

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9393 / March 18, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 69167 / March 18, 2013

INVESTMENT ADVISERS ACT OF 1940
Release No. 3568 / March 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15248

In the Matter of

Banco Comercial
Português, 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 Comercial Português, S.A. (“BCP” 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 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

1. Since at least 2006, BCP, a commercial bank headquartered in Portugal, maintained accounts for U.S. resident customers, primarily Portuguese immigrants or citizens residing in the U.S., that held products deemed to be securities under U.S. law (“securities”). Although BCP has never been registered with the Commission as a broker, dealer or investment adviser, BCP, in violation of the broker-dealer and investment adviser registration provisions, bought and sold securities for U.S. resident customers and provided some of those customers with investment advice. Such transactions in the BCP accounts were not registered and did not qualify for any exemption from registration. By offering and selling securities in the U.S. without registration and without an exemption from registration, and by acting as a broker-dealer and investment adviser to U.S. residents without registering with the Commission, BCP 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.

Respondent

2. BCP is a Portuguese bank, headquartered in Oporto, Portugal. BCP and its subsidiaries have more than 1,700 branches located throughout the world and over 5 million customers. BCP has never been registered with the Commission as a broker, dealer or investment adviser. BCP shares trade on the NYSE Euronext-Lisbon Exchange.

Facts

3. BCP’s Private Bank is a commercial unit within BCP that is in charge of the banking relationship with private banking customers. During the relevant period, the general benchmark (although capable of adjustments/exceptions for particular cases) amount of assets required for one to become a Private Bank customer was €500,000.

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 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)).

4. During the relevant period, BCP provided brokerage and/or advisory services to customers residing in the U.S., including seventy-one BCP Private Bank customers.

5. The BCP Private Bank accounts in question were opened in Portugal and serviced by BCP private bankers based in Portugal. The private bankers serviced these accounts in several ways: telephone, facsimile, mail, e-mail and in-person visits, in both Portugal and the U.S. Some of these communications related to securities transactions in the customers' BCP accounts.

6. None of the private bankers 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.

7. BCP offered and sold a variety of securities to the U.S. resident Private Bank customers, including:

- (a) *Valores Mobiliários*, which include stock shares, bonds and investment funds;
- (b) Unit-Linked *Planos Poupança Reforma*, which are tax advantaged retirement products linked to the performance of a specified index or basket of securities; and
- (c) Structured Products.

8. Some of these securities were held in *Gestao Discricionaria de Carteiras* ("GDCs"). GDCs are actively managed portfolios over which BCP had discretionary authority to purchase securities, based on the investment profile agreed upon between BCP and the GDC account holder.

9. There were no registration statements filed or in effect for the securities BCP bought and sold for U.S. resident customers.

10. BCP is a large and sophisticated financial institution and it knew or should have known of its need to comply with the federal securities laws when providing brokerage and advisory services to U.S. residents.

11. BCP charged U.S. resident customers 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. From 2006 through 2010, Respondent derived gross income totaling approximately €1,097,403 in connection with securities transactions by U.S. resident Private Bank customers.

Violations

12. As a result of the conduct described above, BCP willfully violated Sections 5(a) and 5(c) of the Securities Act, which make it unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell or offer to sell a security for which a registration statement is not filed or not in effect or there is not an applicable exemption from registration.

13. As a result of the conduct described above, BCP willfully violated Section 15(a) of the Exchange Act, which makes it unlawful for any broker or dealer to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security, unless such broker or dealer is registered or associated with a registered broker or dealer.

14. As a result of the conduct described above, BCP willfully violated Section 203(a) of the Advisers Act, which makes it unlawful for any investment adviser, unless registered, to make use of the mails or any means or instrumentality of interstate commerce in connection with its business as an investment adviser.

BCP's Remedial Efforts

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

Undertakings

16. Respondent agrees to comply with the following undertakings:

- (a) By no later than ninety (90) days from the entry of this Order (the "Termination Date"), Respondent will terminate all business of providing broker-dealer and investment advisory services to any U.S. person, as that term is used in Exchange Act Rule 15a-6 [17 C.F.R. §240.15a-6], which require registration under Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act, unless those services are conducted by a BCP entity that is appropriately registered with the Commission as a broker or dealer or investment adviser or qualifies for an exception or exemption from registration (a "Registered/Exempted Entity");

- (b) By no later than sixty (60) days from the entry of this Order, for each U.S. person resident in the U.S. with an account with Respondent holding securities that is not an account with a Registered/Exempted Entity (each, a “U.S. Customer”), Respondent will send a letter, in a form not unacceptable to the Commission staff, (i) informing the U.S. Customer that Respondent is terminating the business described in paragraph 16(a) of this Order and (ii) providing the U.S. Customer with instructions regarding the termination of the business described in paragraph 16(a) of this Order;
- (c) In effecting the termination described in paragraph 16(a) of this Order, Respondent will engage in only those activities that are necessary to accomplish the objectives of the termination, including, but not limited to, liquidating transactions, communications with U.S. persons who are located in the U.S., or using U.S. jurisdictional means in a manner that is limited solely to the termination of the account relationship, provided, however, that (i) Respondent will not accept any securities from U.S. Customers, except: (1) in connection with the repurchase of securities issued by Respondent or its subsidiaries in connection with the termination of the business described in paragraph 16(a) of this Order, or (2) as payment in kind of outstanding indebtedness to Respondent; (ii) Respondent will not enter into any new positions in securities on behalf of a U.S. Customer, except a position that results from a dividend reinvestment occurring pursuant to a pre-existing contractual arrangement; and (iii) Respondent may not seek or receive any transaction-based or other compensation in connection with any securities transactions or investment advisory activities undertaken in connection with the termination of the business described in paragraph 16(a) of this Order.

16.1 Notwithstanding paragraph 16 herein, for the following special categories of accounts and products (except to the extent that broker-dealer or investment advisory services for such accounts and products are conducted by a Registered/Exempted Entity), Respondent agrees to comply with the undertakings set forth in this paragraph 16.1.

- (a) With respect to any account with Respondent holding securities that, based on the account documentation on file with Respondent, is last known to have been held by a U.S. person and for which Respondent is unable to establish and/or maintain contact with the account holder(s) prior to the Termination Date (unless it is subsequently determined that the account holder is not or is no longer a U.S. person):
 - (i) At such point as contact with the account holder(s) is re-established, Respondent shall promptly proceed, in accordance with the undertakings set forth in paragraphs 16.2(a) and (b), to

terminate the business of providing such account holder broker-dealer or investment advisory services which require registration under Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act unless those services are conducted by a Registered/Exempted Entity; and

- (ii) Respondent may not seek or receive any transaction-based or other compensation in connection with any securities transactions or investment advisory activities undertaken in connection with such account.
- (b) With respect to any account with Respondent holding securities that is held by a U.S. person and for which Respondent has determined that such account holder may be treated as having received a notice of termination pursuant to paragraph 16(b), but for which Respondent has been unable to obtain transfer or closing instructions:
- (i) Respondent will continue to comply with the undertakings in paragraph 16(c), except to the extent that Respondent is unable to maintain contact with the account holder(s), in which case such account will be treated in accordance with the undertakings set forth in paragraph 16.1(a)(i)-(ii).
- (c) With respect to any account with Respondent holding securities that is held by a U.S. person and that contains an interest in any private equity product, real estate investment fund, or other illiquid product(s) (i.e., a product subject to transfer and/or termination restrictions) unless those services are conducted by a Registered/Exempted Entity:
- (i) For any such account that, prior to the Termination Date, is known by Respondent to be held by a U.S. person:
 - (aa) Respondent shall not provide any securities services in connection with such account, except to the extent required to service the relevant illiquid product(s) (e.g., conduct capital calls);
 - (bb) Respondent may not seek or receive any transaction-based or other compensation in connection with any securities transactions or investment advisory activities undertaken in connection with such account or the portion of any management, administrative or other fee paid by the investment fund that would be allocable to such interests held

by a U.S. person (except to the extent such fee is to be paid to a third party unaffiliated with Respondent); and

(cc) Upon maturity of the relevant private equity, real estate fund or other illiquid product(s), or as soon as any applicable transfer and/or termination restrictions are no longer in force, Respondent shall promptly provide notice to the U.S. person account holder that it must cease the business of providing such account holder broker-dealer or investment advisory services which require registration under Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act unless those services are conducted by a Registered/Exempted Entity.

(ii) For any such account other than as described in paragraph 16.1(c)(i):

(aa) Respondent shall provide securities services in connection with such account only in accordance with Section 15(a) of the Exchange Act and Section 203(a) of the Advisers Act or such securities services required to service the relevant illiquid investments (e.g., conduct capital calls).

16.2. With respect to any account with Respondent holding securities which is held by an individual account holder who, after the Termination Date, becomes (or is determined to be) a U.S. person, other than accounts or services described in paragraph 16.1(c) herein: Upon Respondent obtaining knowledge that such account holder is or has become a U.S. person (e.g., by the account holder submitting new documentation indicating a relevant change in U.S. residency), Respondent agrees, in accordance with the following undertakings, to no longer provide such account holder with broker-dealer or investment advisory services which require registration under Section 15(a) of the Exchange Act or Section 203(a) of the Advisers Act unless those activities are necessary to accomplish the objectives of the termination (as described in paragraph 16(c)) or those services are conducted by a Registered/Exempted Entity:

- (a) Within 45 days, Respondent will inform the account holder that Respondent will no longer be able to provide such services unless those services are conducted by a Registered/Exempted Entity; and
- (b) Respondent will use U.S. jurisdictional means for communication about such services (other than those conducted by a Registered/Exempted Entity) in a manner that is limited to facilitating the termination of such services or the transfer of the account to a Registered/Exempted Entity.

17. Respondent will certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, 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 Gerald A. Gross, Assistant Director, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

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 BCP 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 BCP is censured.

C. Respondent BCP shall, within 7 days of the entry of this Order, pay disgorgement of \$1,352,220, prejudgment interest of \$289,838, and a civil money penalty in the amount of \$250,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 USC § 3717. 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;³
- (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:

³ The minimum threshold for transmission of payment electronically is \$1,000,000. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

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 BCP as the 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 Andrew M. Calamari, Regional Director, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

D. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary