the Commission's Division of Trading and Markets (f/k/a Division of Market Regulation) and the Financial Crimes Enforcement Network ("FinCEN"), a bureau within the Department of Treasury that administers the BSA, published a "Question and Answer" ("Q&A") regarding a broker-dealer's CIP obligations with respect to transactions in omnibus accounts and sub-accounts. See Question and Answer Regarding the Broker-Dealer Customer Identification Program Rule (31 CFR 103.122) at http://sec.gov/divisions/marketreg/qa-bdidprogram.htm. The Q&A addressed non-exclusive circumstances under which a broker-dealer could treat an omnibus account holder as the only customer for the purposes of the CIP rule and would not also be required to treat the underlying beneficial owner as a customer. Among other things, the Q&A contemplated a scenario in which all securities transactions in the omnibus account or sub-account would be initiated by the financial intermediary holding the omnibus account, and the beneficial owner of the omnibus account or sub-account would have no direct control of the transactions effected in the account. In contrast, the account at issue here was not an intermediated relationship, as E.S. Financial treated the sub-account holders as its own customers.

13. As a result of the foregoing, E.S. Financial did not accurately collect, verify and maintain information regarding the Central American Bank account in accordance with its CIP procedures. Despite being aware of the Corporate Accounts and the Beneficial Owners, E.S. Financial did not collect and verify any information regarding the Beneficial Owners or Corporate Accounts. E.S. Financial also did not follow its CIP procedures for verification of new corporate accounts, and therefore did not document those procedures accurately.

14. Additionally, despite treating the Corporate Accounts and Beneficial Owners as its customers, as described above, E.S. Financial did not collect any identification documentation or verify any information whatsoever regarding the Corporate Accounts or Beneficial Owners in violation of the CIP Rule and the firm's CIP procedures.

15. In her role as President and CEO, Yaffar-Pena was required by the firm's written supervisory procedures to direct that the firm collect and maintain books and records in compliance with SEC Rules 17a-3 and 17a-4. She failed to confirm that the required CIP documentation or ledger accounts related to the Corporate Accounts and Beneficial Owners had been collected and maintained (for example, by the AML officers under her supervision).

16. On January 28, 2016, the Commission authorized and instituted and simultaneously accepted E.S. Financial's settlement offer in which it consented, without admitting or denying the findings, to the entry of an Order by the Commission finding that E.S. Financial willfully violated Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and (9), 17a-4(a), (b)(1) and (j) and 17a-8 thereunder. Pursuant to this settlement, E.S. Financial was ordered to cease-and-desist from committing or causing any violations and any future violations of these provisions, censured, ordered to complete certain undertakings and to pay a civil monetary penalty of $1,000,000.

Applicable Law

17. On April 29, 2003, the Commission and the Treasury Department, through the Financial Crimes Enforcement Network, jointly adopted the CIP Rule implementing Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 296 (2001) (the "USA PATRIOT Act"). The CIP Rule requires broker-dealers to "establish, document, and maintain a written Customer Identification Program ("CIP) appropriate for [the broker-dealer's] size and business . . . ." 31 C.F.R. § 1023.220(a)(1). As part of its written CIP program, a broker-dealer must collect, at a minimum, basic information about each of its customers, including each customer's name, date of birth, address, and identification number. 31 C.F.R. § 1023.220(a)(2)(i).

18. The broker-dealer's CIP must include risk-based procedures for verifying the identity of each customer such as to enable the broker-dealer to form a reasonable belief that it knows the true identify of each customer. 31 C.F.R. § 1023.220(a)(2).

19. The broker-dealer's CIP also must include procedures for making and maintaining records of the customer's identifying information and its verification of the customer's identity. 31 C.F.R. § 1023.220(a)(3).

20. Rule 17a-8, which was promulgated under Section 17(a) of the Exchange Act, requires broker-dealers to comply with the reporting, recordkeeping and record retention requirements in regulations implemented under the Bank Secrecy Act, including the CIP Rule.

21. Section 17(a) of the Exchange Act also requires broker-dealers to make and keep records required by the Commission. Accordingly, Rule 17a-3(a)(3) requires broker-dealers to make and keep ledger accounts (or other records) itemizing separately all purchases, sales, receipts, and deliveries for each customer's account, and Rule 17a-4(a) requires the broker-dealer to preserve these records for at least six years. Rule 17a-3(a)(9) requires broker-dealers to make and keep for each account a record that includes, among other things, the name and address of the account's beneficial owner, and Rule 17a-4(b)(1) requires the broker-dealer to preserve these records for at least three years.

Violations

22. As a result of the conduct described above, Respondent willfully[4] aided and abetted and caused E.S. Financial's violations of Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and (9) thereunder.

23. As a result of the conduct described above, Respondent willfully aided and abetted and caused E.S. Financial's violations of Section 17(a) of the Exchange Act and Rules 17a-4(a) and (b)(1) thereunder.

24. As a result of the conduct described above, Respondent willfully aided and abetted and caused E.S. Financial's violations of Section 17(a) of the Exchange Act and Rule 17a-8 thereunder.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Yaffar-Pena's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

[4] 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)).

A. Respondent Yaffar-Pena cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-3(a)(3) and (9), 17a-4(a) and (b)(1), and 17a-8 thereunder.

B. Respondent shall be, and hereby is, subject to the following limitations on her activities for twelve (12) months:

> Respondent shall not act in a supervisory capacity with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization for the time period specified above.

C. Respondent shall certify, in writing, compliance with the limitation set forth above. The certification shall identify the limitation, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Glenn S. Gordon, Associate Regional Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the entry of this Order.

D. Respondent shall pay a civil penalty of $50,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). Payment shall be made in the following installments:

(1) $10,000 shall be due and payable within 30 days of the entry of this Order;

(2) an additional $20,000 shall be due and payable within 180 days of the entry of this Order; and

(3) the final $20,000 shall be due and payable within one year of the entry of this Order.

If any payment is not made by the date the payment is required by this Order, the entire outstanding balance of civil penalties, plus any additional interest accured pursuant to 31 U.S.C. §3717, shall be due and payable immediately, without further application.

Payment must be made in one of the following ways:

(1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;

(2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm; or

(3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Yaffar-Pena as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Glenn S. Gordon, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 801 Brickell Avenue, Suite 1800, Miami, FL 33131.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, she shall not argue that she is entitled to, nor shall she benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that she shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

V.

It is further Ordered that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, the findings in this Order are true and admitted by Respondent, and further, any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Respondent under this Order or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Respondent of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

By the Commission.

Brent J. Fields
Secretary