

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 84116 / September 13, 2018

INVESTMENT ADVISERS ACT OF 1940
Release No. 5007 / September 13, 2018

ADMINISTRATIVE PROCEEDING
File No. 3-18761

In the Matter of

**Convergex Execution Solutions,
LLC, now known as Cowen
Execution Services LLC**

Respondent.

**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 Convergex Execution Solutions, LLC, now known as Cowen Execution Services LLC (“Convergex” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (“Offer”) that the Commission has determined to accept. Respondent admits the facts set forth in Section III below, acknowledges that its conduct violated the federal securities laws, admits the Commission’s jurisdiction over it 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 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 Respondent’s Offer, the Commission finds that:

Summary

These proceedings arise out of Convergenx’s failure to submit to the Commission true and complete data in response to Commission staff electronic blue sheets (“EBS”) requests, resulting in the reporting of EBS that was incomplete or deficient.

Commission staff routinely sends requests for securities trading records to market makers, brokers and/or clearing firms in order to identify buyers and sellers of securities and firms provide the requested records in a universal electronic format known as the EBS format. Records requested through the EBS system are vital to the Commission’s enforcement and regulatory functions because they assist Commission staff in the investigation of possible securities law violations and in conducting market reconstructions following significant market events.

From May 1, 2012 to February 28, 2016 (the “relevant period”), a substantial number of the 6,574 EBS submissions Convergenx provided to the Commission contained missing or deficient data. Although Convergenx had previously been sanctioned by the Financial Industry Regulatory Authority (“FINRA”) in March 2012 for deficient EBS submissions, the firm did not take reasonable steps during the relevant period to ensure that each of the securities transactions reported in its EBS submissions contained complete and accurate information. Convergenx’s actions violated the recordkeeping and reporting requirements of broker-dealers to furnish promptly true and complete copies of required records upon request by a representative of the Commission.

Respondent

1. **Convergenx Execution Solutions, LLC (“Convergenx”)**, is a Delaware limited liability company with its principal place of business in New York, New York. It changed its name to Cowen Execution Services LLC effective June 2, 2017 following the acquisition of Convergenx Group, LLC by Cowen Inc. (“Cowen”). Convergenx, a wholly-owned subsidiary of Cowen, is an agency-focused broker-dealer and FINRA member. It specializes in execution technology that accesses electronic markets, electronic communications networks, and alternative trading systems. Convergenx has been registered with the Commission as a broker-dealer since 1994 and an investment adviser from 2006 to 2014. In 2012, Convergenx consented to a censure and \$215,000 fine for failing to submit complete and accurate EBS submissions to FINRA. *BNY Convergenx Execution Solutions, LLC*, FINRA Proceeding No. 20110270121 (Mar. 19, 2012).

Facts

A. Convergenx's Deficient EBS Submissions and Processes

2. From May 1, 2012 to February 28, 2016, Convergenx made 6,574 EBS submissions to the Commission in which a substantial number was deficient.

3. Some of Convergenx's missing or deficient EBS fields related to customer identifying information such as the customer's name, address, or taxpayer identification number. Out of the 6,574 EBS submissions Convergenx made, approximately 29%, or 1,922 submissions, contained securities transactions with deficient customer identifying information. For example, these submissions reported over 2.9 million securities transactions that contained no information in the customer name and address fields. Convergenx's failure to supply customer names, addresses, or taxpayer identification numbers resulted from an undetected coding error that caused the suppression of customer identifying information (as well as the date those accounts were opened) for accountholders whose accounts were marked for deletion from the firm's data processing systems because they were no longer customers of the firm.

4. Other missing or deficient fields reported by Convergenx related to information about the securities transactions reported, such as order execution times, exchange codes, transaction type identifiers, and certain trade execution information that was reported at an aggregate level rather than on a per trade basis. For example, Convergenx reported deficient order execution times for 21,816 securities transactions, and deficient or missing exchange codes for over 6.8 million securities transactions. The deficient securities transaction fields resulted from various undetected coding errors that were not related to the coding error that caused the omission of customer identifying information noted above.

5. Convergenx did not identify the deficiencies in its EBS submissions, at least in part, because it did not have a reasonable process to verify that all of the fields required to be populated in EBS submissions included appropriate values instead of blank spaces or incomplete or deficient information.

6. In order to test the accuracy of its EBS submissions, Convergenx historically used a manual process, conducted annually, to validate its EBS submissions. After being censured by FINRA for deficient EBS submissions in March 2012, Convergenx implemented a new software platform to validate EBS submissions on an automated basis. While the new platform identified some instances in which Convergenx made EBS submissions that contained deficient or missing information with respect to certain fields, the software did not detect many of the deficient or missing fields reported to the Commission. During the relevant period, except for annual validations, Convergenx had no process to compare the information reported in its EBS submissions against the underlying data that the firm maintained in multiple distinct databases. Convergenx did not, for example, begin to implement a process for testing whether it was providing accurate information concerning trader names and addresses until September of 2015. Given the firm's lack of a process for validating all of the information provided in its EBS submission against the firm's

own data no one at the firm was able to recognize the systemic coding issues that led to the firm's regular submission of deficient EBS information.

B. Convergenx's Remedial Efforts

7. Convergenx engaged in remedial efforts to improve its information technology that caused the incomplete or deficient EBS submissions. Upon being contacted by the Commission staff, who notified Convergenx that its EBS submissions were missing certain required information, Convergenx identified and corrected the coding errors that had caused these problems and made corrected EBS submissions to the Commission and FINRA (which had similarly been provided deficient EBS). Convergenx instituted new controls over its EBS reporting process to ensure the completeness and accuracy of its EBS submissions, made technical enhancements to monitor its EBS reporting for anomalies, and modified its governance framework. Convergenx adopted new policies and procedures for processing EBS requests and submitting EBS data including conducting post-submission validation and testing of trade data. Convergenx retained an outside consultant that provided recommendations on EBS control and governance frameworks, documentation, technology, change management process, and resources pertaining to the firm's EBS reporting process and submissions. After Convergenx was acquired by Cowen, the firm replaced the primary repository of EBS data, its back-office platform, with a new system to process EBS submissions that is subject to the same controls, validation, and testing of trade data in EBS submissions that the firm already has implemented.

Violations of the Federal Securities Laws

8. Section 17(a)(1) of the Exchange Act requires, among other things, that broker-dealers make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the securities laws. Exchange Act Rule 17a-4(j), promulgated thereunder, requires, in part, broker-dealers such as Convergenx to furnish promptly legible, true, complete, and current copies of those records of the member, broker or dealer that are required to be preserved under Exchange Act Rule 17a-4 and any other (*i.e.*, non-required) records of the member, broker or dealer subject to examination under Section 17(b) of the Exchange Act that are requested by a representative of the Commission. Likewise, Exchange Act Rule 17a-25 requires that broker-dealers such as Convergenx shall, upon request, electronically submit to the Commission the securities transaction information as required in the rule.

9. As described above, Convergenx failed to furnish complete records to the Commission staff that were requested by the Commission in its blue sheet requests. Therefore, Convergenx willfully violated the recordkeeping and reporting requirements of Section 17(a)(1) of the Exchange Act and Rule 17a-4(j) thereunder by failing to furnish promptly true and complete trading information as requested by Commission staff over a period of nearly four years. In addition, Convergenx willfully violated Exchange Act Rule 17a-25 by failing to submit electronically certain securities transaction information to the Commission through the EBS system in response to requests made by the Commission.

Convergex's Remedial Efforts

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

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondent Convergex's 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. Respondent Convergex cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Exchange Act and Rules 17a-4(j) and 17a-25 promulgated thereunder.

B. Respondent Convergex is censured.

C. Respondent Convergex shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$2.75 million to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717. Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

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

Payments by check or money order must be accompanied by a cover letter identifying Convergex as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph G. Sansone, Chief, Market

Abuse Unit, Division of Enforcement, Securities and Exchange Commission, Brookfield Place, 200 Vesey Street, Suite 400, New York, NY 10281.

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

By the Commission.

Brent J. Fields
Secretary