UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 75519 / July 24, 2015

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 APPROVING A PLAN OF DISTRIBUTION**

I.

On December 18, 2013, the Commission issued an 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") against G-Trade Services LLC ("G-Trade"), ConvergEx Global Markets Limited ("CGM"), and ConvergEx Execution Solutions LLC ("CES")[1] (collectively, "Respondents"). The Order required Respondents to pay a total of $107,424,429 in disgorgement, prejudgment interest, and civil money penalties into an escrow account and created a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended. Payment was made into the escrow account as required by the Order on December 17, 2013. In three related proceedings, the Commission or Court ordered that the disgorgement and prejudgment interest paid in those

[1] Exchange Act Release No. 71128 (Dec. 18, 2013), available at http://www.sec.gov/litigation/admin/2013/34-71128.pdf.

proceedings, totaling $2,011,889, be combined with the funds paid in this matter for distribution to harmed customers.[2] All payments have been made and placed into the escrow account, which as of April 30, 2015, totals $109,440,085.58.

In the Order, the Commission found that, from 2006 through 2011, Respondents engaged in a fraudulent scheme to conceal their 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, Respondents routinely took undisclosed "trading profits" ("TP") from these customers by routing their 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 best execution.

Respondents believed that they would lose business if customers became aware of this practice. As a result, Respondents engaged in a scheme to intentionally or recklessly conceal their taking TP from customers. The foundation of the scheme was Respondents' multiple-

[2] *See In the Matter of Jonathan Samuel Daspin*, Administrative Proceeding File No. 3-15652 (Exchange Act Rel. No. 71126 (Dec. 18, 2013)), available at http://www.sec.gov/litigation/admin/2013/34-71126.pdf; *In the Matter of Thomas Lekargeren*, Administrative Proceeding File No. 3-15653 (Exchange Act Rel. No. 71127 (Dec. 18, 2013)), available at http://www.sec.gov/litigation/admin/2013/34-71127.pdf; and *Securities and Exchange Commission v. Craig S. Lax*, Civil Action No. 23:15-cv-014079-WHW-CLW (D.N.J.) available at http://www.sec.gov/news/pressrelease/2015-27.html.

broker corporate structure, 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.

Although 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 with securities traded in non-U.S. markets ("non-U.S. securities"), Respondents' misconduct related to interpositioning and best execution was particularly egregious with respect to U.S. securities. The Order found that CGM often took TP on orders received within the U.S. to buy or sell U.S. securities, but that instead of routing those orders for execution directly to CES, which was the U.S. trading arm of ConvergEx Group, LLC and a member of U.S. exchanges, Respondents unnecessarily routed those orders to CGM in Bermuda in order to take TP. The Order also found that CGM did not provide any additional necessary services in Bermuda when handling orders in U.S. securities and merely routed them back to brokers in the U.S. for execution, thus improperly interpositioning CGM between the customer and the relevant market.

On May 9, 2014, pursuant to Rule 1103 of the Commission's Rules on Fair Fund and Disgorgement Plans ("Rules"), 17 C.F.R. § 201.1103, the Commission issued a Notice of

Proposed Plan of Distribution and Opportunity for Comment (the "Notice")[3] for the distribution of monies placed into the Fair Fund. The Notice provided all interested parties thirty (30) days to submit comments on the Proposed Plan of Distribution (the "Proposed Plan"). The Notice advised interested parties that they could obtain a copy of the Proposed Plan from the Commission's public website or by submitting a written request to Nancy Chase Burton, Esq., United States Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5631. Five comments were submitted, four within the thirty (30) day comment period and one after.

After considering comments, Commission staff, working with the distribution plan administrator appointed by the Commission,[4] prepared a distribution plan, which contains modifications from the Proposed Plan that address the comments received (the "Plan").

After careful consideration, the Commission has concluded to approve the Plan.

II.

A. Public Comments on the Proposed Plan

1. The Neuberger Berman LLC Letter

Joshua Blackman submitted a comment letter, dated May 22, 2014, on behalf of Neuberger Berman LLC ("Neuberger"). Neuberger requested (1) that distribution payments arising from orders placed by investment advisers to wrap fee programs[5] ("Wrap Advisers") be sent directly to the sponsors of the wrap fee programs who cleared the trades and have a

[3] Exchange Act Rel. No. 72146 (May 9, 2014), available at http://www.sec.gov/litigation/admin/2014/34-72146.pdf.

[4] On December 18, 2014, pursuant to Rule 1105(a), 17 C.F.R. § 201.1105(a), the Commission issued an order appointing The Garden City Group, Inc. ("GCG") as the fund administrator and ordering that GCG obtain a bond in accordance with Rule 1105(c), 17 C.F.R. § 201.1105(c), in the amount of $108,653,021. This order is available at http://www.sec.gov/litigation/admin/2014/34-73865.pdf.

[5] *Wrap fee program* means an advisory program under which a specified fee or fees not based directly upon transactions in a client's account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions. 17 C.F.R. § 275.204-3(h)(5).

direct contractual relationship with the affected clients ("Wrap Sponsors"), instead of the Wrap Advisers who submitted the orders to Respondents, and (2) that American Depositary Receipts ("ADRs") be treated as "U.S. securities" under the Plan. Neuberger enumerated several reasons why Wrap Sponsors are better positioned than Wrap Advisers to allocate and distribute payments to underlying wrap clients ("Wrap Clients").[6] Neuberger's comment requesting that distribution payments to be sent directly to Wrap Sponsors rather than Wrap Advisers was also echoed in substance by another commenter (Federated, *infra* at p. 11, §4, ¶ 1).

In support of its first comment, Neuberger's letter explained that, in a typical wrap fee program, a Wrap Client opens an account with a Wrap Sponsor, which typically hires or appoints one or more Wrap Advisers to handle specific trading strategies for the Wrap Client. Neuberger stated that Wrap Advisers typically do not communicate with Wrap Clients, do not have custody of their assets and do not allocate trades among Wrap Clients, which is ordinarily the responsibility of Wrap Sponsors. Thus, according to Neuberger, if a distribution payment were to be sent to a Wrap Adviser like Neuberger (as the Respondents' Direct Customer), then that Wrap Adviser would need to forward the payment to the appropriate Wrap Sponsor with custody of the underlying Wrap Client accounts and knowledge of the appropriate allocation among those accounts.

The Commission has considered Neuberger's first comment, along with other similar comments, and agrees that some modification to the Proposed Plan is appropriate. To address the concerns raised we have added an outreach process to the Plan, designed both to ensure

[6] The reasons cited by Neuberger for directing payments to Wrap Sponsors are that they: (a) have a contractual relationship with the Wrap Clients; (b) have the most information about the Wrap Clients; (c) made the allocations for the affected trades and therefore can determine the amounts owed to each Wrap Client; and (d) as custodian, will ultimately need to receive the payment in order to deposit the amount in the Wrap Client's account or send the payment to the affected client. Mr. Blackman further noted that if distribution payments were sent to a Wrap Adviser such as Neuberger, the Wrap Adviser would need to forward the payment to the appropriate Wrap Sponsors, as it lacks sufficient information about allocations to underlying Wrap Clients and also does not have custody of Wrap Client's accounts.

the accuracy of the distribution process as well as to provide an opportunity for Direct Customers, such as Neuberger, to request that their distribution payment be sent to their underlying clients. More specifically, as described in Section 10 of the Plan, the Fund Administrator will send correspondence to all known Direct Customers of record to advise them of the distribution payments that they are eligible to receive and to request that they respond with an indication of where to send the payments. Direct Customers may elect to receive their payment directly, or they may request that the Fund Administrator make payment to their underlying clients. Direct Customers electing to have distribution payments sent to their underlying clients will be asked to provide contact information and other necessary information to the Fund Administrator, who will then contact the underlying clients to verify payment instructions and obtain any other necessary information.

With regard to Neuberger's request that securities transactions in ADRs be treated as securities transactions involving U.S. securities, the Commission agrees but notes that that is how the Plan, as proposed, will operate. Distribution payments arising from orders relating to ADRs are to be treated consistently with orders in other securities. According to Neuberger, "although the underlying securities of an ADR are foreign, the ADR itself is a negotiable instrument that is traded and settled in U.S. markets." While the Commission agrees with this characterization of ADRs generally, the Respondents executed some orders for ADRs by trading in the underlying non-U.S. securities and taking TP on those transactions while, in other instances, Respondents traded the ADR and took TP on that transaction. In administering the Plan, orders for an ADR transaction will be treated consistently with all other orders for securities transactions – that is, they will be treated as transactions involving U.S. securities unless the Respondents traded non-U.S. securities in filling the order, in which case they will be treated as transactions involving non-U.S. securities. Thus, the Plan's treatment of ADRs is consistent with the underlying securities violations and the taking of TP.

The Plan treats an ADR order, like an order in any other security, in the manner in which the order was executed, and no change is necessary.

2. The EII Capital Management, Inc. Letter

Richard D. Marshall submitted a comment letter, dated June 2, 2014, on behalf of EII Capital Management, Inc. ("EII"), requesting (1) that the Proposed Plan be amended to eliminate the distinction in the treatment of harm suffered by customers in connection with trades in U.S. and non-U.S. securities, and (2) that the Proposed Plan be "clarified" to ensure that investment advisers do not bear any costs associated with the distribution, including expenses incurred by investment advisers to apportion and distribute payments received in the distribution to their underlying customers.

In its first request, EII asserted that the proposed treatment of U.S. and non-U.S. securities is inconsistent with the Order, unfair and lacking basis. EII, in particular, cited that the conduct in the order involved trading in both U.S. and non-U.S. securities and argued that there is "no basis to treat injuries from trading in non-U.S. securities differently (and less advantageously) from injuries from trading in U.S. securities." EII's comment challenging the proposed treatment of U.S. and non-U.S. securities was reiterated in substance by a later comment letter (Towers Watson, *infra* at p. 13, §5, ¶ 1).

The Commission's objective is to distribute the Fair Fund in a fair and reasonable manner, taking into account relevant facts and circumstances.[7] The settlement agreed to by Respondents and the Commission included as disgorgement an amount equivalent to the total amount of TP taken on U.S. securities. This settlement—and the remedies obtained by the Commission—result from arms' length negotiations and reflect the Commission's

[7] *See Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73, 82 (2d Cir. 2006) ("So long as the district court is satisfied that 'in the aggregate, the plan is equitable and reasonable,' the SEC may engage in the 'kind of line-drawing [that] inevitably leaves out some potential claimants'"), citing *SEC v. Wang,* 944 F.2d 80, 88 (2d Cir. 1991).

discretionary judgment about the use of its limited resources, the risks of litigation (including risks of litigation concerning TP from non-U.S. securities), and the Commission's ability to obtain funds for distribution quickly.

Because the disgorgement amount in the Fair Fund equals the amount of gain from TP taken on U.S. securities, the majority of the money in the Fair Fund corresponds to ill-gotten gains related to the trading of U.S. securities. Given the limited funds available in the Fair Fund, which are insufficient to make all injured investors 100% whole, the Commission must choose a method of distribution, and the Commission concludes that it is reasonable to first seek to distribute all of those funds back to those customers harmed by TP in U.S. securities before seeking to distribute funds to customers harmed by trading in non-U.S. securities. Accordingly, the Commission is adopting a plan that distributes all of the funds recovered from Respondents by distributing 100% of the TP taken on U.S. securities back to the customers from whom this money was taken, and then, distributing pro rata the remainder of the funds in order to return a portion of the TP taken on non-U.S. securities.[8]

Moreover, this approach is consistent with the Order, which highlighted multiple instances of misconduct unique to U.S. securities.[9] For example, Respondents' misconduct related to interpositioning and best execution, arising from unnecessarily routing customer orders to Respondent's Bermuda affiliate, was especially egregious with regard to U.S. securities. This is particularly true in light of Respondents' ability to execute those orders at its U.S.-based broker-dealer. The Order also highlighted deficiencies in the company's

[8] The Commission anticipates that approximately $80.1 million will be paid to refund TP taken on U.S. securities with the residual amount of the Fair Fund, approximately $29.3 million, to be distributed pro rata to refund TP taken on non-U.S. securities.

[9] In Paragraph 8 of the Order, the Commission found that the CGM Division and GTM received orders for U.S. securities in their New York offices, and "instead of routing these orders to CES, which was ConvergEx's U.S. trading arm and a member of U.S. exchanges, they unnecessarily routed these orders to CGM in Bermuda in order to take TP." Moreover, Paragraph 10 of the Order describes two transactions for a university and a charitable organization, involving trades in only U.S. securities that GTM routed to CGM in Bermuda, resulting in the taking of an amount of TP equal to several times the disclosed commissions.

disclosures that were particularly problematic with regard to U.S. securities. For these reasons, the Commission concludes that it is fair and reasonable to retain the proposed distribution methodology relating to the treatment of U.S. and non-U.S. securities without any modification.

Regarding EII's request that the Commission modify the Proposed Plan to require Respondents to reimburse investment adviser intermediaries for costs incurred in connection with the distribution, so as to be consistent with the Order, the Commission disagrees that the Order requires Respondents to reimburse their customers for their administrative costs related to the distribution. The language of the Order cited by EII, that Respondents pay all "fees and expenses of administering the Plan," is standard language used regularly in Commission orders. When the Commission appoints a third party administrator for a Fair Fund, this language is used to indicate that the Respondent will pay the administrator's costs and expenses and, conversely, that the distribution fund will not be used to pay any fees and expenses of a respondent. Here, where the Respondents have set up an escrow account for the fund, this language is intended to prohibit the Respondents from using the Fair Fund to reimburse themselves. Furthermore, the addition of the outreach provisions in Section 10 of the Plan (described *supra* at pp. 5-6, §1, ¶ 3), under which customers may elect for the Fund Administrator to make distribution payments directly to underlying clients, addresses EII's concerns to a certain extent. Accordingly, the Commission declines to require further modifications to the Plan based on EII's comments.

3. The City of Philadelphia Letter

Joseph A. Ingrisano submitted a comment letter, dated June 6, 2014, on behalf of the City of Philadelphia and its related agencies and funds (collectively, "City"), which included the following requests: (1) that the Proposed Plan be reissued for comment with the addition of (a) the overall relevant or proportional amounts of TP on U.S. and non-U.S. securities, and

(b) an explanation of the disparate treatment of U.S. securities and non-U.S. securities; (2) that, in the alternative, the Proposed Plan be modified to distribute the Fair Fund on a pro rata basis with equivalent treatment of U.S. and non-U.S. securities; (3) that, prior to distributing the Fair Fund to any intermediary customer (such as a broker), the Commission implement a notice and claims process through which known indirect, underlying customers would be notified that their broker (as a customer of the Respondents) will be receiving a TP refund and provided an opportunity to request that instead such indirect customers' pro rata share of the payment be made to them directly; and (4) that any residual amount remaining in the Fair Fund after the distribution be distributed pro rata to customers in proportion to each customer's uncompensated TP, rather than transferring such amount to the U.S. Treasury, as provided in the Proposed Plan.

First, with regard to City's request for additional quantitative information concerning TP, the Commission's staff estimates that approximately $80.1 million (or 73%) of the Fair Fund will be paid in connection with TP taken on U.S. securities, with the residual amount, approximately $29.3 million (or 27%) of the Fair Fund, to be paid pro rata toward TP taken on non-U.S. securities. Total TP on U.S. and non-U.S. securities taken by Respondents during the relevant period of the investigation was approximately $81.3 million and $185.7 million, respectively. Thus, the distribution payments to be made in this distribution, will result in approximately 100% customer recovery on U.S. TP and approximately 16% recovery on non-U.S. TP, not including amounts refunded in connection with other settlements. In light of the fact that the Proposed Plan disclosed in Section 2 that the distribution was anticipated to "cover substantially less than half of the TP taken on those [non-U.S. securities] orders," together with the fact that letters addressing the U.S./non-U.S. securities methodology were submitted by three commenters, the Commission concludes that reissuing the Plan for comment is not warranted.

Second, regarding equivalent treatment of U.S. and non-U.S. TP, the Commission has provided additional detail regarding its rationale for adopting the Plan's distribution methodology (*see* response to EII's comment, *supra* at pp. 7-9, §2, ¶¶ 3-5). Moreover, in light of the prior notice and comment period, the Commission concludes that an additional notice and comment period is neither necessary nor required by the Rules. Under Rule 1104, 17 C.F.R. § 201.1104, "[i]n the discretion of the Commission, a proposed plan that is *substantially* modified prior to adoption may be republished for an additional comment period. . . ." (emphasis added). In determining whether a plan is substantially modified, the Commission considers, among other things, whether modifications revise the distribution plan's methodology, in particular whether such modifications could have a negative effect on the proposed eligible recipients, and whether the modifications affect the group of persons eligible to participate in a plan. In this case, there is no "substantial" modification because the Plan retains the proposed distribution methodology as to U.S. and non-U.S. TP and both the distribution payment amounts and the ultimate recipients remain unaffected. As a result, the Commission exercises its discretion to not republish the Plan for additional comment.

Third, the City requested that the Plan be modified to create a notice and claims process for known underlying customers, which would notify them of forthcoming TP refunds and provide an opportunity for them to claim directly their pro rata portion from Respondents. According to the Commission staff and Respondents, implementing such a process would not be practicable given that the Respondents lack access to the requisite trading records for all ultimate customers and such customers also lack knowledge of which transactions involved the taking of TP. Moreover, in light of the outreach process incorporated in Section 10 of the Plan, the Commission has added significant steps to help ensure that distribution payments reach harmed customers. Accordingly, the Commission declines to further modify the Plan based on this comment.

Fourth, City requests that "any" residual amount in the Fair Fund be distributed in a final pro rata distribution, rather than transferring such balance to the U.S. Treasury. The Plan is structured to distribute essentially all funds to known harmed customers, thus, according to the Commission staff, any residual amount remaining in the Fair Fund after the distribution is expected to be de minimis. It is the practice of the Commission to send de minimis residual amounts to the U.S. Treasury after Fair Fund distributions are completed because the administrative cost and burden of conducting a follow-on distribution typically outweighs paying additional de minimis amounts to eligible recipients. In response to this comment, the Commission has added language, now in Section 16 of the Plan, that provides: in the event there is a residual of undistributed Fair Fund funds that in the Commission staff's view would warrant consideration of an additional disbursement from the Fair Fund, the Commission may exercise its discretion to enter an order for an additional distribution to harmed customers who, after an initial disbursement of the Fair Fund, and in accordance with the methodology set forth in Section 9, remain eligible to receive additional funds.

4. The Federated Investors, Inc. Letter

Stephen A. Keen submitted a comment letter, dated June 9, 2014, on behalf of Federated Investors, Inc. ("Federated"). Federated requested a modification to the distribution methodology of the Proposed Plan for customers that placed orders as investment adviser intermediaries (*e.g.*, Wrap Advisers). Specifically, Federated requested that the Respondents be ordered to engage an independent fund administrator to engage in an outreach process to underlying intermediaries (*e.g.*, Wrap Sponsors), through which those lower level intermediaries would be presented options as to how, and the manner in which, they wish to participate in the Fair Fund distribution on behalf of their underlying customers. Federated also stated that the Proposed Plan would unfairly impose a burden on Federated outside the scope of its obligations as a Wrap Advisor and cause it to violate the custody requirements of the Investment Advisers Act of 1940.

The Commission has considered Federated's comments, together with the similar and related concerns raised by the EII, Neuberger and the City. In response, as described above, the Commission has incorporated in the Plan an outreach process in Section 10, to be administered by a third-party fund administrator in Section 3, to facilitate the identification of appropriate recipients for distribution payments. The Commission concludes that the Plan addresses the concerns raised by Federated and other commenters on this issue, provides the flexibility necessary to address and resolve the wide variety of potential issues that may arise with different customers, and is fair and reasonable.

5. The Towers Watson (Pty) Ltd. Letter

Anthony Lester, of Towers Watson (Pty) Ltd., submitted a comment letter, dated August 8, 2014, on behalf of his client, "Client 5" (described in paragraph 57 of the Deferred Prosecution Agreement, dated December 12, 2013, between the Department of Justice and ConvergEx Group, LLC). Mr. Lester wrote that it was "fundamentally unfair" for the Commission to treat U.S. and non-U.S. equities differently, as proposed, particularly where his client relied on the fact that Respondent was an affiliate of a large U.S. firm regulated by the Commission. Mr. Lester also noted Client 5's agreement with the arguments regarding the same issue raised by comment letters from the City of Philadelphia and EII.

The Commission has considered the comments of Towers Watson (Pty) Ltd., which essentially reiterate the comments of EII with regard to the treatment of U.S. and non-U.S. securities in the distribution. For the same reasons explained above (*supra* at pp.7-9, §2, ¶¶ 3-5) in response to EII's comment regarding the treatment of U.S. and non-U.S. securities in the distribution, the Commission in its discretion declines to modify the Proposed Plan's distribution methodology.

B. Modification and Approval of the Plan

For the reasons stated above, the Commission finds that the Proposed Plan should be modified in response to some of the comments submitted, with the changes that are incorporated into the Plan submitted herewith.

III.

Accordingly, IT IS HEREBY ORDERED that, pursuant to Rule 1104, 17 C.F.R. § 201.1104, the Plan for this matter is approved, and it shall be posted simultaneously with this Order on the Commission's website at www.sec.gov.

By the Commission.

Brent J. Fields
Secretary