

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15654

In the Matter of :

G-TRADE SERVICES LLC, :

CONVERGEX GLOBAL MARKETS :

LIMITED, and CONVERGEX :

EXECUTION SOLUTIONS LLC :

Respondents. :

PROPOSED PLAN OF DISTRIBUTION

1. *Background.* This Proposed Plan of Distribution (the “Plan”) has been developed pursuant to the Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order against G-Trade Services LLC (“G-Trade”), ConvergeX Global Markets Limited and ConvergeX Execution Solutions LLC (“CES”) (collectively, “Respondents”) (the “Order”) (Exchange Act Release No. 71128 (Dec. 18, 2013)). This Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

In the Order, the Commission found that Respondents engaged in a fraudulent scheme to conceal their practice of unnecessarily routing certain global trading and transition management customer¹ orders to an offshore affiliate in order to charge undisclosed mark-ups and mark-downs (“trading profits” or “TP”), in addition to disclosed commissions on those orders. The scheme involved the taking of TP from customers in connection with orders in securities traded in U.S. markets (“U.S. securities”), as well as securities traded in non-U.S. markets (“non-U.S. securities”). As a result of this conduct, the Commission found that the Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that Respondents G-Trade and CES willfully violated Section 15(c)(1) of the Exchange Act. The Commission ordered the Respondents to pay disgorgement of \$79,802,448, prejudgment interest of \$7,621,981 and a civil monetary penalty of \$20,000,000. The Order created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. In accordance with the Order, ConvergeX Group, LLC,

¹ The term “customer” as used herein shall refer to those entities that had a direct contractual account or trading relationship with one or more of the Respondents.

on behalf of the Respondents, paid a total of \$107,424,429 into an escrow account. This amount, plus the \$1,228,592 arising from the related actions against additional respondents², will constitute the corpus of the Fair Fund from which funds may be withdrawn and distributed in accordance with the Plan. The corpus may be increased prior to distribution by additional payments arising from related actions against additional respondents that the Commission may order to be aggregated in the Fair Fund.

2. *Scope of Distribution; Eligible Fair Fund Recipients.* The purpose of this distribution is to refund a portion of the TP taken from Respondents' customers between October 2, 2006 and December 31, 2011 (the "relevant period"). The proposed distribution methodology, described in Section 9, provides full refunds of TP for orders placed during the relevant period in U.S. securities and pro rata refunds of TP for orders in non-U.S. securities. The Commission staff anticipates that refunds of TP relating to orders in non-U.S. securities will cover substantially less than half of the TP taken on those orders. The Order provides that the Fund Administrator will develop a distribution plan with the assistance and cooperation of Respondents. The Order also provides that the Plan will include a methodology to identify and compensate affected current and former customers of Respondents from whom TP was taken during the relevant period. The Order obligated Respondents to pay the funds no later than 10 days from the entry of the Order. The Respondents tendered funds to the Fair Fund on December 17, 2013. This Plan sets forth the methodology to be used in paying the refunds of TP and requires Respondents to make refunds of TP to Respondents' customers.

3. *Fund Administrator.* Jennifer S. Leete, an Assistant Director in the Division of Enforcement, is proposed as the fund administrator for the Plan ("Fund Administrator"). The Fund Administrator will administer the Plan in accordance with Rule 1105 of the Commission's Rules on Fair Fund and Disgorgement Plans. As a Commission employee, the Fund Administrator shall receive no compensation, other than her regular salary as a Commission employee, for her services in administering the Fair Fund. No bond shall be required because the Fund Administrator is a Commission employee. In carrying out her duties, the Fund Administrator may be assisted by Commission staff acting under her supervision, as well as by the Respondents or their agents. The Fund Administrator will, among other things: oversee and supervise the Respondents' assistance in administering the Fair Fund; receive, review, approve and submit to the Commission a final accounting prepared by the Respondents; cooperate with the Respondents in providing the information necessary to accomplish income tax compliance; and cause the Fair Fund to be distributed in accordance with this Plan.

4. *No Notice or Claim Process.* The identity of harmed customers and the amount of TP taken from them during the relevant period will be determined from the books and records of the Respondents. In connection therewith, a third party consultant retained by Respondents will

² The related actions to date are *In the Matter of Jonathan Samuel Daspin*, Administrative Proceeding File No. 3-15652 (Exchange Act Rel. No. 71126 (Dec. 18, 2013)), and *In the Matter of Thomas Lekargeren*, Administrative Proceeding File No. 3-15653 (Exchange Act Rel. No. 71127 (Dec. 18, 2013)).

review the data and verify Respondents' allocation of the Fair Fund in accordance with the distribution methodology set forth in Paragraph 9. Accordingly, the Fair Fund is not being distributed according to a claims-made process, so the procedures for providing notice and for making and approving claims are not applicable.

5. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

6. *Tax Compliance.* Respondents shall serve as the "administrator" of the QSF for tax reporting and compliance purposes and may retain any professional services necessary or appropriate. The costs and expenses of any such tax compliance responsibilities and professional services, including information reporting and the payment of any taxes, penalties, and interest due, shall be borne by Respondents and shall not be paid out of the Fair Fund. Payments to Respondents' customers shall be made from the assets of the Fair Fund plus income (in excess of the Fair Fund's income tax liability) it may earn from the date of deposit to a date agreed upon between the Fund Administrator and Respondents. Respondents shall calculate or shall cause to be calculated an estimated distributable amount ("EDA") which shall allow for the payment of the Fair Fund's income tax obligations. The EDA shall be the balance from which the payments to Respondents' customers shall be made. Any tax withholding required on any payment to a customer shall be deducted from the gross payment to be made to that customer. The source of the gross payments to the Respondents' customers and any tax withholding shall be the EDA and shall not be separately funded by Respondents. The Fund Administrator will provide such information and cooperation to Respondents as may be reasonably necessary for the Respondents to accomplish their tax reporting, withholding and compliance responsibilities.

7. *Control of Distribution Fund.* The Commission has jurisdiction and control of the Fair Fund and shall retain control of the assets of the Fair Fund until they are transferred from the escrow account to a deposit account for distribution to harmed customers in accordance with Section 9 below. The assets of the Fair Fund have been deposited into an escrow account at a bank and, consistent with the terms of the escrow agreement, may only be disbursed in accordance with the written authorization of the Commission.

8. *Expenses of Administration.* All fees and expenses of administering the Plan shall be paid by the Respondents.

9. *Distribution Methodology.*

- a. Overview; Intent. The proposed methodology set forth in this Section 9 (the "Methodology") provides Respondents' customers full refunds of TP on U.S. securities and pro rata refunds of TP on non-U.S. securities. Customers will receive a payment in an amount equal to (i) the TP on U.S. securities, (ii) a pro rata portion of the TP on non-U.S. securities, or, where applicable, both (i) and (ii).

- b. De Minimis. Customers whose calculated payment is less than \$1,000 U.S. will not receive a payment in the distribution, provided that no de minimis threshold shall apply to TP taken on orders originating from Respondents' Global Transition Management division.
- c. Prior Refunds. In the event that Respondents shall have refunded TP to a harmed customer, otherwise eligible to be compensated under the Plan, or made an irrevocable deposit into a QSF approved by a court of competent jurisdiction for such purpose (including, but not limited to, payments made in *United States of America v. ConvergEx Global Markets Limited*, 2:13-cr-00810-JLL (D.N.J.)), prior to the distribution, such payment shall be treated as if it had been made pursuant to the Plan for purposes of all calculations hereunder, provided that Respondents have provided written evidence reasonably acceptable to the Fund Administrator of such previous payment or deposit into a QSF.
- d. Calculation. Respondents shall submit to the Fund Administrator for validation and approval an electronic spreadsheet identifying each customer that will receive a payment, the amount of the payment and information sufficient for the Fund Administrator to reasonably verify that the amount has been calculated correctly. Respondents shall prepare the spreadsheet using information from their books and records and include the following information for each customer: (i) the name of the customer; (ii) the portfolio code associated with each order; (iii) the total TP on U.S. securities; (iv) the total TP on non-U.S. securities; and (v) the pro rata amount of TP taken on non-U.S. securities (calculated in accordance with Section 9.e. below).
- e. Pro Rata Methodology. Payments attributable to TP on non-U.S. securities will be calculated for each customer by multiplying the TP on non-U.S. securities for that customer by a pro rata percentage based on the funds remaining in the Fair Fund. Respondents will calculate the pro rata percentage by subtracting (x) the aggregate amount of TP on U.S. securities to be paid to all customers in the distribution, from (y) the total amount in the Fair Fund, and then dividing the resulting difference by the total amount of TP on non-U.S. securities taken from all customers entitled to receive a payment in the distribution.
- f. Alternative Payment Arrangements. Unless otherwise approved by the Fund Administrator in writing and covered by the disbursement authorized by the Commission pursuant to Section 10, Respondents shall send distribution payments to their direct customers of record for the trades on which TP was taken.
- g. Fund Administrator's Discretion Regarding Payments. The Fund Administrator will have discretion to consider issues, raised by a customer eligible to receive payments, concerning the feasibility of allocating distribution payments to its underlying customers, and to make adjustments, consistent with the purposes of this

Plan and after consultation with Respondents, to the amount a customer or customers will receive pursuant to the Methodology.

10. *Validation and Approval of Disbursement of the Fair Fund.* Upon written instruction from the Fund Administrator, the Respondents will disburse the Fair Fund in accordance with the Methodology, by mailing a check, by sending a payment by wire transfer, or by delivering payment to each customer in such other alternative manner as may be approved in writing by the Fund Administrator. Before instructing the Respondents to disburse the Fair Fund, the Fund Administrator, with the assistance of Commission staff, will validate the applicable calculation, verify that such calculation is in accordance with the Plan and the Methodology, and obtain authorization from the Commission to disburse the Fair Fund pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans. Within five (5) business days of receipt of written instructions from the Fund Administrator to disburse the Fair Fund, Respondents shall cause the Fair Fund to be disbursed. Respondents will notify the Fund Administrator of any returned payments due to non-delivery, insufficient addresses, and/or other deficiencies. Respondents shall exercise reasonable efforts in good faith to research and explain any errors that result in non-delivery and, if requested by the Fund Administrator, submit a supplemental calculation for payment of the returned items.

The Respondents are also responsible for accounting for all payments in a form acceptable to the Fund Administrator. In the event that any distribution is in the form of a paper check in lieu of an electronic transfer, each check will state on its face that it is valid for 90 days. After 90 days from the date on the distribution check, Respondents shall notify the Fund Administrator of all uncashed checks. Respondents will cancel/void all outstanding payments and, if applicable, return the funds to the escrow account for the Fair Fund.

11. *Approval of Fair Fund Disbursements.* Before instructing the Respondents to disburse the Fair Fund, the Fund Administrator will obtain authorization from the Commission to disburse the Fair Fund pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disgorgement Plans.

12. *Information Mailing to Accompany Payments.* All payments shall be accompanied by a written communication that includes: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the QSF and related tax consequences, if required; (c) a statement that checks will be void after 90 days; (d) the name of a person to contact with questions; (e) the amount of payment that represents TP on orders in U.S. securities; and (f) the amount of payment that represents TP on orders in non-U.S. securities. Each customer receiving a refund of TP taken in connection with an order in non-U.S. securities shall receive a written communication stating the total amount of TP taken from such customer on transactions in non-U.S. securities. Any such information letter or other communication about this Plan shall be submitted to the Fund Administrator for review and written approval. The accompanying mailing will clearly indicate that the money is being distributed from a Fair Fund established by the Commission.

13. *Notice of Proposed Plan and Opportunity for Comment.* In accordance with Rule 1103 of the Commission’s Rules on Fair Fund and Disgorgement Plans, notice of the Plan shall be published in the SEC Docket and on the Commission’s website at www.sec.gov. Interested parties may also obtain a written copy of the Plan by submitting a written request to Nancy Chase Burton, Esq., United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. All persons who desire to comment on the Plan may submit their comments, in writing, no later than thirty (30) days from the date of the Notice of Proposed Plan of Distribution: (1) to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; (2) by using the Commission’s internet comment form (www.sec.gov/litigation/admin.shtml); or (c) by sending an e-mail to rule-comments@sec.gov. Comments submitted should include “Administrative Proceeding File Number 3-15654” in the subject line. Comments received will be publicly available. Persons should submit only information that they wish to make publicly available.

14. *Final Accounting.* During the first 10 days of each calendar quarter, the Respondents shall submit an accounting of all monies earned or received and all monies spent in connection with the administration of the Plan to the Fund Administrator, who will file it with the Commission, and Respondents will submit a final accounting to the Fund Administrator, both accountings in a format provided by the Commission staff. The Fund Administrator, with the assistance of the Commission staff, shall review the final accounting, approve it, and submit it for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

15. *Amendments and Procedural Deadline Extensions.* The Fund Administrator shall take reasonable and appropriate steps to cause the Fair Fund to be distributed by Respondents according to the Plan. Where the Fund Administrator deems necessary, the Fund Administrator may implement immaterial changes to the Plan to effectuate its general purposes. If a change is deemed material by the Fund Administrator, Commission approval is required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission’s own motion. For good cause shown, the Commission staff may extend any of the procedural deadlines set forth in this Plan.

16. *Assistance by Respondents.* Respondents will assist the Fund Administrator and the Commission staff by promptly providing requested information necessary for the administration and implementation of the Plan.

17. *Disposition of Undistributed Funds.* After all assets have been distributed, any amounts remaining in the Fair Fund shall constitute the Residual. The Residual may include distributions from checks that have not been cashed or from checks that were not delivered or from funds returned to the Fund Administrator or the Respondents. The Residual will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

18. *Termination of the Fair Fund.* Upon completion of the distribution of the Fair Fund, the Respondents shall make arrangements for the final payment of taxes and filing the final tax returns, and the Fund Administrator shall submit a final accounting to the Commission. The Fair Fund shall

be eligible for termination, and the Fund Administrator shall be discharged, after all of the following have occurred: (a) a final accounting, in the accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval, and has been approved by, the Commission; (b) all income taxes and other fees due and owing by the Fair Fund have been paid by the Respondents; (c) all taxes withheld from distributions to customers have been tendered to the appropriate tax agencies; (d) all expenses associated with the administration of the Fair Fund have been paid by the Respondents; and (e) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the Commission staff shall arrange for the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and shall seek an order from the Commission to approve the termination of the Fair Fund and discharge the Fund Administrator.