

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 71126 / December 18, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30838 / December 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15652

<p>In the Matter of</p> <p>Jonathan Samuel Daspin,</p> <p>Respondent.</p>
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ORDER INSTITUTING ADMINISTRATIVE AND CEASE-AND-DESIST PROCEEDINGS, PURSUANT TO SECTIONS 15(b) AND 21C OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 9(b) OF THE INVESTMENT COMPANY 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 Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 9(b) of the Investment Company Act of 1940 (“Investment Company Act”) against Jonathan Samuel Daspin (“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. Respondent admits to the facts set forth in Sections III.B. and C. below, acknowledges that his conduct violated the federal securities laws, admits the Commission’s jurisdiction over him and the subject matter of these proceedings and 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 and Section 9(b) of the Investment Company 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:

A. Summary

These proceedings arise out of Respondent's participation in a fraudulent scheme to conceal his employer's practice of charging undisclosed mark-ups and mark-downs in addition to disclosed commissions on certain global trading and transition management customer orders. G-Trade Services LLC ("G-Trade") and ConvergEx Execution Solutions LLC ("CES") are broker-dealers that held themselves out to the public as conflict-free agency brokers that charged explicit commissions for equity order execution. In addition to charging explicit commissions, however, G-Trade and CES routinely routed customer orders to their offshore affiliate, ConvergEx Global Markets Limited ("CGM"), which took undisclosed "trading profits" ("TP") from global trading and transition management customers by executing orders on a riskless basis and opportunistically adding a mark-up or mark-down to the price of the security. Respondent was the global head of trading for CGM, a Bermuda broker-dealer. He often consulted with the client-facing brokers to assess whether and how much TP to take, in order to minimize the risk of detection by the customer.

Respondent and other employees feared that they would lose business if customers became aware of the practice of taking TP. As a result, Respondent participated in a scheme to intentionally or recklessly conceal the practice of taking TP from customers. Respondent and others engaged in specific acts to hide CGM's practice of taking TP from customers, including opportunistically taking TP only when they believed that the risk of detection by the customer was low, using technological tools to conceal CGM's identity in otherwise transparent markets, intentionally delaying the implementation of real-time trade reporting and utilizing proprietary software applications to quickly fabricate false execution prices. In addition, with the knowledge and approval of his direct supervisor, Respondent falsified trading data to cover up the fact that CGM had taken TP on trades, knowing that those falsified documents would likely be provided to customers.

By virtue of his conduct, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; willfully aided and abetted and caused another person's violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and willfully aided and abetted and caused CES's and G-Trade's violations of Section 15(c)(1) of the Exchange Act.

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.

B. Respondent and Other Relevant Entities and Individuals

1. **Jonathan Samuel Daspin** was the global head of trading of ConvergEx Global Markets Limited from 2006 until his discharge in 2011. From 1992 through 2004, Respondent was a registered representative associated with broker-dealers registered with the Commission. Respondent held securities licenses from 1992 until 2004. Respondent is a resident of New Jersey.

2. **ConvergEx Global Markets Limited** was a Bermuda broker-dealer and a wholly-owned subsidiary of ConvergEx Group, LLC (“ConvergEx”).² CGM is not registered with the Commission in any capacity. The CGM trading model at issue in these proceedings predated the formation of ConvergEx in October 2006.

3. **G-Trade Services LLC** is a registered broker-dealer and a wholly-owned subsidiary of ConvergEx. G-Trade is headquartered in New York. G-Trade is currently and was at all times relevant to these proceedings registered as a broker-dealer with the Commission. ConvergEx Global Markets Division (the “CGM Division”) was an unincorporated business division of G-Trade and other offshore affiliates of ConvergEx, which offered global trading services from 2006 until 2011.

4. **ConvergEx Execution Solutions LLC** is a registered broker-dealer and a wholly-owned subsidiary of ConvergEx. CES is headquartered in New York. CES is currently and was at all times relevant to these proceedings registered with the Commission as a broker-dealer and as an investment adviser and was a member of the New York Stock Exchange. Global Transition Management (“GTM”) is an unincorporated business division of CES and other offshore affiliates of ConvergEx, which offers transition management services.

C. Facts

5. From 2006 through 2011, the CGM Division offered customers global trading services, and GTM provided global transition management services. The CGM Division’s global trading services involved handling large non-electronic orders for either a single stock or a basket of stocks in markets around the world, including the United States. GTM’s global transition management services generally involved handling large orders to buy and sell stocks for customers who were changing fund managers or investment strategies. Customers seek out transition management services in order to minimize risks to their portfolios and preserve the value of their stocks while in transition.

² ConvergEx, formerly known as BNY ConvergEx Group, LLC, is a global investment services and technology firm that was established in October 2006 through the combination of an institutional trade execution business and an investment technology company. ConvergEx is headquartered in New York and is not registered with the Commission in any capacity.

6. GTM and the CGM Division of G-Trade acted as agents on behalf of customers and charged a disclosed commission. In this capacity, sales traders received customer orders and entered them into CGM's order management system, which allowed them to automatically route the orders to CGM in Bermuda.³

7. The CGM Division of G-Trade, GTM and CGM were not market makers, and they generally did not commit their own capital to facilitate customer executions or offer customers guaranteed prices. Thus, they assumed little, if any, market risk when they executed customer orders.

8. From 2006 until his discharge in 2011, Respondent was employed as CGM's global head of trading. When Respondent and other CGM traders received orders originating from GTM or the CGM Division of G-Trade, they acted in a riskless principal capacity and bought or sold the securities for CGM's own account through a local broker in the relevant market.⁴

9. At the direction and with the approval of senior management, if Respondent and the other CGM traders believed that they could add a mark-up or mark-down without detection by a customer, they added one to the price that CGM had received from the local broker and kept the difference for CGM as trading profits or "TP." CGM then delivered the execution back to the CGM Division of G-Trade (which, in the case of an order for a transition management customer, would send the execution on to GTM). The trade would then be confirmed to the customer at a price that included TP. As a result, when Respondent took TP on a customer's trade, the price reported to the customer was worse than the price that CGM had received from the local broker.

10. Respondent or other CGM traders often took TP on orders to buy or sell stocks listed on U.S. exchanges. Most of these orders were received in the New York office of GTM or the CGM Division, and instead of routing those orders to CES, which was ConvergEx's U.S. trading arm and a member of U.S. exchanges, GTM or the CGM Division of G-Trade unnecessarily routed those orders to CGM in Bermuda in order to take TP. Respondent or other CGM traders in Bermuda would then in turn execute the orders with third-party U.S. broker-dealers and add TP to the price received before delivering the execution back to GTM or the CGM Division of G-Trade.

³ For orders executed in Asian markets, GTM and the CGM Division routed customer orders to an affiliated broker in Hong Kong wholly owned by ConvergEx, which functioned in a similar capacity to CGM in Bermuda.

⁴ In general, a "riskless principal" trade occurs when a broker-dealer, after receiving a customer order to buy (or sell) a security, buys (or sells) the security for its own account from (or to) another person in a contemporaneous offsetting transaction and then allocates the shares to the customer order.

11. Each customer's trade confirmation disclosed the commission charged by CES or G-Trade, but did not state that CGM also had taken a mark-up or mark-down on the price at which the local broker filled the order.

Marketing Materials and Disclosures

12. From 2006 to 2011, GTM and the CGM Division marketed themselves as "conflict free" agency-only brokers offering global execution services.

13. GTM and the CGM Division used several versions of customer disclosures during the relevant period, and the relevant disclosures expanded over time. These disclosures generally stated, "Client authorizes ConvergeEx, in its sole discretion and without notice, to use the services of one or more other persons or entities (including its affiliates) in connection with the execution, clearance and/or settlement of any Order and/or Transaction, or otherwise to service Client or perform its obligations, and that such persons or entities may act as principal and earn a spread[.]"

14. These disclosures did not state the regularity with which GTM and the CGM Division of G-Trade routed orders to CGM and took TP. These disclosures also did not state that GTM and the CGM Division routed orders for securities listed on U.S. exchanges to their affiliate in Bermuda, which took a mark-up or mark-down, instead of CES, their "U.S. trading arm" and a member of U.S. exchanges. Furthermore, the disclosures did not inform customers of the amount of TP that CGM took on trades or indicate to customers that, in many instances, they were paying several times more than the agreed-upon commission amount.

Concealing TP from Customers

15. Respondent and his superiors understood that customers likely were unaware of CGM's practice of taking TP, and they feared customers would withdraw their business if they learned of the practice. As a result, from at least 2006 until his discharge in 2011, as described herein, Respondent participated in a fraudulent scheme by taking steps to intentionally or recklessly conceal TP from customers.

TP Taken Opportunistically

16. With the knowledge and approval of CGM senior management, Respondent concealed the practice of taking TP by doing so on an opportunistic basis. In other words, Respondent's decision whether to take TP and the amount of TP to take depended largely on whether Respondent thought that CGM could take TP and how much TP it could take without the customer detecting it. Respondent also instructed other CGM traders to take TP in an opportunistic manner. For example, on one occasion, Respondent sent an instant message to a CGM trader in Hong Kong, directing, "You must take TP, take as much as you can get away with."

17. Respondent was often able to take TP without detection because the customers whose orders he traded were often asleep during market trading hours due to time zone

differences. Conversely, Respondent did not take TP from customers who actively monitored executions throughout the day through the receipt of real-time trade information.

18. To further avoid potentially revealing the practice of taking TP, Respondent instructed sales traders that they needed to give Respondent notice prior to trading if the sales traders' customers were going to ask for time and sales reports. If prior to trading, the sales traders advised that a customer might request time and sales reports, Respondent would refrain from taking TP on those trades.

19. Respondent also suspended the practice of taking TP at times when he knew customers were scrutinizing their executions, in order to impress those customers and secure future business. In one instance, at the direction of his supervisor, Respondent suspended the practice of taking TP when a customer requested time and sales reports to analyze execution prices and then resumed taking TP after his supervisor was told that the customer was no longer conducting the analysis.

20. Respondent also determined the amount of TP that he could take from customers based on his perception of the likelihood that the customer would detect the charge. In certain instances when Respondent perceived the risk of detection to be low, he took TP in an amount that caused some customers to buy at a price equal to the market high of the day and sell at a price equal to the market low of the day, where better prices could have been provided. Senior management of CGM was aware of these practices, and when consulted, directed and approved of setting customer prices in this manner.

21. At the encouragement of certain members of senior management, Respondent consulted with sales traders at GTM and the CGM Division regarding the sales traders' assessment of the "sensitivity" of their customers to determine whether a particular customer was paying close attention to execution prices. The end result of this practice was that certain customers received worse execution prices than they would have received if they had been more "sensitive."

Preventing Customers from Monitoring Their Executions in Real Time

22. It became more difficult for Respondent to take TP without detection when advances in technology prompted an increased number of customers to request intraday execution price information on their trades in "real time." Respondent and senior management of CGM understood that CGM would not be able to take TP if the customers received a live data feed that revealed the prices that CGM itself had received in the local markets for the customers' trades.

23. As a result, Respondent, his supervisor and CGM Division sales traders discussed possible steps they could take to delay implementing real-time trade reporting for one highly profitable customer. After the customer requested real-time reporting, and even though CGM had the ability to deliver this service to the customer at the time, Respondent and employees in the CGM Division took steps to delay providing real-time trade reporting to that customer for approximately one year in order for CGM to be able to continue to take TP on that customer's

trades. Beyond that, even after the customer began receiving real-time trading data, Respondent and other CGM traders, with the knowledge and approval of CGM senior management, disabled the real-time service from time-to-time, enabling CGM to continue taking TP on at least some of that customer's trades.

Falsified Time and Sales Reports

24. Certain customers requested time and sales reports for trades on which CGM had taken TP. Because CGM had added a mark-up or mark-down to the price received from the local broker in order to take TP, the average of the prices reflected on the actual time and sales reports did not match the price that had already been reported to the customer on the trade confirmation. Due to these discrepancies and the risk that the inquiring customers would discover TP had been taken on their trades, Respondent, with the approval of the CEO of CGM, created false trade execution data and provided that false data to client-facing sales traders to provide to customers, rather than having the sales traders acknowledge to the customer that mark-ups or mark-downs had been taken.

25. In some instances, Respondent and senior management of CGM directed sales traders to tell customers that the time and sales reports no longer existed. In other instances, Respondent altered the time and sales data reflecting CGM's actual execution prices, so that the prices and volumes on the altered time and sales reports would average to the price, inclusive of TP, that had appeared on the customers' confirmation. Respondent also taught some of the other CGM traders to create these false time and sales reports. Once a false report was prepared, Respondent would provide it to sales traders in a format that would make it difficult for the customer to analyze. Senior management of CGM was aware that these false reports were provided to customers who asked for prints for their trades.

26. On one occasion, a customer requested a time and sales report for orders of a U.S. equity on which CGM had taken TP. Respondent altered the actual time and sales data so that the prices reflected on the report he provided to the sales trader servicing the customer would average to the price, inclusive of TP, that had previously been provided to the customer. Respondent then sent the falsified time and sales report to the client-facing sales trader and the CEO of CGM, knowing that the sales trader would likely forward the falsified report to the customer. Respondent sent the report as an image file so that the customer would not be able to easily analyze the data.

Technological Tools

27. Respondent employed technological tools to conceal CGM's practice of taking TP from customers. On at least one occasion when Respondent believed that there might be market transparency on trades that were part of a transition, with the approval of certain members of senior management, he used an anonymous broker code and an algorithmic tool provided by G-Trade to reduce that transparency in order to take TP without detection by the customer. Using G-Trade's algorithmic tool enabled Respondent to hide CGM's identity in the market so that the customer would not be able to identify the entities with whom CGM traded or the prices it received. Although this algorithmic tool could be used for legitimate purposes, such as promoting

market anonymity in order to minimize market impact of trades, Respondent used this anonymity on this occasion to take TP without risking detection by the customer.

28. In addition, Respondent provided guidance on the development and implementation of software known as “AutoTP” that allowed him and other CGM traders to quickly compare actual execution prices to market highs, lows and various benchmarks. This tool helped Respondent and other traders maximize TP and arrive at a customer price that minimized the likelihood of detection by the customer. Respondent on at least one occasion also used this software to create plausible execution prices for an altered time and sales report.

Advice of Counsel

29. Respondent was advised by ConvergEx’s in-house legal counsel that the general practice of taking TP had been approved by outside legal counsel and that the disclosure language was adequate. Legal counsel, however, was never advised and was unaware of the full extent of CGM’s and Respondent’s practices regarding the taking of TP. For example, Respondent and other CGM traders made false statements to customers in order to conceal CGM’s practice of taking TP and took numerous other steps to intentionally or recklessly conceal TP from customers. Thus, Respondent did not receive legal advice that his participation in a scheme to conceal from customers CGM’s practice of taking TP was permissible.

D. Violations

30. As a result of the conduct described above, Respondent willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

31. As a result of the conduct described above, Respondent willfully aided and abetted and caused another person’s violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

32. As a result of the conduct described above, Respondent willfully aided and abetted and caused G-Trade’s and CES’s violations of Section 15(c)(1) of the Exchange Act, which prohibits fraudulent conduct by a broker-dealer in effecting, inducing or attempting to induce any securities transaction.

E. Respondent’s Cooperation

In determining to accept the Offer, the Commission considered the cooperation Respondent afforded the Commission staff.

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 Sections 15(b) and 21C of the Exchange Act and Section 9(b) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent cease and desist from committing or causing any violations and any future violations of Sections 10(b) and 15(c) of the Exchange Act and Rule 10b-5 thereunder.

B. Respondent be, and hereby is:

barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or nationally recognized statistical rating organization;

prohibited from serving or acting as an employee, officer, director, member of an advisory board, investment adviser or depositor of, or principal underwriter for, a registered investment company or affiliated person of such investment adviser, depositor or principal underwriter; and

barred from participating in any offering of a penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

C. Any reapplication for association by Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Respondent shall pay disgorgement of \$1,000,000 and prejudgment interest of \$111,550 to the Securities and Exchange Commission. Respondent shall pay \$150,000 within 30 days of the entry of this Order and pay the remainder within 365 days of the entry of this Order. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. 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;⁵
- (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

⁵ The minimum threshold for transmission of payment electronically is \$1,000,000.00 as of December 31, 2012. For amounts below the threshold, respondents must make payments pursuant to option (2) or (3) above.

(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 Jonathan Samuel Daspin 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 Stephen L. Cohen, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549-5553.

E. Such disgorgement and prejudgment interest may be combined with the funds paid in In the Matter of G-Trade Services LLC, ConvergeX Global Markets Limited and ConvergeX Execution Solutions LLC, to be filed contemporaneously with these proceedings, for distribution to harmed customers.

F. Respondent acknowledges that the Commission is not imposing a civil penalty based upon his entry into a Cooperation Agreement with the Commission in which he agrees to cooperate fully and truthfully in these proceedings and any other related enforcement litigation or proceeding to which the Commission is a party. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent has failed to comply with the obligations set forth in the Cooperation Agreement to cooperate fully and truthfully in these proceedings or any other related enforcement litigation or proceeding to which the Commission is a party, the Division may, at its sole discretion and with prior notice to the Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may contest by way of defense in any resulting administrative proceeding whether he failed to comply with his obligations to cooperate fully and truthfully, but may not: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Elizabeth M. Murphy
Secretary