

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 71128 / December 18, 2013**

**INVESTMENT ADVISERS ACT OF 1940**  
**Release No. 3744 / December 18, 2013**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-15654**

**In the Matter of**

**G-Trade Services LLC,  
ConvergEx Global Markets Limited,  
and  
ConvergEx Execution Solutions LLC,  
  
Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE  
AND CEASE-AND-DESIST PROCEEDINGS,  
PURSUANT TO SECTIONS 15(b) AND 21C  
OF THE SECURITIES EXCHANGE ACT OF  
1934 AND SECTION 203(e) 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 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 (“Advisers Act”) against G-Trade Services LLC (“G-Trade”), ConvergEx Global Markets Limited (“CGM”), and ConvergEx Execution Solutions LLC (“CES”) (collectively, “Respondents”).

**II.**

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Respondents admit the facts set forth in Sections III.B. and C. below, acknowledge that their conduct violated the federal securities laws, admit the Commission’s jurisdiction over them and the subject matter of these proceedings and consent 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 203(e) 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 Respondents' Offers, the Commission finds<sup>1</sup> that:

#### A. Summary

These proceedings arise out of a fraudulent scheme to conceal Respondents' practice of unnecessarily routing certain global trading and transition management customer orders to an offshore affiliate in order to charge undisclosed mark-ups and mark-downs in addition to disclosed commissions on those orders. Respondents held themselves out to the public as a unified conflict-free agency broker that charged explicit commissions for equity order execution. In addition to explicit commissions, however, Respondents routinely took undisclosed "trading profits" ("TP") from global trading and transition management customers by routing customer orders to an offshore affiliate, which executed orders on a riskless basis and opportunistically added a mark-up or mark-down to the price of the security. Often the offshore affiliate 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. TP often greatly exceeded the disclosed commissions, which resulted in many customers paying more than double the amount that they thought they were paying to execute orders. The practice of executing orders through the offshore affiliate and taking TP was not adequately disclosed to customers and was inconsistent with Respondents' purported conflict-free agency model. In addition, through this practice, Respondents failed to seek to obtain best execution.

Respondents believed that they would lose business if customers became aware of this practice. As a result, Respondents orchestrated a scheme to intentionally or recklessly conceal TP from customers. The foundation of the scheme was Respondents' multiple-broker corporate structure that included the offshore affiliate, which was necessary to add an additional layer of execution charges while maintaining the appearance of technical compliance with regulatory requirements. Respondents also engaged in specific acts to hide 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 their 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, Respondents made false and misleading statements to customers who inquired about Respondents' overall compensation, including providing certain customers with falsified trading data to cover up the fact that the offshore affiliate had taken TP on their orders.

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<sup>1</sup> The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

Customers with large orders, including those arising out of the global trading and transition management services at issue here, typically rely on their brokers to execute orders on their behalf at the most favorable terms reasonably available under the circumstances. Monitoring the execution of these orders and assessing the quality of a broker's services can be difficult for even the most sophisticated customers – particularly given the complex nature of today's markets, where brokers often need to choose from a variety of order types, routing strategies, and trading venues to execute large orders. Customers rely on the honesty and expertise of their brokers and are ill-positioned to decipher disclosures that may be technically accurate but are materially misleading.<sup>2</sup> Often, as in this case, customers ask their brokers for general information on how their orders are handled, as well as request specific data to enable more detailed tracking of execution quality. In such cases, brokers must provide accurate information, without material misstatements or omissions, including by responding to customer inquiries in a transparent and complete manner, in order for customers to be able to assess the quality and overall costs of the broker's services.

By virtue of their conduct, Respondents willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and G-Trade and CES willfully violated Section 15(c)(1) of the Exchange Act.

After commencement of the Commission's investigation, Respondents provided substantial cooperation to the Commission staff and undertook significant remedial measures. For example, the Audit and Risk Committee of Respondents' ultimate parent company retained separate counsel, who conducted an internal investigation and, together with company counsel, promptly reported to the staff the factual information developed in counsel's witness interviews and document review. Counsel consistently responded to staff requests in a timely fashion and in a useful format, and on several occasions identified significant evidence for the staff, which accelerated the progress of the investigation. Respondents also closed down the offshore affiliate, discharged a number of employees, including employees in management positions, and ceased the routing of U.S. securities offshore for order handling. Moreover, in 2012, Respondents augmented disclosures related to global trading and transition management, enhanced relevant policies, procedures and compliance programs and hired a new general counsel.

## **B. Respondents**

1. **G-Trade Services LLC** is a registered broker-dealer and a wholly-owned subsidiary of ConvergEx Group, LLC ("ConvergEx").<sup>3</sup> G-Trade is headquartered in New York

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<sup>2</sup> See *SEC v. Gabelli*, 653 F.3d 49, 57 (2d Cir. 2011), *rev'd on other grounds*, — U.S. —, 133 S.Ct. 1216, 185 L.Ed.2d 297 (2013) ("The law is well settled . . . that so-called 'half-truths'—literally true statements that create a materially misleading impression—will support claims for securities fraud").

<sup>3</sup> 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

and has been registered as a broker-dealer with the Commission since October 2006. 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.

2. **ConvergEx Global Markets Limited** was a Bermuda broker-dealer and is a wholly-owned subsidiary of ConvergEx. CGM is not registered with the Commission in any capacity. CGM ceased all trading activities in early 2012 and voluntarily relinquished its securities license with the Bermuda Monetary Authority in 2012. The CGM trading model at issue in these proceedings predated the formation of ConvergEx in October 2006.

3. **ConvergEx Execution Solutions LLC** is a registered broker-dealer and a wholly-owned subsidiary of ConvergEx. CES is headquartered in New York. CES has been registered with the Commission as a broker-dealer since January 1994, and as an investment adviser since September 2006. CES has been a member of the New York Stock Exchange since January 1994. Global Transition Management (“GTM”) is an unincorporated business division of CES and other offshore affiliates of ConvergEx, which offers transition management services.

### C. Facts

#### *Order Routing Practices and Customer Charges*

4. From 2006 through 2011, Respondents executed equity orders for institutional customers, including funds managed on behalf of charities, religious organizations, retirement plans, universities and governments.

5. The CGM Division offered customers global trading services, and GTM provided global transition management services.<sup>4</sup> 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 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.

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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.

<sup>4</sup> The conduct that is the subject of this Order involves certain segments of the businesses operated by CES and G-Trade from 2006 through 2011. These proceedings do not involve the following businesses of CES, G-Trade or their affiliates: U.S. Program and Sales Trading, Options Services, Prime Services, ATSS, Commission Management and Recapture Services, Clearing, or Technology. These proceedings also do not involve orders executed through ConvergEx’s electronic Direct Market Access (“DMA”) platform.

6. Respondents are not market makers, and they generally do not commit their own capital to facilitate customer executions or offer customers guaranteed prices. Thus, Respondents assume little, if any, market risk when they execute customer orders.

7. GTM and the CGM Division of G-Trade acted as agent 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. With a customer order in hand, CGM acted in a riskless principal capacity and bought or sold the security for CGM's own account through a local broker in the relevant market.<sup>5</sup> If CGM employees believed that they could add a mark-up or mark-down without detection by a non-fiduciary customer, they added one to the price received from the local broker and kept the difference for Respondents as trading profits or "TP."<sup>6</sup> CGM then delivered the execution back to GTM or the CGM Division of G-Trade, which confirmed the trade to the customer at a price that included TP. As a result, when CGM took TP on a customer's trade, the price reported to the customer by GTM or the CGM Division was worse than the price that CGM had received from the local broker.

8. CGM 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, Respondents unnecessarily routed those orders to CGM in Bermuda in order to take TP. 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.

9. 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.

10. The amount of TP taken on trades often was more than the disclosed commission. It was not uncommon for the amount of TP to be several times the amount of the commission that the customer had paid CES or G-Trade. For example, GTM conducted a transition for a university, which paid GTM approximately \$93,000 in disclosed commissions, but also paid approximately \$543,000 in TP. Similarly, GTM conducted a transition on behalf of a

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<sup>5</sup> 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.

<sup>6</sup> Some customers asked Respondents to handle their trades on a fiduciary basis. When customers requested fiduciary treatment, Respondents did not take TP on those customers' trades and typically charged those customers higher disclosed commission rates.

charitable organization, which paid approximately \$33,000 in disclosed commissions, but also paid approximately \$283,000 in TP. In both cases, the transitions involved trades only in securities listed on U.S. exchanges, yet GTM unnecessarily routed the customers' orders offshore to CGM in order to take TP.

11. TP was an important revenue source for Respondents, and the profitability of CGM and GTM in large part depended on it.

### *Concealing TP from Customers*

12. Many employees of Respondents, including certain members of their senior management, understood that customers likely were unaware of CGM's practice of taking TP and would fire them if they learned of the practice. As a result, from 2006 through 2011, as described herein, Respondents engaged in a fraudulent scheme by taking steps to intentionally or recklessly conceal from customers the practice of taking TP.

### *Marketing Materials and Disclosures*

13. From 2006 to 2011, Respondents marketed themselves as a "conflict free" agency-only broker offering global execution services.

14. Some of Respondents' marketing materials described Respondents' global trading services under the "BNY ConvergeEx Group" brand as a "conflict-free" solution with access to global markets "all through one organization." With respect to these services, Respondents stated that "[o]ur interests are aligned with yours." Likewise, Respondents stated, "[o]ur primary interest is putting your interests first."

15. GTM at times marketed its transition management services by stating, "with our agency-only platform, our interests are always fully aligned with yours." GTM also at times promoted its transition management services as the customer's "conflict-free advocate." GTM at times further advertised that it eliminated "unnecessary transactions" and promised "full transparency." For these services, GTM at times represented to customers that the commission schedule included "all of our charges."

16. In light of the practice of taking TP described herein, these statements were untrue with respect to Respondents' order handling practices for non-fiduciary orders.

17. Respondents 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[.]"

18. 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, Respondents did not disclose the amount of TP that they took on trades or indicate to customers that, in many instances, they were paying several times more than the agreed-upon commission amount.

19. Certain members of CGM’s and G-Trade’s senior management were aware that these disclosures did not inform customers of their routine practice of taking TP or the magnitude of the TP in comparison to the commission.

### *Multiple-Broker Structure*

20. G-Trade and CES unnecessarily used CGM, which was established prior to the formation of ConvergEx, to execute certain customer orders. This multiple-broker structure was critical to the practice of taking TP. Specifically, GTM and the CGM Division of G-Trade received orders worldwide through sales traders located in New York and elsewhere, but maintained their global traders in a separate broker entity, CGM, which was located in Bermuda.<sup>7</sup>

21. CGM in Bermuda and the CGM Division (which included New York-based global sales traders registered with G-Trade) were operated as one business. For example, CGM’s Bermuda operation was managed jointly with the CGM Division of G-Trade in New York, and TP generated in Bermuda was credited or “shadow posted” to CES and G-Trade for various business reasons, including for employee compensation determinations. In addition, CGM’s TP and commission revenues were regularly discussed with senior management of ConvergEx.

22. There was no benefit to customers arising from the fact that the services were provided in Bermuda by a separate broker. Rather, CGM’s Bermuda operation was used as a means to take TP. Particularly with respect to U.S. equities, GTM and the CGM Division routed certain orders to CGM in order to take TP, knowing that many trades would be more profitable for Respondents at customers’ expense. CGM did not provide additional necessary services in handling these orders and routed them back to brokers in the U.S. for execution. Respondents thus improperly interpositioned CGM between the customer and the relevant market and failed to seek to obtain best execution on customer orders.

23. In 2007, certain members of senior management approved GTM’s decision to increase the routing of orders for U.S. equities to CGM in Bermuda. CGM could generate more profits by adding TP to the customer’s price than CES could generate by charging commissions alone. Significantly, because there were increased settlement costs associated with routing trades

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<sup>7</sup> 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.

to Bermuda, certain members of senior management directed that customer orders not be routed to CGM unless there was an opportunity to take TP from customers.

### ***TP Taken Opportunistically***

24. Respondents concealed their practice of charging customers both commissions and TP by making decisions regarding TP on an opportunistic basis. In other words, Respondents' decision whether to take TP, and the amount of TP to take, depended largely on whether Respondents thought that CGM could take TP without the customer detecting it. On one occasion, CGM's then head trader directed another trader, "You must take TP, take as much as you can get away with."

25. To this end, the CGM Division and GTM generally assessed the "sensitivity" of their customers to determine whether a particular customer was paying attention to execution quality. The CGM Division of G-Trade and GTM communicated that information to CGM in Bermuda, and CGM did not take TP on trades for "sensitive" customers.

26. Similarly, CGM often took TP when customers were asleep during market trading hours because of time zone differences. On the other hand, CGM did not take TP from customers who actively monitored executions throughout the day through the receipt of real-time trade information.

27. Likewise, CGM, with the knowledge and approval of its senior management, did not take TP on trades if customers, prior to trading, requested a "time and sales" report that would detail the times of execution and prices received on the individual executions underlying a customer's order, and thus expose any TP taken by CGM.

28. The CGM Division also suspended the practice of taking TP at times when it knew customers were scrutinizing their executions, in order to impress those customers and secure future business. In at least one instance, CGM suspended the practice of taking TP when a customer requested time and sales reports to analyze execution prices and then resumed taking TP after they were told that the customer was no longer conducting the analysis.

29. Respondents also determined the amount of TP that they could take from customers based on their perception of the likelihood that the customer would detect the charge. For example, in certain instances when Respondents perceived the risk of detection to be low, CGM took TP in an amount that resulted in customers buying at a price equal to the market high of the day and selling 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.

30. The end result of this practice was that certain customers received worse execution prices from Respondents than they would have received if they had been more "sensitive." Certain members of Respondents' senior management encouraged employees to

communicate information regarding customers' perceived "sensitivity" to CGM to maximize the amount of TP taken by CGM.

### ***Preventing Customers from Monitoring Their Executions***

31. To conceal TP, Respondents took steps to prevent their customers from monitoring their trade executions. For example, certain customers were told that they needed to give Respondents prior notice in order to receive time and sales reports.

32. Likewise, the practice of taking TP became threatened when advances in market technology prompted an increased number of customers to request intraday execution price information on their trades in "real-time." Respondents understood that they 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.

33. As a result, CGM took steps to delay implementing real-time trade reporting for one highly profitable customer. After the customer requested real-time reporting, the CGM Division made misleading statements to the customer indicating that it did not have the capability, and it delayed implementing the service for approximately a year in order to take TP. To continue to take TP even after the customer started receiving real-time data, CGM, working in coordination with employees of the CGM Division of G-Trade, disabled the service periodically in order to take TP and falsely told the customer that they were experiencing technological difficulties.

### ***Misrepresentations Regarding Compensation***

34. Respondents believed that customers generally did not understand Respondents' business model with respect to TP and would fire them if they learned the truth. As a result, Respondents further concealed their practice of taking TP by making misrepresentations and misleading statements to customers who inquired about how Respondents were compensated for their order execution services.

### ***Compensation on Transitions***

35. In response to one customer's inquiry into whether GTM could act in a principal capacity and take a spread, GTM employees first attempted to avoid answering the question, and then provided a misleading response with respect to the circumstances under which orders would be executed on a principal basis. GTM employees also stated falsely that it was "difficult, if not impossible" to determine the amount of the mark-ups or mark-downs under such circumstances.

36. At times, GTM also provided untrue responses to requests for pre-transition proposals for some customers. For example, one customer's request for proposal for transition management services asked GTM directly: "Describe your revenue source. How transparent is your revenue?" A GTM employee responded: "All of our revenue sources are commission based,

and are fully disclosed. Other than explicit commissions, we do not charge any additional fees.” While this response was technically accurate from the narrow perspective of GTM, the response omitted the fact that the customer would pay TP in addition to the explicit commissions charged by GTM, and was thus misleading.

37. In response to another customer’s inquiry regarding the spread disclosure language in the transition management agreement, a GTM employee falsely stated that principal trading is “rarely used in our transition business” and “we can assure you that no principal trading has been carried out in any transition for [the customer.]” The GTM employee further stated that “[s]hould it ever be necessary, prudent or strategically important” to engage in principal trading for the customer, GTM “would always discuss and seek your approval.” This statement was approved expressly by a senior manager of GTM, who knew that the statement was untrue.

### ***Falsified Time and Sales Reports***

38. 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 time and sales reports would not match the price previously reported to the customer on the trade confirmation. Due to these discrepancies and the risk of the inquiring customers finding out about TP, certain employees of CGM and G-Trade’s CGM Division lied to customers rather than acknowledge the undisclosed mark-ups and mark-downs.

39. In some instances, customers were falsely told that the time and sales reports no longer existed. On at least six occasions involving at least four different customers, CGM employees altered the time and sales data reflecting CGM’s actual execution prices, so that the prices given to the customers would average to the price, inclusive of TP, previously reported on the customers’ confirmations. Once these reports were prepared, CGM or CGM Division employees transmitted the data to customers in a format that made 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.

### ***Technological Tools***

40. Respondents employed technological tools to conceal their practice of taking TP from their customers.

41. On at least one occasion, when the now former head trader for CGM 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 algorithmic tools and anonymous broker codes to hide CGM’s identity in the market so that the customer could not identify 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, the former CGM head trader used this anonymity on this occasion to add a mark-up or

mark-down on the prices that CGM had received on the customer's trades in order to take TP without the customer knowing it.

42. In addition, Respondents developed and implemented software known as "AutoTP" that allowed traders to quickly compare actual execution prices to market highs, lows and various benchmarks. This tool helped traders to maximize TP and arrive at a customer price that minimized the likelihood of detection by the customers.

### ***Inadequacy of Procedures***

43. Throughout the relevant period, Respondents lacked adequate policies and procedures related to monitoring execution quality for orders routed to CGM. Indeed, until November 2008, Respondents had no formal policies and procedures in place to evaluate CGM's execution quality. Even after Respondents adopted such policies, Respondents failed to effectively implement and review compliance with those policies. Respondents also ignored a number of red flags related to the concealment of TP.

### ***Advice of Counsel***

44. On certain occasions, ConvergEx and a predecessor entity retained outside law firms in the United States and elsewhere to advise on the adequacy of certain disclosures in light of CGM's taking of TP on trades in global securities. Many of Respondents' employees were generally aware of these reviews. None of these employees, however, was told that outside counsel had approved concealing the practice from clients. Indeed, these law firms were not advised that Respondents sometimes routed trades consisting solely of U.S. securities to Bermuda, nor were they told that CGM and GTM deliberately concealed TP from customers, that CGM routinely took TP in an opportunistic manner, or that CGM and GTM employees made false statements to customers in order to conceal their practice of taking TP.

## **D. Violations**

45. As a result of the conduct described above, Respondents 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.

46. As a result of the conduct described above, Respondents G-Trade and CES willfully violated 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. Respondents' Remedial Efforts and Cooperation**

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

**F. Undertakings**

G-Trade and CES undertake to:

48. Retain, at the expense of G-Trade and CES and within thirty (30) days of the issuance of this Order, a qualified independent ethics and compliance consultant (the “Consultant”) with extensive experience in developing, implementing and overseeing organizational compliance and ethics programs, not unacceptable to the staff, to conduct an ethics and compliance program assessment. G-Trade and CES shall cause the Consultant to analyze whether the components of G-Trade’s and CES’s ethics and compliance program set forth below are having the desired effects, determine whether the culture is supportive of ethical and compliant conduct and provide advice and recommendations to strengthen the program and enhance the culture of compliance. G-Trade and CES shall cause the Consultant to:

a. review the creation, administration and implementation of the compliance and ethics program, including but not limited to reviewing key documents (e.g., business principles, Code of Conduct, policies and procedures, risk assessments, performance evaluation forms, relevant internal training materials and internal communications), conducting an assessment survey and interviewing relevant personnel;

b. review and evaluate G-Trade’s and CES’s policies, practices and procedures related to best execution and the provision of information to customers concerning order handling and compensation for trade execution, including but not limited to related written disclosures, advertising materials and other communications with customers and prospective customers;

c. evaluate the structure and functioning of the Legal and Compliance Department, including a review of the corporate culture of compliance; and

d. report to the Commission staff and G-Trade’s and CES’s General Counsel and Chief Compliance Officer, as described below, regarding the Consultant’s findings and recommendations;

49. Provide a copy of the engagement letter detailing the Consultant’s responsibilities to Jennifer S. Leete, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-5546;

50. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records and personnel as reasonably requested for the above-described review;

51. Require the Consultant to report to the Commission staff on his/her activities as the staff shall request;

52. Permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by G-Trade and CES;

53. Within one hundred and fifty (150) days of the issuance of this Order, unless otherwise extended by the Commission staff for good cause, G-Trade and CES shall require the Consultant to complete the review and report to the Commission staff and G-Trade's and CES's General Counsel and Chief Compliance Officer concerning:

- a. the scope and methodologies used by the Consultant in order to complete the review;
- b. G-Trade's and CES's compliance with the review;
- c. the adequacy of G-Trade's and CES's existing policies, practices and procedures regarding the matters assessed; and
- d. the Consultant's recommendations, if necessary, regarding modification or supplementation of G-Trade's and CES's policies, practices and procedures related to the matters assessed (the "Recommendations");

54. Within one hundred and twenty (120) days of G-Trade's and CES's receipt of the Recommendations, G-Trade and CES shall adopt and implement all of the Recommendations; provided, however, that as to any Recommendation that G-Trade and CES consider to be, in whole or in part, unduly burdensome or impractical, G-Trade and CES may submit in writing to the Consultant and the Commission staff (at the address set forth above), within sixty (60) days of receiving the Recommendations, an alternative policy, practice or procedure designed to achieve the same objective or purpose. G-Trade and CES shall then attempt in good faith to reach an agreement with the Consultant relating to each Recommendation that G-Trade and CES consider to be unduly burdensome or impractical and G-Trade and CES shall cause the Consultant to reasonably evaluate any alternative policy, practice or procedure proposed by G-Trade and CES. Such discussion and evaluation by G-Trade, CES and the Consultant shall conclude within ninety (90) days after G-Trade's and CES's receipt of the Recommendations, whether or not G-Trade, CES and the Consultant have reached an agreement. Within fourteen (14) days after the conclusion of the discussion and evaluation by G-Trade, CES and the Consultant, G-Trade and CES shall require that the Consultant inform G-Trade, CES and the staff (at the address set forth above) of his/her final determination concerning any Recommendation that G-Trade and CES consider to be unduly burdensome or impractical. G-Trade and CES shall abide by the determinations of the Consultant and, within sixty (60) days after final agreement between G-Trade, CES and the Consultant or final determination by the Consultant, whichever occurs first, G-Trade and CES shall adopt and implement all of the Recommendations that the Consultant deems appropriate;

55. Within fourteen (14) days of G-Trade's and CES's adoption of all of the Recommendations that the Consultant deems appropriate, G-Trade's and CES's General Counsel and Chief Compliance Officer shall certify in writing to the staff (at the address set forth above) that G-Trade and CES have adopted and implemented all of the Consultant's Recommendations and that G-Trade and CES have established policies, practices and procedures that are consistent with the findings of this Order;

56. G-Trade and CES may apply to the Commission staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by G-Trade and CES, the Commission staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate;

57. To ensure the independence of the Consultant, G-Trade and CES shall not have the authority to terminate the Consultant without prior written approval of the Commission's staff and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates;

58. G-Trade and CES shall require the Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with G-Trade and CES or any of their present or former affiliates, directors, officers, employees or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without the prior written consent of the Commission staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with G-Trade and CES, or any of their present or former affiliates, directors, officers, employees or agents acting in their capacity as such, for the period of the engagement and for a period of two years after the engagement;

59. G-Trade and CES agree to certify in writing to the Commission staff (at the address set forth above), in the second year following the issuance of this Order, that G-Trade and CES have established and continue to maintain policies, practices and procedures consistent with the findings of this Order;

60. The Commission's acceptance of G-Trade's and CES's offer of settlement and entry of this Order shall not be construed as its approval of any policy or practice reviewed by the Consultant and/or implemented based on the Consultant's Recommendation.

#### **IV.**

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

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

B. CES and G-Trade cease and desist from committing or causing any violations and any future violations of Section 15(c) of the Exchange Act.

C. CES and G-Trade are censured.

D. Respondents shall, within 10 days of the entry of this Order, pay, jointly and severally, disgorgement of \$79,802,448, prejudgment interest of \$7,621,981 and a civil money penalty of \$20,000,000, into an escrow account acceptable to the Commission's staff and provide evidence of such deposit in a form acceptable to the Commission's staff. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. If timely deposit of the civil penalty is not made by the required payment date, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, interest and penalties referenced in Section IV.D. above. Regardless of whether any such Fair Fund distribution is made, 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, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they 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 United States Treasury or to a Fair Fund, as the Commission directs. 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 Section, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more customers based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

F. The disgorgement, interest, civil penalties and any other funds which may be paid to the Fair Fund through this action, or as the result of any related Commission actions, shall be aggregated in the Fair Fund in accordance with any orders issued in those other actions. The Commission will appoint a Fund Administrator who will develop a distribution plan (the "Plan") with the assistance and cooperation of Respondents. The Plan will include a methodology to identify and compensate affected current and former customers of Respondents from whom TP was taken between October 2, 2006, and December 31, 2011. The Fund Administrator will

administer the Plan in accordance with the Commission Rules on Fair Fund and Disgorgement Plans. Respondents shall be responsible for any and all costs associated with developing and administering the Plan. Respondents shall also be responsible for any and all tax compliance responsibilities associated with the Fair Fund and may retain any professional services necessary or appropriate. The costs and expenses of any such tax compliance responsibilities and professional services, including the payment of any taxes, penalties, and interest due, shall be borne by Respondents and shall not be paid out of the Fair Fund. The Respondents have informed the Commission staff that the Fair Fund will constitute 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. Respondents shall be the “administrators” of the QSF identified in 26 C.F.R. §1.468B-2(k)(3) for tax reporting and compliance purposes. Any amount remaining in the Fair Fund after all distributions have been made and costs have been paid shall be transmitted to the Commission for transfer to the U.S. Treasury. Under no circumstances shall any part of the Fair Fund be returned to Respondents.

G. Respondents acknowledge that the Commission is not imposing a civil penalty in excess of \$20 million based upon their cooperation in the Commission investigation and their agreement to cooperate in related enforcement actions. If at any time following the entry of the Order, the Division of Enforcement (“Division”) obtains information indicating that Respondents knowingly failed to provide full, truthful and continuing cooperation, the Division may, at its sole discretion and with prior notice to the Respondents, petition the Commission to reopen this matter and seek an order directing that the Respondents pay an additional civil penalty. Respondents may contest by way of defense in any resulting administrative proceeding whether it knowingly failed to provide full, truthful and continuing cooperation, 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.

H. G-Trade and CES shall comply with the Undertakings enumerated in Section III.F. above.

By the Commission.

Elizabeth M. Murphy  
Secretary