

**NEW YORK STOCK EXCHANGE LLC  
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT  
NO. 2019-05-00023**

TO: New York Stock Exchange LLC

RE: ConvergEx Execution Solutions LLC & Cowen Executions Services LLC, Respondents  
CRD No. 35693

During the period from April 1, 2014 to December 31, 2017 (the “Relevant Period”), initially ConvergEx Execution Solutions LLC (“ConvergEx”) and subsequently Cowen Execution Services LLC (“CES”)<sup>1</sup> violated NYSE Rules 122 (Orders with More than One Floor Broker) and 2010 (Standards of Commercial Honor and Principles of Trade) by sending and maintaining agency orders for the account of the same principal to two different floor broker firms in the same security that could execute at the same time and price.

In addition, during the period from April 1, 2014 to January 25, 2019 (the “Supervisory Relevant Period”), ConvergEx and CES violated NYSE Rules 342 (effective before December 1, 2014) and 3110(a) and (b) (effective on and after December 1, 2014) (Supervision) by failing to establish and maintain a supervisory system and written supervisory procedures (“WSPs”) reasonably designed to achieve compliance with NYSE Rule 122.

CES (together with ConvergEx, the “Firm”) consents to a censure and \$1,000,000 in monetary sanctions (comprised of \$165,000 in disgorgement and a \$835,000 fine).

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Pursuant to Rule 9216 of the New York Stock Exchange LLC (the “NYSE” or the “Exchange”) Code of Procedure, 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, the NYSE 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 the NYSE, or to which the NYSE 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 the NYSE:

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<sup>1</sup> The parent company that indirectly owns CES acquired ConvergEx in June 2017 and inherited the legacy ConvergEx business.

## **BACKGROUND & JURISDICTION**

1. ConvergeEx became a member of the NYSE in January 1994 and established itself as a Delaware limited liability company headquartered in New York, New York. The parent company that indirectly owns CES acquired ConvergeEx in June 2017 and effectively inherited the legacy ConvergeEx business. Among other services, the Firm provides routing and execution services to its customers.
2. The Firm's registration as an NYSE member organization remains in effect. Neither ConvergeEx nor CES has disciplinary history for violations of NYSE Rule 122.

## **PROCEDURAL HISTORY**

3. This matter arises from an investigation conducted by NYSE Regulation. In a letter dated May 9, 2019, NYSE Regulation provided notice to the Firm that it was under investigation in this matter relating to the Firm's potential violations of NYSE Rule 122.

## **VIOLATIONS**

### **The Firm Violated NYSE Rules 122 and 2010**

4. NYSE Rule 122 prohibits member organizations from sending and maintaining with more than one floor broker, for execution on the Exchange, orders at the same price for the purchase or sale of the same security with knowledge that such orders are for the account of the same principal.
5. NYSE Rule 2010 requires a "member organization, in the conduct of its business, [to] observe high standards of commercial honor and just and equitable principles of trade."
6. In March 2014, ConvergeEx on-boarded a hedge fund customer (the "Customer") and shortly thereafter in April 2014 started providing, among other services, routing and execution services to the Customer. ConvergeEx's electronic trading desk routed certain of the Customer's orders to, among other destinations, two different floor broker firms on the NYSE floor.
7. This included orders routed from two separate and distinct algorithmic trading strategies at the Customer, which were on behalf of accounts for the same principal until at least December 2017.
8. After the parent of CES acquired the routing and execution services from ConvergeEx in June 2017, CES continued to route the Customer's orders in the same exact manner starting in July 2017.
9. One of the purposes of NYSE Rule 122 is to prevent impacting the NYSE parity allocation rules so that a member organization or its customer cannot obtain

preferential execution – that is, be over-represented in the market – by sending same orders to multiple floor brokers at the same time.

10. As a direct result of the Firm routing the Customer's orders to two different floor broker firms, the Customer was over-represented under the NYSE parity model throughout the Relevant Period and received over-allocations of executions to the disadvantage of other market participants.
11. For the aforementioned reasons, the Firm violated NYSE Rules 122 and 2010 during the Relevant Period.

**The Firm Violated NYSE Rules 342 and 3110(a) & (b)**

12. NYSE Rules 342 (effective before December 1, 2014) and 3110(a) and (b) (effective on and after December 1, 2014) require member organizations to, among other things, establish and maintain both a supervisory system and WSPs that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.
13. Because the Firm represented the Customer on an agency basis, it had the supervisory obligations to conduct reasonable due diligence to assure that the Customer's orders were not for the account of the same principal and, if the orders were for the account of the same principal, to detect and prevent routing the orders to two different floor brokers in the same security that could have executed at the same time and price.
14. During the Supervisory Relevant Period, however, the Firm did not have any supervisory system or WSPs in place to ensure compliance with NYSE Rule 122. As a result of these supervisory failures, the Firm failed to detect and prevent the violative orders that were routed to the two different floor broker firms for the Customer.
15. As a result of the above misconduct, the Firm violated NYSE Rules 342 and 3110(a) and (b) during the Supervisory Relevant Period.

**SANCTIONS**

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

1. **Censure;**
2. **Disgorgement of \$165,000 in commissions that the Firm made in connection with the violative orders described above; and**
3. **A \$835,000 fine.**

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. The Firm has submitted a Method of Payment Confirmation form showing the method by which it will 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 Firm agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts. The Firm further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any fine amounts that the Firm pays pursuant to this AWC, regardless of the use of the fine amounts.

## **II. WAIVER OF PROCEDURAL RIGHTS**

The Firm specifically and voluntarily waives the following rights granted under the NYSE Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal 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 Exchange's Board of Directors 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 Chief Regulatory Officer of the NYSE; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE employee; or any Regulatory Staff as defined in Rule 9120 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 communication prohibitions of Rule 9143 or the separation of functions prohibitions of 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 by NYSE Regulation, and accepted by the Chief Regulatory Officer of the NYSE pursuant to NYSE 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. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 25 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE Rule 9310(a)(1)(B);
  - 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
  - 3. The NYSE shall publish a copy of the AWC on its website in accordance with NYSE Rule 8313;
  - 4. The NYSE may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Rule 8313; and
  - 5. 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 the Exchange, or to which the Exchange 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 the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. 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

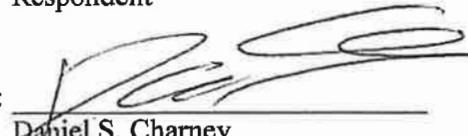
is inconsistent with the AWC in this Statement. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.


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.

3/5/20  
\_\_\_\_\_  
Date

Cowen Execution Services LLC,  
Respondent

By:   
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Daniel S. Charney  
Chief Executive Officer  
Cowen Execution Services LLC

Reviewed by:

  
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Michael D. Wolk, Esq.  
Sidley Austin LLP  
Counsel for Respondent

Accepted by NYSE Regulation

03/05/20

Date



Tony M. Frouge  
Senior Enforcement Counsel

Aaron H. Krieger  
Enforcement Counsel

NYSE Regulation

Signed on behalf of New York Stock  
Exchange LLC, by delegated authority from  
its Chief Regulatory Officer