

FINANCIAL INDUSTRY REGULATORY AUTHORITY

In the Matter of the
Continued Membership
of
ConvergEx Execution Solutions, LLC

Notice Pursuant to
Rule 19h-1 of the
Securities Exchange Act
of 1934

SD-2025

Date: March 25, 2015

I. Introduction

On February 4, 2014, ConvergEx Execution Solutions, LLC (“CES” or the “Firm”) submitted a Membership Continuance Application (“MC-400A” or “the Application”) with FINRA’s Department of Registration and Disclosure.¹ The Application seeks to permit the Firm, a FINRA member subject to a statutory disqualification, to continue in membership with FINRA notwithstanding its disqualification. A hearing was not held in this matter; rather, pursuant to FINRA Rule 9523(b), FINRA is filing this Notice pursuant to Rule 19h-1 of the Securities Exchange Act of 1934 (“Exchange Act” or “SEA”).

II. The Statutorily Disqualifying Event

CES is subject to a statutory disqualification based on an Order Instituting Administrative and Cease-And-Desist Proceedings issued by the United States Securities and Exchange Commission (“SEC” or the “Commission”) dated December 18, 2013 (“the Order”), in the matter of G-Trade Services LLC (“G-Trade”), ConvergEx Global Markets Limited and ConvergEx Execution Solutions LLC (“CES”) (collectively, “Respondents”).² CES willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities. The Order found that CES willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities. Among other things, the Order found that the Respondents, wholly owned subsidiaries of ConvergEx Group, LLC, engaged in a fraudulent scheme to conceal Respondents’ practice of routing certain global

¹See the MC-400A Application filed with FINRA by CES, dated February 4, 2014, as well as related documents (attached as Exhibit 1).

²See the SEC’s Order dated December 18, 2013, in the matter of CES, et al. (attached as Exhibit 2).

trading and transition management customer orders to an offshore affiliate in order to charge undisclosed mark-ups and mark-downs on those orders. Further, the Order found that CES and G-Trade willfully violated Section 15(c)(1) of the Exchange Act, which prohibits fraudulent conduct by a broker-dealer in effecting, inducing or attempting to induce any securities transactions. As a result of their misconduct, the Respondents were ordered to cease and desist from committing or causing any violations and future violations of various provisions of the Exchange Act; CES and G-Trade were censured; and the Respondents were required to pay, jointly and severally, disgorgement of \$79,802,448, prejudgment interest of \$7,621,981, and a civil penalty of \$20,000,000.³ CES and G-Trade have made full payments of this amount.⁴ In addition, CES and G-Trade agreed to a number of undertakings, which are detailed in the Order.⁵ In one of the undertakings, the Firm was required to retain an independent consultant to complete a review and prepare a report of its recommendations. That report was completed on May 15, 2014.⁶ The independent consultant's report resulted in twenty-two recommendations and the Firm has implemented all of the recommendations.⁷ The final, unfinished undertaking requires the Firm to certify in writing, to SEC staff, in the second year following the issuance of the Order, that it has established and "continued to maintain policies, practices and procedures consistent with the findings of the Order."⁸

III. Background Information

A. The Firm

CES is based in New York, New York and has been a NASD/FINRA member since January 1994.⁹ The Firm has five branch offices and five Offices of Supervisory Jurisdiction ("OSJ"). The Firm employs 206 registered representatives, 72 registered principals and 336 employees. CES is engaged in the following types of businesses: exchange member engaged in exchange commission business other than floor activities; broker or dealer retailing corporate equity

³ *Id.*

⁴ The funds were placed in an escrow account administered by JP Morgan Chase ("JP Morgan") and can only be distributed by JP Morgan upon written authorization from the SEC. The SEC's Division of Enforcement has requested a third extension, until March 27, 2015, for entry of an order approving or disapproving the Proposed Plan of Distribution. *See* SEC Extension Order, dated December 9, 2014 (attached as Exhibit 3).

⁵ *See* Exhibit 2.

⁶ *See* the report of the independent consultant, the Independent Assessment of the ConvergEx Group Ethics & Compliance Program & Culture, dated May 15, 2014 (attached as Exhibit 4).

⁷ *See* letter from Steven P. Heineman and Robert Virgilio, of ConvergEx, to Jennifer S. Leete, of the SEC, wherein the Firm certifies that it has adopted and implemented the remaining recommendations, dated December 31, 2014 (attached as Exhibit 5).

⁸ The Order was issued on December 18, 2013; thus, the Firm is expected to certify by December 18, 2015. *See* Exhibit 2.

⁹ *See* the Firm's Organization Registration Status from the records of Central Registration Depository ("CRD") (attached as Exhibit 6).

securities over the counter; and non-exchange member arranging for transactions in listed securities by exchange member; U.S. government securities broker; municipal securities broker; and put and call broker or dealer or option writer.¹⁰ In addition to FINRA, CES is a member of the following self-regulatory organizations (“SROs”): BATS-YX, BATS-ZX, BX, BOX, CBOE, CHX, EDGA, EDGX, ISE, MIAX, NQX, NYSE, NYSE ARCA, NYSE-MKT, PHLX and DTCC. The Firm is also a member of the Municipal Securities Rulemaking Board (“MSRB”) and the National Futures Association (“NFA”).

B. Recent Routine Examinations

The 2013 Sales Practice Examination of the Firm resulted in no findings.¹¹ The 2012 and 2011 FINOP Examinations resulted in Cautionary Actions. From the 2012 FINOP examination¹² CES was cited for one exception: failing to comply with SEA Rule 15c3-3(f)/01 (Reserve Account Notification Letter) because the Firm’s J.P. Morgan Chase Bank Notification Letter for customers’ Special Reserve Bank was not adequate as it contained statements which were contradictory to the necessary no-lien language required by the Rule. In the 2011 FINOP Examination¹³ the Firm was cited for two exceptions: 1) A review of the stock borrow/loan conduit business disclosed that the Firm was reconciling their back office system in aggregate instead of on a counterparty basis, as required by SEA Rule 17a-3 (Records to be Made by Brokers/Dealers); and 2) SEA Rule 17a-5 (Reports to be Made By Certain Brokers/Dealers) because a review of CES’ method for reporting its soft dollar revenue and expenses on the FOCUS Income Statement disclosed that the Firm was reporting balances on a net basis.

An earlier 2010 FINOP and Sales Practice examination also resulted in a Cautionary Action.¹⁴ There were several exceptions from that examination including exceptions for failing to properly compute its customer reserve formula and for failing to adequately maintain its book and records to capture certain text messages of its registered representatives. Further details of

¹⁰ See Types of Business for the Firm (attached as Exhibit 7).

¹¹ CES is on a 3 year cycle for the Sales Practice Examination. The next Sales Practice Examination will be scheduled in 2016.

¹² See the Examination Disposition Letter, dated June 10, 2013; Report on the Examination, Examination Number 20120303004, dated April 26, 2013; and the Firm’s response, dated May 24, 2013 (collectively attached as Exhibit 8).

¹³ See the Examination Disposition Letter, dated July 5, 2011; Report on the Examination, Examination Number 20110252764, dated April 15, 2011; and the Firm’s responses, dated May 3, 2011 and July 11, 2011 (collectively attached as Exhibit 9).

¹⁴ See the Examination Disposition Letter, dated June 10, 2011; Report on the Examination, Examination Number 20100211839, dated August 13, 2010; and the Firm’s response, dated September 7, 2010 (collectively attached as Exhibit 10).

this examination can be found in the attached Examination Report. As noted in the Firm's response, CES took corrective actions to address the violations.

FINRA Regulatory Actions Against CES

Since its inception, the Firm has been the subject of one FINRA Decision & Order of Offer of Settlement; three FINRA Minor Rule Violation; ten letters of Acceptance, Waiver and Consent ("AWC").¹⁵ With respect to the failure to supervise violations, the Firm was cited mainly for transaction reporting violations, failure to supervise; and inadequate written supervisory policies and procedures.

Additional Regulatory Actions by Other SRO's

In April 2012, the AMEX brought an action against the Firm because of systemic errors found in its proprietary blue sheet system, failing to submit to the AMEX accurate trade data and for failing to maintain adequate supervisory procedures.¹⁶ CES was censured and fined \$215,000.

In April 2010, the New York Stock Exchange brought an action against the Firm for various trading violations.¹⁷ As a result of its misconduct the Firm was censured and fined \$190,000.

In August 2010, the National Stock Exchange, Inc. brought an action against CES because of its failure to deliver product descriptions to its clients who purchased exchange traded funds through the Firm.¹⁸ CES was censured and fined \$17,500.

In July 31, 2009, the America Stock Exchange, Inc. ("AMEX") brought an action against CES.¹⁹ The Firm violated various AMEX Rules, amongst them, Rule 1000-Commentary.04 and 1000A-Commentary .05 for its failure to prevent introducing broker-dealer client from entering limit orders into the Firm's AMEX order routing system. These failures caused the Firm to effectively operate as a market maker because it held itself out as willing to buy and sell certain shares on a regular basis. AMEX censured and fined CES \$35,000.

¹⁵ See copies of the Decision, MRV's and AWCs (collectively attached as Exhibit 11).

¹⁶ See the NYSE AMEX Hearing Board Decision 12-AMEX-1, dated March 19, 2012 (attached as Exhibit 12).

¹⁷ See the NYSE Hearing Board Decision 10-NYSE-9, dated April 22, 2010 (attached as Exhibit 13).

¹⁸ See the Expedited Proceeding Letter of Consent by the National Stock Exchange, dated June 28, 2010 (attached as Exhibit 14).

¹⁹ See the NYSE AMEX Hearing Board Decision 09-AMEX-19, dated July 31, 2009 (attached as Exhibit 15).

The Department is not aware of any other complaints, disciplinary proceedings, arbitrations or regulatory actions pending against CES.²⁰

IV. The Firm's Proposed Continued Membership with FINRA and the Supervisory Plan

Notwithstanding its disqualification, CES seeks to continue in membership with FINRA. In addition to the independent consultant's recommendations, the Firm has represented that, among other things, it has voluntarily taken the following measures:²¹

- It's Executive Management Committee now includes an ethics/compliance review at least quarterly;
- It is now explicit that the CCO has a direct reporting line to the chair of the Audit and Risk Committee;
- There is now a formal process for the Human Resources, Legal and Compliance Departments to collectively review any instances of employee misconduct;
- Departing employees are encouraged to participate in an exit interview, and the Human Resources Department has developed a list of exit interview questions that focus on ethics and compliance issues;
- The Firm has chosen a new vendor to manage its former "hotline," which has been rebranded as a "Help-Line." Calls are routed to a third party vendor, rather than the Human Resources Department;
- Compliance personnel now routinely receive profit and loss information on the businesses they support in order to facilitate more risk-based monitoring;
- Best Execution training has been held for IT personnel;
- A comprehensive robust communication and training plan has been developed and implemented; and
- A Mission and Values statement has been developed and communicated to employees.

²⁰ While not a pending regulatory matter, there is a pending civil action against the Firm involving claims of violations of the Employee Retirement Income Security Act ("ERISA").

²¹ See letters from John Faust, of WilmerHale, to Lorraine Lee-Stepney, of FINRA, dated December 18, 2014 and January 9, 2015 (both attached as Exhibit 16).

V. Discussion

After reviewing the record in this matter (including the above representations by the Firm), FINRA approves the Firm's request to continue in membership in FINRA, subject to the terms and conditions set forth below.

In evaluating this Application, FINRA assessed whether the Firm has demonstrated that its continued membership is in the investing public's interest and does not create an unreasonable risk of harm to investors or the markets (see FINRA By-Laws, Art. 3, Sec. 3(d)). Factors that bear on FINRA's assessment include the fact that the events leading to the Firm's disqualification concluded in 2011, the nature and gravity of the statutorily disqualifying misconduct, the restrictions imposed on the Firm, and whether there has been any intervening misconduct.

As stated earlier, the Firm has represented that it has already undertaken many steps, both before and after the imposition of the SEC's Order, to remedy the violations. In addition to implementing all of the recommendations from the independent consultant's report²², the Firm has also represented that its parent terminated all employees who engaged in the misconduct; terminated its Global Transition Management business in January 2014; implemented procedures for enhanced supervision of emails; revised its existing best execution procedures; enhanced its disclosures regarding compensation practices, (including in customer agreements); and hired an outside ethics and compliance consultant to conduct an assessment of its parent, ConvergEx Group LLC's, ethics and compliance program.²³

CES' disciplinary history does not reflect any similar violations subsequent to the entry of the Order. While FINRA has brought a number of formal disciplinary actions against the Firm, the majority of those actions were related to trade reporting violations.

Given the special procedures set forth below, FINRA believes that the Firm has met its burden, and that its continued membership in FINRA will not create an unreasonable risk of harm to the market or investors.²⁴

1. The Firm must comply with all of the undertakings from the Commission's Order and it must evidence its compliance in writing, to FINRA, Regulatory Operations Department, Attn: Statutory Disqualification Manager, no later than five business days after the designated event has occurred;

²²See Exhibit 5.

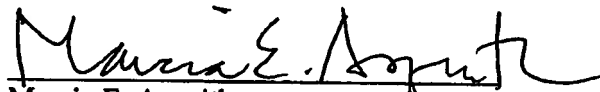
²³See letter from John Faust, of WilmerHale, to Lorraine Lee-Stepney of FINRA, indicating the titles of the employees that were terminated, dated November 25, 2014 (attached as Exhibit 17).

²⁴See the letter from Lorraine Lee-Stepney of FINRA, to John Faust, wherein the Firm agrees to its plan of heightened supervision, dated January 20, 2015 (attached as Exhibit 18).

2. It will be the responsibility of CES staff to notify FINRA, in writing, when it has complied with the final undertaking from the Commission's Order;
3. CES has represented that it has terminated its Global Transition Management business. If the Firm were to seek to reengage in this practice or engage in this line of business, it must first file an application as provided for in NASD Rule 1017 and obtain FINRA's approval; and
4. The Firm has ceased the routing of U.S. securities to any offshore affiliates. If the Firm were to seek to reengage in this practice or engage in this line of business, it must first file an application as provided for in NASD Rule 1017 and obtain FINRA's approval.

FINRA certifies that the Firm meets all qualification requirements. FINRA certifies that the Firm meets all qualification requirements. BATS-YX, BATS-ZX, BX, BOX, CBOE, CHX, EDGA, EDGX, ISE, MIAX, NQX, NYSE, NYSE ARCA, NYSE-MKT, PHLX and DTCC have concurred with FINRA's determination to permit the Firm's continued membership.²⁵ In conformity with the provisions of SEA Rule 19h-1, the continued membership of the Firm will become effective within 30 days of the receipt of this notice by the Commission, unless otherwise notified by the Commission.

On Behalf of FINRA


Marcia E. Asquith
Senior Vice President and Corporate Secretary

²⁵FINRA is not required to seek concurrences from NYSE ARCA, BOX and MIAX. However, FINRA is required to provide a copy of the 19h-1 Notice to those SRO's and we have complied with that requirement.