

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20140406670-01**

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

RE: Convergen Execution Solutions LLC, Respondent
BD No. 35693

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

I.

ACCEPTANCE AND CONSENT

- A. The 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

CES has been a member of FINRA since 1994 and is headquartered in New York City. The Firm employs 235 registered persons working from 10 branch offices. CES's business includes the introduction, execution and clearing of securities transactions for institutional customers.

RELEVANT DISCIPLINARY HISTORY

CES does not have any relevant disciplinary history with the Securities and Exchange Commission, FINRA, any other self-regulatory organization or any state securities regulator.

OVERVIEW

From June 2008 through December 2015 ("the Relevant Period"), CES failed to establish and implement an anti-money laundering ("AML") program that was reasonably designed to detect and cause the reporting of potentially suspicious transactions in microcap securities. The Firm did not have in place adequate

procedures to ensure that such transactions were scrutinized sufficiently. As a result, the Firm failed to reasonably detect and investigate red flags indicative of potentially suspicious activity in connection with certain transactions in microcap securities, which activity might have required the filing of a suspicious activity report ("SAR"). Between 2009 and 2012, the Firm took on three U.S. clients (the "Direct Customers") for whom CES provided custody, execution and clearing services in connection with the deposit and liquidation of nearly 47 billion shares of microcap stock. Between 2012 and 2014, the Firm cleared liquidation transactions of close to 18.5 billion shares of microcap securities executed by a U.S. broker-dealer client ("VG"). Finally, for the duration of the Relevant Period, the Firm executed transactions of microcap securities on a delivery-versus-payment, or DVP, basis for three foreign financial institutions (the "FFI Customers"), including the sale of more than 260 million microcap shares. The Firm failed to tailor its AML program to detect suspicious transactions in microcap securities during the Relevant Period. In addition, the Firm failed to perform a periodic review of the three FFI Customers as required under Section 1010.610 of the Bank Secrecy Act.

As a result of the foregoing, CES violated NASD Conduct Rules 3011(a) and (b) (for conduct prior to January 1, 2010), FINRA Rules 3310(a) and (b) (for conduct on and after January 1, 2010), NASD Conduct Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on and after December 15, 2008).

Further, from at least September 2009 until September 2012, CES failed to establish, maintain and enforce a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to ensure compliance with Section 5 of the Securities Act of 1933 ("Section 5") and the applicable rules and regulations with respect to the distribution of unregistered securities. As a result, CES violated NASD Conduct Rules 3010(a) and (b), and FINRA Rule 2010.

From October 2010 through March 2011, CES executed the sale of approximately 7 million shares of an unregistered microcap security for a Direct Customer that were not eligible for an exemption from the registration requirements of Section 5. As a result, CES contravened Section 5 in violation of FINRA Rule 2010.

FACTS AND VIOLATIVE CONDUCT

The Firm's AML Program was Not Reasonably Designed to Detect and Cause the Reporting of Potentially Suspicious Activity in Microcap Securities

NASD Conduct Rule 3011(a), which was replaced by FINRA Rule 3310(a) on January 1, 2010, requires each member to "[e]stablish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. § 5318(g) and the implementing regulations promulgated thereunder."

NASD Notice to Members 02-21, issued in April 2002, provided guidance to firms with respect to AML compliance programs, including that (a) firms must tailor their AML programs to fit their business model and customer base; (b) firms must monitor for red flags of suspicious activity that suggest money laundering; and (c) if firms detect “red flags,” they should perform additional due diligence and determine whether or not to file a SAR.

During the Relevant Period, the Firm’s AML program was not reasonably designed to detect and cause the reporting of potentially suspicious activity in microcap stock.

Inadequate AML System and Procedures

The Firm first began conducting microcap liquidation transactions for its customers in 2008. Despite the fact that this was a new business for CES, the Firm failed to tailor its AML Compliance Program and written AML procedures to identify suspicious transactions in microcap securities.

CES’s Account Opening Process Was Flawed

During the Relevant Period, the Firm risk-rated new accounts for AML concerns from “low” to “high.” The Firm’s risk rating system was flawed because it often underestimated risk presented by new customers. Specifically: (i) AML risk ratings were assigned by the registered representative responsible for conducting business with the accountholder, and were frequently assigned on the basis of incomplete or inaccurate information; (ii) only accounts that were rated as “medium” or “high” risk were reviewed by the Firm’s AML Compliance Officer; and (iii) accounts that did not match pre-defined parameters for “medium” or “high” risk automatically defaulted to “low” risk. As a result of this flawed process, the accounts most active in microcap liquidation activity were designated as “low” risk, including the highest-volume Direct Customer, all three of the FFI Customers, and VG.

“Low” risk accounts generated fewer exceptions than “high” risk accounts in the Firm’s AML surveillance system (the “AMLERT” system), which was one of the primary means by which the Firm reviewed customer transactions for potentially suspicious activity. “Low” risk accounts also did not receive retrospective AML reviews that high- and medium-risk accounts received, including a 90-day lookback review and an annual or semi-annual periodic review. As a result, the “low” risk ratings assigned to the most active microcap liquidation accounts compromised the ability of the AML Compliance Group to re-evaluate the Firm’s relationships with these customers.

AMLERT Review Deficiencies

The AMLERT system was a proprietary trade surveillance tool designed and used by the AML Compliance Group to monitor for a range of unusual or manipulative

activity. The AMLERT system generated reports of customer activity that were reviewed by an AML Compliance Group analyst to determine if the activity should be promoted to an AMLERT Inquiry. The analyst was required to review and then close each AMLERT Inquiry as either “unremarkable” or “suspicious.” “Suspicious” AMLERT Inquiries required the completion of an internal Incident Report, which would either result in the filing of a SAR or the completion of an internal “No SAR” memorandum.

The AMLERT system did not monitor for the deposit and liquidation of microcap stock. Until 2011, the AMLERT system failed to include any parameters or alerts related to low-priced securities. In 2011, when the AMLERT system was updated to generate a “daily penny stock report,” that report only considered activity involving both a purchase and subsequent sale of a microcap stock. The system failed to surveil for the deposit and liquidation of microcap stock. As a result, none of the transactions of the Direct Customers or VG triggered the daily penny stock report. Further, AMLERT Inquiries were nearly always closed by the assigned AML analyst after a cursory review; Of the 14,059 AMLERT Inquiries generated during the Relevant Period, the analyst closed 14,043 (99.89%) as “unremarkable.” None of the Direct Customers or the three FFI Customers ever triggered an AMLERT Inquiry that was deemed “suspicious.”

There were also failures in the Firm’s communication of relevant information within the Compliance Department. For example, the AML Compliance Group did not have systematized access to all information relevant to evaluating whether or not potentially suspicious activity required follow-up and the filing of a SAR. First, there was no systematic method of informing the AML Compliance Group of regulatory inquiries concerning trading irregularities. Second, even though the Firm had surveillance reports showing that the Direct Customers were, on a near-daily basis, trading microcap securities in amounts that exceeded at least 30 per cent of the market’s trading volume in those securities, those reports were not made available to the AML Compliance Group. Third, the AML Compliance Group was not provided information concerning the deposit of unregistered securities and the tradeability of those shares, even though the Compliance Department had collected such information.

Failure to Adequately Monitor for AML Red Flags

During the Relevant Period, CES failed to identify and investigate red flags of potentially suspicious transactions in microcap securities, including (a) the deposit of physical certificates of unregistered securities and their prompt liquidation into the market, (b) trading activity in customer accounts that represented a large share of the trading volume of a given stock, and (c) the liquidation of shares where public information existed, but was not accessed by CES, to suggest that transactions were being effected as part of a “pump and dump” scheme. For example:

- RM, one of the Direct Customers, deposited and liquidated nearly 9.2

billion physical certificates of unregistered shares of a microcap company between February 2010 and September 2012. RM was obliged to deposit physical certificates because of a longstanding “chill” on the stock imposed by The Depository Trust and Clearing Corporation (“DTCC”), preventing the electronic transfer of the shares. On 94 of the 179 trading days (53%) on which RM sold shares of the issuer, the quantity sold by RM represented over 50% of the total daily market volume.

- CES approved a deposit by RM of over 7.8 million unregistered shares of a microcap issuer on August 5, 2011. Market information accessed by the Firm stated that there were only about 1.2 million shares of the company outstanding, much less than the size of the deposit approved by the Firm.
- CB, one of the three FFI Customers, liquidated nearly 2.8 million shares of a microcap stock from January 11, 2011, through March 7, 2011. These sales coincided with a paid advertising campaign for the stock by a well-known penny stock promoter and a substantial increase in the share price and trading volume, facts that CES could have, but failed, to discover. The issuer purported to be in the business of acquiring, exploring and developing coal, oil and gas exploration properties in the United States, but until shortly before the sales occurred the issuer was a shell company purportedly in the business of selling low-priced makeup targeted to teenagers.
- VG liquidated 9.5 million shares of a microcap stock on March 18, 2013, for 24 cents a share. CES, which cleared the trade, failed to discover that on the previous business day to the sale, a paid penny stock promoter issued a press release claiming that the issuer had acquired a “gold project” in “Colombia’s Hottest Gold Exploration Region,” which was followed by an increase in the share’s price and trading volume. The shares sold by VG were on behalf of an FFI subaccount customer domiciled in Cyprus, which CES had identified in its AML/KYC Manual as a jurisdiction posing a high risk of money laundering activity.

None of the customer activity described above resulted in an AMLERT Inquiry or the completion of an Incident Report. Because of the inadequacy of the tools used by the Firm’s AML Compliance Group for surveilling microcap trading, the Firm was not in a position to reasonably scrutinize such trading for the purpose of detecting and reporting potentially suspicious activity.

As a result of the foregoing, CES violated NASD Conduct Rule 3011(a) (for conduct prior to January 1, 2010), FINRA Rule 3310(a) (for conduct on and after January 1, 2010), NASD Conduct Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on and after December 15, 2008).

CES Failed to Perform a Periodic Review of the FFI Customers

NASD Conduct Rule 3011(b), which was replaced by FINRA Rule 3310(b) on January 1, 2010, requires each member to establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder, including 31 C.F.R. § 1010.610.

Section 1010.610(a) requires financial institutions (including broker-dealers) to establish and implement due diligence policies, procedures, and controls to assess the AML risk posed by FFI correspondent accounts based upon a consideration of all relevant factors. The relevant factors include, but are not limited to: (i) the nature of the FFI's business and the markets it serves; (ii) the type, purpose and anticipated activity of such correspondent account; and (iii) the nature and duration of the covered financial institution's relationship with the FFI. The regulation also requires covered financial institutions to "appl[y] risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money-laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account."

None of the new account documentation associated with the FFI Customer accounts identified microcap trading as anticipated activity for these accounts. Nevertheless, the FFI Customers liquidated more than 260 million shares of microcap stock, regularly under potentially suspicious circumstances. Because the FFI Customers were identified as "low" risk accounts, none of those Customers received a documented periodic review during the Relevant Period that would have enabled the Firm to compare the actual activity of the FFI Customers with the activity that the Firm anticipated when it opened the accounts.

As a result of the foregoing, CES violated NASD Conduct Rule 3011(b) (for conduct before January 1, 2010), FINRA Rule 3310(b) (for conduct on and after January 1, 2010), NASD Conduct Rule 2110 (for conduct prior to December 15, 2008) and FINRA Rule 2010 (for conduct on and after December 15, 2008).

CES Did Not Establish, Maintain and Enforce a Supervisory System that was Reasonably Designed to Ensure Compliance with Section 5 in the Accounts of Its Direct Customers

NASD Conduct Rule 3010(a) requires members to "establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules." NASD Conduct Rule 3010(b) requires that firms document the system in written procedures to supervise the types of business in which the firm engages.

Section 5 prohibits the offer or sale of any security unless there is a registration statement in effect as to that security or there is an exemption available for that securities transaction. FINRA Regulatory Notice 09-05 ("RN 09-05"), issued in January 2009, sets forth, among other things, a set of "red flags" that should alert member firms to the possibility that a customer is participating in an illegal distribution of stock. RN 09-05 also includes a non-exhaustive set of questions that firms should answer before approving unregistered stock for sale, and recommends compliance and supervisory procedures for making these necessary determinations. Finally, RN 09-05 makes clear that member firms cannot rely on third parties, including outside counsel and transfer agents, to discharge their inquiry obligations.

From September 2009 through September 2012, the Firm failed to establish, maintain and enforce a supervisory system reasonably designed to achieve compliance with Section 5. CES failed to ensure reasonably that adequate due diligence was conducted before executing sales in microcap securities to verify that the transactions were registered or exempt from registration.

CES failed to commit appropriate training and resources to its review of the deposit and subsequent liquidation of unregistered securities in the accounts of its Direct Customers. While the Firm had procedures that required the collection of documents to meet its due diligence obligations, the Firm failed to identify readily-discoverable red flags involving the deposit of unregistered microcap stock, including (a) incomplete due diligence packages, (b) opinion letters prepared by attorneys on the OTCBB's prohibited attorney list; (c) opinion letters prepared by attorneys representing the issuer of the unregistered securities, and (d) large volumes of physical share certificates being deposited. Additionally, the Firm generally relied upon information obtained from interested parties rather than conducting adequate independent reviews to determine whether proposed sale transactions amounted to unregistered distributions. For example, the Firm did not independently verify when the unregistered security was acquired, whether the Direct Customer was a control person of the issuer, or whether the content of attorney opinion letters was reliable. While the Firm required the completion of "144 Worksheets," they were not reviewed by a supervisor when completed. The Firm did not have adequate policies or procedures requiring a searching inquiry to assure compliance with Section 5 until at least June 2012.

As a result of the foregoing, CES violated NASD Conduct Rules 3010(a) and (b) and FINRA Rule 2010.

CES Contravened Section 5 in Violation of FINRA Rule 2010

From October 22, 2010, through March 22, 2011, CES effected the sale of approximately 7 million unregistered shares of a microcap issuer for Direct Customer RM. These sales realized more than \$275,000 in proceeds to the customer. The stock of the issuer was thinly traded, and the issuer's debts greatly exceeded its assets. The Firm received defective opinion letters in connection with

the deposits of the securities that should have alerted the Firm to the fact that the shares were not eligible for resale. Specifically, the opinion letters claimed that the securities had been held by a non-affiliate of the issuer for at least six months, when, in fact, the "securities" referred to in the opinion letters were vendor invoices that had been purchased by the Direct Customer just weeks prior to the deposit and liquidation of the position at CES.

By facilitating the sale by Direct Customer RM of unregistered securities in transactions not subject to an exemption from the registration requirements, CES acted in contravention of Section 5, and thus, violated FINRA Rule 2010.

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

- a censure; and
- a fine of \$3 million.

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

The Respondent specifically and voluntarily waives any right to claim that the Respondent 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

The 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 Respondent;
- 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 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.

The Respondent further specifically and voluntarily waive 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 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 the Respondent; and
- C. If accepted:
 - 1. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Respondent;
 - 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. the 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. The 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 Respondent'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 Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Respondent 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.

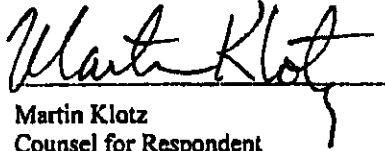
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that the Firm has agreed to its provisions voluntarily; and that no offer, threat, 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.

11/18/2016
Date (mm/dd/yyyy)

[Signature]
Convergex Execution Solutions LLC, Respondent
BD No. 35693

Greg Voetsch, Chief Executive Officer
By: _____
[Name and Title]

Reviewed by:



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Accepted by FINRA:

December 7, 2016

Date

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



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This Corrective Action Statement is submitted by the Respondent, Convergenx Execution Solutions LLC ("CES"). It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

**Statement of Corrective Action
by Convergenx Execution Solutions LLC**

CES submits this Statement of Corrective Action in connection with the foregoing Letter of Acceptance, Waiver, and Consent ("AWC") to describe the steps it has taken to substantially reduce the risk of recurrence of the issues addressed by the AWC.

Since the activities described in the AWC, CES has implemented a number of enhancements to existing procedures and implemented new measures to further reduce these risks. For example, after the closure of the VG account referenced in the AWC, CES restricted lower tier and caveat emptor designated OTC equities. Since then, these measures have been periodically enhanced. Most importantly, CES implemented hard blocks preventing it from executing microcap securities transactions for its execution clients. Limited exceptions to this blanket restriction may only be made through a formalized and rigorous pre-approval process involving Senior Management and the Compliance Department. Furthermore, CES is currently designing and implementing a process to place similar restrictions on microcap transactions executed away from the Firm by its introducing broker clients for clearance by CES.

CES has also substantially improved the coordination and information sharing among compliance, other control functions and various business lines. In May 2015, CES established the Low Priced Securities Working Group, which was later expanded to the Equity Options Working Group. The Working Group meets regularly to discuss any material changes to any business lines along with any new regulatory or compliance issues. Likewise, in June 2016, CES established the Surveillance Working Group, which consists of members of Trade Surveillance, AML Compliance and Credit and Risk, and meets regularly to discuss client activity. In addition, the Compliance Department and Surveillance Working Group have implemented procedures to systematically track and share regulatory inquiries, subpoenas and other information concerning, for example, particular customers, trades and issuers.

In July 2016, CES also augmented its AML/KYC policies to address concerns regarding Foreign Financial Institutions. Pursuant to these enhanced policies, all FFIs are automatically ranked no less than Medium Risk.