

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 20120330969-01

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: ConvergeX Execution Solutions, LLC, Respondent
Broker-Dealer
CRD No. 35693

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, ConvergeX Execution Solutions, LLC (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

The firm became a member of FINRA on January 3, 1994 and its registration remains in effect. Its client base is comprised solely of broker-dealers and institutional investors.

RELEVANT DISCIPLINARY HISTORY

On September 6, 2011, an AWC was accepted in which the firm was censured and fined a total of \$52,500 for violation of NASD Rule 6955(a), FINRA Rule 7450, FINRA Rule 7440, FINRA Rule 6182, SEC Rule 17a-3, NASD Rule 3110, SEC Rule 611, FINRA Rule 2010 and NASD Rule 3010 for the period of August 1, 2006 through December 31, 2006, as well as on December 29, 2008.

On April 24, 2012, an AWC was accepted in which the firm was censured and fined a total of \$32,000 consisting, in relevant part, of: (i) \$10,000 for violation of Rule 605; (ii) \$7,500 for violation of FINRA Rule 7450; and (iii) \$7,000 for failing to supervise the relevant activity in violation of FINRA Rule 2010 and NASD Rule 3010 for the period of January 27 and 28, 2010.

SUMMARY

The firm, among other things, owns and operates alternative trading systems (“ATS”)¹ including: VortEx ATS (“VortEx”) and ConvergeEx Cross ATS (“ConvergeEx Cross”). As part of the Trading and Market Making Surveillance 2010 cycle examination, the staff of FINRA’s Department of Market Regulation and determined that the firm, on numerous occasions, made inaccurate reports of transactions executed within its ATS and failed to disclose certain order handling practices within Vortex.

FACTS AND VIOLATIVE CONDUCT

Rule 605 of Regulation NMS Violations

1. Rule 605 of Regulation NMS requires market centers to make available monthly reports concerning its execution of “covered orders” as that term is defined by Rule 600 of Regulation NMS.
2. From approximately February 2007 to approximately June 2012, the firm, as the result of two separate programming errors, submitted 64 inaccurate Rule 605 reports related to the execution of covered orders in VortEx and ConvergeEx Cross. The conduct described in this paragraph constitutes a separate and distinct violation of Rule 605 of Regulation NMS.

Rule 606 of Regulation NMS Violations

3. Rule 606 of Regulation NMS requires that every broker-dealer make publicly each calendar quarter a report on its routing of non-directed orders in NMS securities and to categorize such orders as “market,” “limit” or “other orders,” which includes not held orders.
4. From approximately January 2008 to approximately June 2012, as the result of programming errors, the firm submitted 14 inaccurate Rule 606 reports. The conduct described in this paragraph constitutes a separate and distinct violation of Rule 606 of Regulation NMS.

FINRA Rule 7230A and B Violations

5. From approximately July 2009 to approximately April 2010, the firm incorrectly reported approximately 1,536,788 long sales to the Trade Reporting Facility (“TRF”) with a “short sale” indicator. The conduct described in this paragraph constitutes a separate and distinct violation of FINRA Rule 7230A and B.

¹ *Alternative trading system* means any organization, association, person, group of persons, or system that constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing, with respect to securities, the functions commonly performed by a stock exchange.

FINRA Rule 6380A and B Violations

6. From approximately July 13, 2009 to approximately May 2010, the Firm, as the result of a programming error, over-reported approximately 401,000 transactions to the TRF. The conduct described in this paragraph constitutes a separate and distinct violation of FINRA Rule 6380A and B.

NASD Rule 2110/FINRA Rule 2010 Violations

7. VortEx began operation in or about October 2007. Subscribers to VortEx include only broker-dealers and institutional customers.
8. In late 2008/early 2009, the firm began allowing exchanges to access liquidity in VortEx. It created a process internally known as “X-Streaming” whereby VortEx solicited various exchanges via Indications of Interest (“IOIs”) to induce those exchanges to route Immediate-Or-Cancel (“IOC”) orders (“X-Streaming Orders”) to VortEx. The IOIs, which were not sent to any other subscribers, are based solely on broker-dealer and institutional subscribers’ resting orders² residing in VortEx and contain symbol, side, and total size of all marketable orders in that symbol residing in VortEx. These IOIs, however, do not reflect the price (actual or limit) of the underlying resting orders nor any subscriber identifying information.
9. The firm crossed the X-Streaming Orders with all resting orders when the terms and conditions on both sides were met. The firm crossed the orders as agent. The firm received compensation solely from the subscriber sending the resting order based on a contractual fixed rate. No fee was charged to the exchange submitting the X-Streaming Order.
10. On or about July 10, 2009, in addition to exchanges, the firm began to allow certain broker-dealer subscribers to route X-Streaming Orders to VortEx³ and the firm and those exchanges and broker-dealers routing X-Streaming Orders to VortEx agreed that the firm could earn a portion of the NBBO spread on matches between those X-Streaming Orders and broker-dealer resting orders (“B-D resting orders”) pegged to the midpoint of the NBBO.⁴ This was referred to internally by the firm as the “RP process.” Because the B-D resting orders were designated by the submitting broker-dealer subscribers as “midpoint pegged” orders, the orders could only be filled at the midpoint of the NBBO or would receive no fill.
11. For example, with the NBBO at 10 to 10.01, a broker-dealer subscriber submits a midpoint pegged resting buy order pegged at the then-available NBBO midpoint,

² A *resting order* is an order that resides in VortEx until the terms and conditions of the order are satisfied or the subscriber cancels the order.

³ However, VortEx did not direct IOIs to such broker-dealers.

⁴ X-Streaming Orders interacting with institutional subscribers’ resting orders continued to be crossed as agent with the firm receiving contractually-agreed compensation solely from the resting order. No fee was charged to the X-Streaming Order.

would receive a price of 10.005. Specifically, unless that subscriber has opted out of the IOI process that order becomes part of an IOI that is generated to an exchange. The X-Streaming exchange receives the IOI and sends an IOC sell order with a limit of \$10. The exchange's IOC order is matched with the B-D resting order. In that instance, the firm will effect two transactions acting as principal in each leg (one, as in this example, buying as principal from the X-Streaming IOC order at \$10 and one selling as principal to the B-D resting order at \$10.005). The difference in price between the two orders is retained by the firm as compensation from the IOC order sender and the B-D resting order sender pays its previously-agreed commission.

12. The changes to X-Streaming did not change the price obtained by the B-D resting order, nor did it change the commission paid to the Firm for the execution of that resting order. Thus, in the above example, the broker-dealer subscriber would receive \$10.005 before and after X-Streaming, and it paid the same commission whether or not its order was executed as part of an X-Streaming trade or otherwise. In addition, the B-D resting order received the same price as similarly situated resting orders from Institutional customers.
13. During the period from July 2008 through December 2010, the firm's general practice was to orally inform subscribers of its IOI practices prior to the institution of those practices and during the on-boarding process, and to provide an opportunity to opt out of the IOI process. The firm, however, could not establish through its records that oral or written disclosure of its IOI practices had been provided to every subscriber prior to using IOIs based on subscriber orders as part of the X-Streaming process.⁵
14. As a result, not all subscribers were aware of, and the firm could not confirm that they were aware of, X-Streaming (*i.e.*, the RP Process or that certain of their order information may be disseminated to certain exchanges in the form of IOIs). The conduct described in paragraphs 13 and 14 constitutes a separate and distinct violation of NASD Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on or after December 15, 2008)..

NASD Rule 3010 Violations

15. At all relevant times, the firm failed to establish and maintain a system to supervise the activities of its associated persons in the marketing and management of VortEx and reasonably designed to achieve compliance with (i) Rules 605 and 606 of Regulation NMS; and (ii) FINRA Rules 7230A and B and 6380A and B. The conduct described in this paragraph constitutes a separate and distinct violation of NASD Rule 2110 (for conduct prior to December 15, 2008), FINRA Rule 2010 (for conduct on or after December 15, 2008) and NASD Rule 3010.

⁵ In September 2009, the Firm included written disclosure of its IOI practices in its Terms and Conditions with its institutional customers. In December 2010, the firm provided all subscribers (both institutional customers and broker-dealer subscribers) with written disclosure of X-Streaming.

B. The firm also consents to the imposition of the following sanctions:

Censure and fine in the amount of \$425,000 (consisting of \$75,000 for violations of Rule 605 of Regulation NMS; \$50,000 for violations of Rule 606 of Regulation NMS; \$25,000 for violations of FINRA Rule 6380A; \$50,000 for violations of FINRA Rule 7230A; and \$100,000 for violations of NASD Rule 2110/FINRA Rule 2010 and \$125,000 for the supervisory violations).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm’s permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm’s disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. The firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm’s: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC’s provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

3/10/14
Date

Respondent

By: [Signature]

Name: Robert J. Virgilio

Title: Managing Director Chief Compliance Officer

Reviewed by:

[Signature]

Laura S. Pruitt, Esq.
Counsel for Respondent
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(202) 239-3618

Accepted by FINRA:

4/8/14
Date

Signed on behalf of the
Director of ODA, by delegated authority

[Signature]
Thomas R. Gira
Executive Vice President
Department of Market Regulation