

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

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NO. 20130358257-01

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Convergen Execution Solutions, LLC (the "firm" or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

I.**ACCEPTANCE AND CONSENT**

- A. Respondent 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 has been a member of FINRA since January 3, 1994 and its registration remains in effect. The firm has the following relevant disciplinary history:

On April 24, 2012, FINRA accepted an AWC (20100214834) in which the firm was censured and fined a total of \$32,000 for violations identified in connection with the firm's 2010 TMMS exam during the period from January 27 and 28, 2010, including a \$7,500 fine for OATS reporting violations and a \$7,000 fine for supervisory deficiencies with respect to SEC Rule 605 and rules regulating Alternative Trading Systems ("ATS").

On September 6, 2011, FINRA accepted an AWC (20070092787) in which the firm was censured and fined a total of \$52,500 during the period from August 1, 2006 through December 31, 2006, including a \$20,000 fine for OATS reporting violations.

SUMMARY

The Trading and Market Making ("TMMS") staff of the Department of Market Regulation, in connection with matter 20130358257 the firm's 2013 TMMS examination, reviewed the items set forth on Exhibit A, which is attached and incorporated by reference, primarily for trade dates March 20, 2013 and March 21, 2013 (the "review period").

FACTS AND VIOLATIVE CONDUCT

1. During the review period, the firm reported 281 trades to the FINRA TRF with inaccurate information. Specifically, the trade reports contained inaccurate: (a) buy/sell indicators; (b) capacity codes; (c) contra party MPIDs; (d) related market center codes; (e) execution times; and (f) execution quantities. These inaccurate trade reports represented 37% of the sample (749) the TMMS staff reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7230A.
2. During the review period, the firm transmitted to OATS 11 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports omitted or contained inaccurate: (a) capacity codes; (b) account type codes; and (c) execution information. These inaccurate and/or incomplete reports represented 15 percent of the sample (75) the TMMS staff reviewed. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 7450.
3. For the month of March, 2013, the firm made available a report on the covered orders in national market system securities that it received for execution from any person. This report included incorrect and incomplete information as to the inclusion of 3 covered orders and inaccurate execution prices. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 605 of Regulation NMS.
4. During the review period the firm incorrectly appended a ".B" modifier on one trade report to the FINRA/Nasdaq Trade Reporting Facility. The conduct described in this paragraph constitutes a violation of FINRA Rule 6380A.
5. During the review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of FINRA. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject area:

- Disclosure of Order Execution Information – SEC Rule 605 [b, d]; and
- Trade Reporting – Trade Reporting Input and Requirements [b].

The conduct described in this paragraph constitutes violations of FINRA Rule 2010 and NASD Rule 3010.

B. Respondent also consents to the imposition of the following sanctions:

A censure and fine of \$55,000 comprised of:

- \$15,000 for the FINRA Rule 6380A and 7230A trade reporting violations;
- \$12,500 for the OATS reporting violations;
- \$20,000 for the SEC Rule 605 violations;
- \$7,500 fine for deficient supervisory procedures; and
- An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph five above.

Within 30 business days of acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph five above; and, (3) the date the revised procedures were implemented.

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

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondent 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

Respondent 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 Respondent; 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 accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Respondent 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. Respondent 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. Respondent 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.

02/02/2015
Date

Respondent
Convergex Execution Solutions, LLC

By: [Signature]

Name: Gregory Voetsch

Title: CEO, CES

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by FINRA:

3.4.2015
Date

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

[Signature]
Justin Chretien, Chief Counsel
FINRA Department of Market Regulation

Exhibit A 20130358257

<u>Sample Size</u>	<u>Sample Description</u>
78	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
15	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
0	Sales reviewed for compliance with SEC Rule 204 fail-to-deliver requirements
394	Sell trades reported to a TRF or OTCRF for compliance with sale indicator requirements, FINRA Rules 6182 or 6624
0	Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4755(a)(1)(A) long/short reporting requirements
0	Buy and Sell orders entered into Nasdaq Exchange execution system for compliance with Nasdaq Rule 4611 capacity reporting requirements
0	Sell orders entered into Nasdaq OMX BX execution system for compliance with Nasdaq OMX BX Rule 4755 long/short reporting requirements
0	Sell orders entered into Nasdaq OMX PHLX execution system for compliance with Nasdaq OMX PSX Rule 3305 long/short reporting requirements
36	Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.15 long/short reporting requirements
40	Buy and Sell orders entered into DirectEdge Exchange execution systems for compliance with EDGA/EDGX Rule 11.22 capacity reporting requirements
0	Sell orders entered into NYSE-Arca execution system for compliance with NYSE-Arca Equities Rule 7.16 long/short reporting requirements
0	Buy and Sell orders entered into NYSE-Arca execution system for compliance with NYSE Arca Equities Rule 7.33 capacity reporting requirements

0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604
8	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with FINRA Rule 5330
25	Non-tape reports to a TRF or OTCRF for compliance with the Related Market Center Indicator requirements of FINRA Rules 7230A and 7330
1	Order memoranda and Net Trading agreements for compliance with FINRA Rule 2124 requirements
75	Orders in securities required to be submitted to OATS for compliance with FINRA Rules 7440 and 7450 requirements
130	Customer confirmations prepared and maintained in connection with select samples for compliance with SEC Rule 10b-10
37	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
5	Data sets published for March 2013 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
13	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020-1040; Nasdaq Rule Series 1020-1040, Nasdaq OMX BX Rule Series 1020-1040; Nasdaq OMX PHLX Rule Series 600-604; EDGA/EDGX Rules 2.3, 2.5 and 11.4 and NYSE-Arca Rules 2.4, 6.18 and 7.21
0	Customer orders in OTC equity securities for compliance with FINRA Rule 5310, Supplementary Material .06: Securities with Limited Quotation or Pricing Information
1	Disclosures to customers relating to trading in the Extended Hours session for compliance with FINRA Rule 2265

325		Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4
749		Trades reported to a TRF or OTCRF for compliance with FINRA Rules 6380A and 7230A or 6622 and 7330
N/A		Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with FINRA Rule 5310 and NASD Rule 3010
All Provided		Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rule 611
All Provided		Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010, Nasdaq Rule 3010, Nasdaq OMX BX Rule 3010, Nasdaq OMX PHLX Rule 748, EDGA Rule 5.1, EDGX Rule 5.1 or NYSE-Arca Rule 6.18 requirements
All Provided		Member's risk management and supervisory system/procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Rule 15c3-5 requirements