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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

|                          |   |                         |
|--------------------------|---|-------------------------|
| UNITED STATES OF AMERICA | : | Hon. Jose L. Linares    |
|                          | : |                         |
| v.                       | : | Criminal No. 13-811     |
|                          | : |                         |
| CONVERGEX GROUP, LLC,    | : | 18 U.S.C. §§ 1343, 1349 |
|                          | : |                         |
| Defendant.               | : |                         |

**DEFERRED PROSECUTION AGREEMENT**

Defendant ConvergEx Group, LLC (the "Company"), by its undersigned representatives, pursuant to authority granted by the Company's Board of Directors, and the United States Department of Justice, Criminal Division, Fraud Section (the "Department"), enter into this deferred prosecution agreement (the "Agreement"), the terms and conditions of which are as follows:

**Criminal Information and Acceptance of Responsibility**

1. The Company acknowledges and agrees that the Department will file a two-count criminal Information (the "Information") in the United States District Court for the District of New Jersey charging the Company with: (i) conspiracy to commit wire fraud and securities fraud, in violation of Title 18, United States Code, Section 1349; and (ii) wire fraud, in violation of Title 18, United States Code, Section 1343. In so doing, the Company: (a) knowingly waives its right to indictment

on this charge, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives, for purposes of this Agreement and any charges by the United States arising out of the conduct described in the attached Statement of Facts, any objection with respect to venue and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the District of New Jersey.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, employees, and agents as charged in the Information, and as set forth in the Statement of Facts attached hereto as Attachment A and incorporated by reference into this Agreement, and that the allegations described in the Information and the facts described in Attachment A are true and accurate. Should the Department pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the Statement of Facts at any such proceeding.

Neither this Agreement nor the Information is a final adjudication of the matters addressed in such documents.

3. The Department and the Company further agree that as a term and condition of this Agreement, ConvergEx Global Markets Limited ("CGM Limited"), a wholly owned subsidiary of the Company, will plead guilty to a two-count criminal Information in the United States District Court for the District of New Jersey charging it with: (i) conspiracy to commit wire fraud and securities fraud, in violation of Title 18, United States Code, Section 1349; and (ii) wire fraud, in violation of Title 18, United States Code, Section 1343, and pay restitution, in accordance with the Plea Agreement that is attached as Attachment B, which is incorporated in this Agreement.

**Term of the Agreement**

4. This Agreement is effective for a period beginning on the date on which the Information is filed and ending two (2) years and seven (7) calendar days from that date (the "Term"). The Company agrees, however, that, in the event that the Department determines, in its sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Department, in its sole discretion, for up to a total additional time period of one year, without prejudice to

the Department's right to proceed as provided in Paragraphs 16 through 20 below. Any extension of the Agreement extends all terms of this Agreement for an equivalent period.

**Relevant Considerations**

5. The Department enters into this Agreement based on the individual facts and circumstances presented by this case and the Company. Among the factors considered were the following: (a) after being contacted by the Department in connection with an investigation of possible fraudulent conduct in connection with mark-ups and mark-downs on securities transactions (hereinafter, such mark-ups and mark-downs are referred to as "spread income"), the Company conducted an extensive internal investigation and disclosed to the Department the misconduct described in the Information and Statement of Facts; (b) the Company's cooperation has been extraordinary, including conducting an extensive internal investigation, voluntarily making U.S. and foreign employees available for interviews, uncovering and voluntarily disclosing misconduct about which the Department was previously unaware, and collecting, analyzing, and organizing voluminous evidence and information that it produced and presented in a detailed and comprehensive fashion for the Department; (c) the Company has engaged in extensive remediation, including terminating the employment of officers

and employees who were responsible for or condoned the fraudulent conduct, ceasing all trading activities at and voluntarily relinquishing the Bermudan securities license of CGM Limited, its Bermuda subsidiary, and revamping its business model to preclude the possibility of a recurrence of the type of fraudulent conduct described in the attached Statement of Facts; (d) the Company has committed to continue to enhance its compliance program and internal controls, including by hiring a qualified independent ethics and compliance consultant to conduct an ethics and compliance program assessment; (e) the Company has agreed to continue to cooperate with the Department in any ongoing investigation of the conduct of the Company and its subsidiaries and affiliates, as well as its officers, directors, employees, agents, and consultants relating to fraudulent conduct in connection with the taking, disclosing, or sharing of spread income on securities transactions as provided in Paragraphs 6 and 7 below; (f) the guilty plea by CGM Limited to one count of conspiracy to commit wire and securities fraud, along with one count of wire fraud, and its agreement to pay restitution; and (g) the significant sanction being imposed by the U.S. Securities and Exchange Commission (the "SEC") for ConvergEx Group's conduct in this matter.

6. The Company shall continue to cooperate fully with the Department in any and all matters relating to the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department that has commenced before or during the term specified in Paragraph 4, subject to applicable law and regulations, until the date upon which all investigations and prosecutions arising out of such conduct are concluded, whether or not those investigations and prosecutions are concluded within the term specified in Paragraph 4, or until further agreement with the Department. This includes ensuring that its subsidiaries and affiliates comply with the terms of this Paragraph and Paragraph 7 of this Agreement. At the request of the Department, the Company shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the Company, its subsidiaries and affiliates, or any of its present and former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to this Agreement and Attachment A. The Company agrees that its cooperation pursuant to this Paragraph shall include, but not be limited to, the following:

a. The Company shall truthfully disclose all factual information not protected by a valid claim of attorney-client

privilege or attorney work product with respect to its activities, those of its subsidiaries and affiliates, and those of its present and former directors, officers, employees, agents, and consultants concerning all matters relating to the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department about which the Company has any knowledge or about which the Department may inquire, including any evidence or allegations and internal or external investigations, about which the Company has any knowledge or about which the Department may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of the Company to provide to the Department, upon request, any document, record or other tangible evidence relating to the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department about which the Department may inquire of the Company.

b. Upon request of the Department, with respect to any issue relevant to its investigation of the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department, the Company shall designate knowledgeable employees, agents or attorneys to provide to the Department the information and materials described in Paragraph

6(a) above on behalf of the Company. It is further understood that the Company must at all times provide complete, truthful, and accurate information.

c. With respect to any issue relevant to the Department's investigation of the conduct described in this Agreement and Attachment A and other conduct under investigation by the Department, the Company shall use its best efforts to make available for interviews or testimony, as requested by the Department, present or former officers, directors, employees, agents, and consultants of the Company. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Department pursuant to this Agreement, the Company consents to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government of such



materials as the Department, in its sole discretion, shall deem appropriate.

7. In addition to the obligations in Paragraph 6, during the Term of the Agreement, should the Company discover any evidence or allegations of fraudulent conduct in connection with the taking, disclosing, or sharing of spread income on securities transactions or similar misconduct not otherwise disclosed, including the existence of internal or external investigations into such conduct, the Company shall promptly report such evidence or allegations to the Department.

**Payment of Monetary Penalty**

8. The Department and the Company agree that application of the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") to determine the applicable fine range yields the following analysis:

- a. The 2013 USSG are applicable to this matter.
- b. Offense Level. Based upon USSG § 2B1.1, the total offense level is 33, calculated as follows:

|              |                                     |      |
|--------------|-------------------------------------|------|
| (a) (1)      | Base Offense Level                  | 7    |
| (b) (1) (K)  | Loss of more than \$7,000,000       | + 20 |
| (b) (10) (C) | Sophisticated means                 | + 2  |
| (b) (18) (A) | Associated with a registered broker | + 4  |
| <b>TOTAL</b> |                                     | 33   |

- c. Base Fine. Based upon USSG § 8C2.4(a)(1), the base fine is \$22,000,000 (the fine indicated in the Offense Level Fine Table).
  - d. Culpability Score. Based upon USSG § 8C2.5, the culpability score is 7, calculated as follows:
    - (a) Base Culpability Score 5
    - (b)(2) The organization had 1,000 or more employees and an individual within high-level personnel participated in, condoned, or was willfully ignorant of the offense +4
    - (g)(2) The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct - 2
- TOTAL** 7

Calculation of Fine Range:

|             |                             |
|-------------|-----------------------------|
| Base Fine   | \$22,000,000                |
| Multipliers | 1.4 (min) / 2.8 (max)       |
| Fine Range  | \$30,800,000 / \$61,600,000 |

The Company agrees to pay a monetary penalty in the amount of \$18,010,027.05 to the United States Treasury. The Company must pay this sum within ten (10) business days of the sentencing of CGM Limited, in connection with its guilty plea and plea agreement attached as Attachment B. The parties agree that any

criminal fine or payment to the United States Postal Inspection Service Consumer Fraud Fund that might be imposed by the Court on CGM Limited in connection with its guilty plea and plea agreement will be deducted from the \$18,010,027.05 penalty agreed to under this Agreement. The Company and the Department agree that this \$18,010,027.05 penalty is appropriate given the facts and circumstances of this case, including the Company's forfeiture of \$12,789,972.95 as set forth in Paragraph 9, the payment by the Company on behalf of three of its subsidiaries of \$107,424,429 to the Fair Fund to be established by the SEC as a result of the SEC's action against those subsidiaries arising, in part, from the same conduct at issue in this case, and the nature and extent of the Company's extraordinary cooperation and extensive remediation in this matter. The \$18,010,027.05 penalty is final and shall not be refunded. Furthermore, nothing in this Agreement shall be deemed an agreement by the Department that \$18,010,027.05 is the maximum penalty that may be imposed in any future prosecution, and the Department is not precluded from arguing in any future prosecution that the Court should impose a higher fine, although the Department agrees that under those circumstances, it will recommend to the Court that any amount paid under this Agreement should be offset against any fine the Court imposes as part of a future judgment. The

Company acknowledges that no United States tax deduction may be sought in connection with the payment of any part of this \$18,010,027.05 penalty.

**Forfeiture**

9. As a result of the Company's conduct, including the conduct set forth in the Statement of Facts, the parties agree the Department could institute a civil and/or criminal forfeiture action against certain funds held by the Company and that such funds would be forfeitable pursuant to Title 18, United States Code, Sections 981 and 982, and Title 28, United States Code, Section 2461. The Company hereby acknowledges that at least \$12,789,972.95 was traceable to and/or involved in transactions in violation of Title 18, United States Code, Sections 1343 and 1349. The Company hereby agrees to administratively forfeit to the United States the sum of \$12,789,972.95 (the "Forfeiture Amount") pursuant to Title 18, United States Code, Section 981. The Company hereby agrees that, in the event the funds used to pay the Forfeiture Amount are not directly traceable to the transactions, the monies used to pay the Forfeiture Amount shall be considered substitute *res* for the purpose of forfeiture. The Company shall pay the Forfeiture Amount plus any associated transfer fees within five (5) business days of the sentencing of CGM Limited, in

connection with its guilty plea and plea agreement attached as Attachment B, pursuant to payment instructions provided by the Department in its sole discretion. The Company agrees to sign any additional documents necessary to complete forfeiture of the funds. The Company takes no position as to the disposition of the funds after payment and waives any statutory or procedural notice requirements with respect to the United States' disposition of the funds. The Company knowingly and voluntarily waives any claim or defense it may have under the Eighth Amendment of the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited assets.

10. The Forfeiture Amount paid is final and shall not be refunded should the Government later determine that the Company has breached this Agreement and commences a prosecution against the Company. In the event of a breach of this Agreement and subsequent prosecution, the Government may pursue additional civil and criminal forfeiture in excess of the Forfeiture Amount. The Government agrees that in the event of a subsequent breach and prosecution, it will recommend to the Court that the amounts paid pursuant to this Agreement be offset against whatever forfeiture the Court shall impose as part of its

judgment. The Company understands that such a recommendation will not be binding on the Court.

**Conditional Release from Liability**

11. Subject to Paragraphs 16 through 20, the Department agrees, except as provided herein, that it will not bring any criminal or civil case against the Company, its subsidiaries, or its affiliates related to the conduct described in the Agreement and Attachment A or relating to information that the Company disclosed to the Department prior to the date on which this Agreement was signed, except as set forth in the plea agreement attached as Attachment B. The Department, however, may use any information related to the conduct described in the attached Statement of Facts against the Company, its subsidiaries, or its affiliates: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; or (c) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code.

a. This Paragraph does not provide any protection against prosecution for any future conduct by the Company, its subsidiaries, or its affiliates.

b. In addition, this Paragraph does not provide any protection against prosecution of any present or former officer, director, employee, shareholder, agent, consultant, contractor,

or subcontractor of the Company, its subsidiaries, or its affiliates for any violations committed by them.

**Corporate Compliance Program**

12. The Company represents that it has implemented and will continue to implement a compliance and ethics program designed to prevent and detect fraudulent conduct in connection with violations of the securities laws and other criminal laws prohibiting fraud throughout its operations, including those of its subsidiaries and affiliates. Implementation of these policies and procedures shall not be construed in any future enforcement proceeding as providing immunity or amnesty for any crimes not disclosed to the Department as of the date of signing of this Agreement for which the Company would otherwise be responsible.

13. In order to address any deficiencies in its internal controls, policies, and procedures, the Company represents that it has undertaken, and will continue to undertake in the future, in a manner consistent with all of its obligations under this Agreement, a review of its existing internal controls, policies, and procedures regarding compliance with the securities laws and other criminal laws prohibiting fraud. If necessary and appropriate, the Company will adopt new or modify existing internal controls, policies, and procedures in order to ensure

that the Company maintains a rigorous compliance code, standards, and procedures designed to prevent and detect violations of the securities laws and other criminal laws prohibiting fraud throughout its operations, including those of its subsidiaries and affiliates. Furthermore, the Company will engage a qualified independent ethics and compliance consultant with extensive experience in developing, implementing, and overseeing organizational compliance and ethics programs to conduct an ethics and compliance program assessment. The Company will provide the Department within thirty (30) days of the completion of this review the consultant's findings. In addition, in light of active investigations by various regulators of the misconduct described in the Statement of Facts and the role that regulators will continue to play in reviewing the Company's compliance standards, the Department has determined that adequate compliance measures have been and will be established. The Company will report to the Department, upon request, regarding its remediation and implementation of any compliance program and internal controls, policies, and procedures that relate to compliance with the securities laws and other criminal laws prohibiting fraud. The Company agrees that it has no objection to any regulatory agencies providing to the Department any information or reports generated by such



agencies or the Company relating to violations of the securities laws and other criminal laws prohibiting fraud. Such information and reports will likely include proprietary, financial, confidential, and competitive business information. Public disclosure of the information and reports could discourage cooperation, impede pending or potential government investigations, and thus undermine the Department's objectives in obtaining such reports. For these reasons, among others, the information and reports and the contents thereof are intended to remain and shall remain nonpublic, except as otherwise agreed to by the parties in writing, or except to the extent that the Department determines in its sole discretion that disclosure would be in furtherance of the Department's discharge of its duties and responsibilities or is otherwise required by law.

**Deferred Prosecution**

14. In consideration of: (a) the past and future cooperation of the Company and other factors described in Paragraphs 5 through 7 above; (b) the Company's payment of a criminal penalty of \$18,010,027.05 as set forth in Paragraph 8 and forfeiture of \$12,789,972.95 as set forth in Paragraph 9; and (c) the Company's implementation and maintenance of remedial measures as described in Paragraphs 5, 12, and 13 above, the Department agrees that any prosecution of the Company for the

conduct charged in the Information, the conduct set forth in the attached Statement of Facts, and for the conduct that the Company disclosed to the Department prior to the signing of this Agreement, be and hereby is deferred for the Term of this Agreement.

15. The Department further agrees that if the Company fully complies with all of its obligations under this Agreement, the Department will not continue the criminal prosecution against the Company described in Paragraph 1, and, at the conclusion of the Term, this Agreement shall expire. Within thirty (30) days of the Agreement's expiration, the Department shall seek dismissal of the Information, and agrees not to file charges in the future against the Company based on the conduct described in this Agreement and Attachment A, unless, after the expiration of the Term of this Agreement, the Department determines in its sole discretion that the Company intentionally failed to meet its obligations under Paragraphs 6 and 7 of this Agreement.

**Breach of the Agreement**

16. If, during the Term of this Agreement, the Company, its subsidiaries, or its affiliates (a) commits any felony under U.S. federal law subsequent to the signing of this Agreement, (b) provides in connection with this Agreement deliberately

false, incomplete, or misleading information, (c) fails to cooperate as set forth in Paragraphs 6 and 7 of this Agreement, (d) fails to implement an enhanced compliance program as set forth in Paragraphs 12 and 13 of this Agreement, or (e) otherwise fails to perform or to fulfill completely each and every one of the Company's obligations under the Agreement, the Department shall determine, in its sole discretion, whether the Company has breached the Agreement. If the Department determines that the Company, its subsidiaries, or its affiliates have breached the Agreement, the Company, its subsidiaries, or its affiliates shall thereafter be subject to prosecution for any federal criminal violation of which the Department has knowledge, including but not limited to, the charges in the Information, which may be pursued by the Department in the U.S. District Court for the District of New Jersey or any other appropriate venue. Any such prosecution may be premised on information provided by the Company, its subsidiaries, or its affiliates. Any such prosecution relating to the conduct described in the attached Statement of Facts or relating to conduct known to the Department prior to the date on which the Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Company, its

subsidiaries, or its affiliates notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, the Company agrees that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year.

17. In the event that the Department determines that the Company has breached this Agreement, the Department agrees to provide the Company with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty (30) days of receipt of such notice, the Company shall have the opportunity to respond to the Department in writing to explain the nature and circumstances of such breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Department shall consider in determining whether to institute a prosecution.

18. In the event that the Department determines that the Company has breached this Agreement: (a) all statements made by or on behalf of the Company to the Department or to the Court, including the attached Statement of Facts, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or

subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Department against the Company, its subsidiaries, or its affiliates; and (b) the Company, its subsidiaries, or its affiliates shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that statements made by or on behalf of the Company, its subsidiaries, or its affiliates prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director or employee, or any person acting on behalf of, or at the direction of, the Company, its subsidiaries, or its affiliates will be imputed to the Company, its subsidiaries, or its affiliates for the purpose of determining whether the Company has violated any provision of this Agreement shall be in the sole discretion of the Department.

19. The Company acknowledges that the Department has made no representations, assurances, or promises concerning what sentence may be imposed by the Court if the Company breaches this Agreement and this matter proceeds to judgment. The Company further acknowledges that any such sentence is solely

within the discretion of the Court and that nothing in this Agreement binds or restricts the Court in the exercise of such discretion.

20. No later than 90 days prior to the expiration of the period of deferred prosecution specified in this Agreement, the Company, by the Chief Executive Officer of the Company and the Chief Financial Officer of the Company, will certify to the Department that the Company has met its disclosure obligations pursuant to Paragraphs 6 and 7 of this Agreement. Such certification will be deemed a material statement and representation by the Company to the executive branch of the United States for purposes of 18 U.S.C. § 1001, and it will be deemed to have been made in the judicial district in which this Agreement is filed.

**Sale or Merger of Company**

21. The Company agrees that in the event it sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale is structured as a sale, asset sale, merger, or transfer, it shall include in any contract for sale, merger, or transfer a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement.

**Public Statements by Company**

22. The Company expressly agrees that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Company, its subsidiaries, affiliates, or unit holders, make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Company set forth above or the facts described in the attached Statement of Facts. Any such contradictory statement shall, subject to cure rights of the Company described below, constitute a breach of this Agreement, and the Company thereafter shall be subject to prosecution as set forth in Paragraphs 16 through 20 of this Agreement. The decision whether any public statement by any such person contradicting a fact contained in the Statement of Facts will be imputed to the Company for the purpose of determining whether it has breached this Agreement shall be at the sole discretion of the Department. If the Department determines that a public statement by any such person contradicts in whole or in part a statement contained in the Statement of Facts, the Department shall so notify the Company, and the Company may avoid a breach of this Agreement by publicly repudiating such statement(s) within five (5) business days after notification. The Company shall be permitted to raise

defenses and to assert affirmative claims in other proceedings relating to the matters set forth in the Statement of Facts provided that such defenses and claims do not contradict, in whole or in part, any statement contained in the Statement of Facts. This Paragraph does not apply to any statement made by any present or former officer, director, employee, or agent of the Company in the course of any criminal, regulatory, or civil case initiated against such individual, unless such individual is speaking on behalf of the Company.

23. The Company agrees that if it or any of its subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, the Company shall first consult the Department to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Department and the Company; and (b) whether the Department has any objection to the release.

24. The Department agrees, if requested to do so, to bring to the attention of governmental and other debarment authorities the facts and circumstances relating to the nature of the conduct underlying this Agreement, including the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to debarment authorities,



the Department is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by the debarment authorities.

**Limitations on Binding Effect of Agreement**

25. This Agreement is binding on the Company and the Department but specifically does not bind any other offices of the United States Department of Justice, federal agencies, or any state, local or foreign law enforcement or regulatory agencies, or any other authorities, although the Department will bring the cooperation of the Company and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by the Company.

**Notice**

26. Any notice to the Department under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to the Deputy Chief—Securities and Financial Fraud Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, N.W., Washington, D.C. 20005. Any notice to the Company under this Agreement shall be given by personal delivery, overnight delivery by a recognized delivery service, or registered or certified mail, addressed to Craig S. Warkol, Bracewell & Giuliani LLP, 1251 Avenue of the Americas,

49<sup>th</sup> Floor, New York, New York 10020, and Steven P. Heineman, ConvergEx Group, LLC, 1633 Broadway, 48th Floor, New York, New York 10019. Notice shall be effective upon actual receipt by the Department or the Company.

**Complete Agreement**

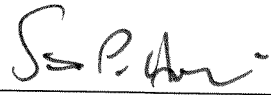
27. This Agreement sets forth all the terms of the agreement between the Company and the Department. No amendments, modifications, or additions to this Agreement shall be valid unless they are in writing and signed by the

Department, the attorneys for the Company, and a duly authorized representative of the Company.

**AGREED:**

**FOR CONVERGEX GROUP, LLC:**

Date: 12/12/13

By:   
STEVEN P. HEINEMAN  
ConvergEx Group, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Craig S. Warkol  
Bracewell & Giuliani LLP

**FOR THE DEPARTMENT OF JUSTICE:**

Jeffrey H. Knox  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice

Date: \_\_\_\_\_

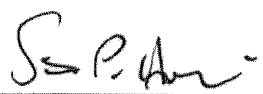
BY: \_\_\_\_\_  
Justin Goodyear  
Jason Linder  
Patrick M. Pericak  
Trial Attorneys

Department, the attorneys for the Company, and a duly authorized representative of the Company.

**AGREED:**

**FOR CONVERGEX GROUP, LLC:**

Date: 12/12/13

By:   
STEVEN P. HEINEMAN  
ConvergEx Group, LLC

Date: 12/12/13

By:   
Craig S. Warkol  
Bracewell & Giuliani LLP

**FOR THE DEPARTMENT OF JUSTICE:**

Jeffrey H. Knox  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice

Date: \_\_\_\_\_


BY: \_\_\_\_\_  
Justin Goodyear  
Jason Linder  
Patrick M. Pericak  
Trial Attorneys

Department, the attorneys for the Company, and a duly authorized representative of the Company.

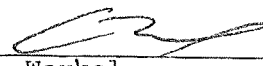
AGREED:

FOR CONVERGEX GROUP, LLC:

Date: 12/12/13

By:   
STEVEN P. HEINEMAN  
ConvergEx Group, LLC


Date: 12/12/13

By:   
Craig S. Warkol  
Bracewell & Giuliani LLP

FOR THE DEPARTMENT OF JUSTICE:

Jeffrey H. Knox  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice

Date: 12/12/13

BY:   
Justin Goodyear  
Jason Linder  
Patrick M. Pericak  
Trial Attorneys

**COMPANY OFFICER'S CERTIFICATE**

I have read this Agreement and carefully reviewed every part of it with outside counsel for ConvergeX Group, LLC (the "Company"). I understand the terms of this Agreement and voluntarily agree, on behalf of the Company, to each of its terms. Before signing this Agreement, I consulted outside counsel for the Company. Counsel fully advised me of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed the terms of this Agreement with the Board of Directors of the Company. I have advised and caused outside counsel for the Company to advise the Board of Directors fully of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement.

No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of the Company, in any way to enter into this Agreement. I am also satisfied with outside counsel's representation in this matter. I certify that I am the General

Counsel for the Company and that I have been duly authorized by the Company to execute this Agreement on behalf of the Company.

Date: December 12, 2013

CONVERGEX GROUP, LLC

By: Steven P. Heineman

STEVEN P. HEINEMAN

General Counsel

ConvergEx Group, LLC

**CERTIFICATE OF COUNSEL**

I am counsel for ConvergeX Group, LLC (the "Company") in the matter covered by this Agreement. In connection with such representation, I have examined relevant Company documents and have discussed the terms of this Agreement with the Company Board of Directors. Based on our review of the foregoing materials and discussions, I am of the opinion that the representative of the Company has been duly authorized to enter into this Agreement on behalf of the Company and that this Agreement has been duly and validly authorized, executed, and delivered on behalf of the Company and is a valid and binding obligation of the Company. Further, I have carefully reviewed the terms of this Agreement with the Board of Directors and the General Counsel of the Company. I have fully advised them of the rights of the Company, of possible defenses, of the Sentencing Guidelines' provisions and of the consequences of entering into this Agreement. To my knowledge, the decision of the Company to enter into this Agreement, based on the authorization of the Board of Directors, is an informed and voluntary one.

Date: 12/12/13, 2013

By:   
\_\_\_\_\_  
Craig S. Warkol  
Bracewell & Giuliani LLP  
Counsel for ConvergeX Group, LLC



**ATTACHMENT A**

**STATEMENT OF FACTS**

This Statement of Facts is incorporated by reference as part of the Deferred Prosecution Agreement, dated December 12, 2013, between the United States Department of Justice, Criminal Division, Fraud Section (the "Department"), and ConvergEx Group, LLC ("CONVERGEX GROUP"). CONVERGEX GROUP hereby agrees and stipulates that the following information is true and accurate. CONVERGEX GROUP admits, accepts, and acknowledges that it is responsible for the acts of its officers, employees, and agents as set forth below. Should the Department pursue the prosecution that is deferred by this Agreement, CONVERGEX GROUP agrees that it will neither contest the admissibility of, nor contradict, this Statement of Facts in any such proceeding.

**Relevant ConvergEx Entities and Employees**

1. CONVERGEX GROUP was a parent company that owned several subsidiaries, including broker-dealers and related companies offering brokerage services to U.S. and foreign institutional clients. Multiple cross-subsidiary business divisions also reported up to CONVERGEX GROUP.

2. Certain of these broker-dealers offered their clients "agency brokerage" services for equities (the "Agency Brokers"). ConvergEx divisions offering global trading and global transition management services through the Agency Brokers

disclosed to clients that the Agency Brokers would charge commissions for their services and presented themselves as "conflict free" agency-only brokers in certain marketing materials.

3. ConvergEx Global Markets Limited ("CGM Limited") was a wholly owned subsidiary of CONVERGEX GROUP that was incorporated, headquartered, and registered as a broker-dealer in Bermuda. CGM Limited was acquired by CONVERGEX GROUP in October 2006.

4. ConvergEx Global Markets Division ("CGM Division") was an unincorporated business line reporting up to CONVERGEX GROUP that included CGM Limited and divisions of certain Agency Brokers. The CGM Division offered global trading services, which allowed clients to contemporaneously trade large blocks of securities in different markets throughout the world. The CGM Division in many respects was operated as one business. For instance, certain income (known as spread income) generated by CGM Limited in Bermuda was credited to the Agency Brokers for various business reasons, including for making compensation decisions for employees of the Agency Brokers.

5. The Global Transition Management Division ("GTM Division") was an unincorporated business division reporting up to CONVERGEX GROUP that was housed within certain of the Agency Brokers. The GTM Division offered transition management

services, which provided clients in the process of changing fund managers or investment strategies the ability to execute large orders to buy and sell securities.

6. The CGM and GTM Divisions regularly routed certain orders for the purchase or sale of securities to CGM Limited, which traded securities on a riskless principal basis. In general, a "riskless principal" trade occurs when a broker-dealer, after receiving a client order to buy (or sell) a security, buys (or sells) the security for its own account from (or to) another person in a contemporaneous offsetting transaction and then allocates the shares to the client order. CGM Limited regularly included a mark-up (an additional amount paid for the purchase of a security) or mark-down (a reduction of the amount received for the sale of a security) when executing orders routed by the Agency Brokers for non-fiduciary clients, and the price reported to these clients by the Agency Brokers included any such mark-up or mark-down. Employees of CONVERGEX GROUP and certain of its subsidiaries referred to such mark-ups and mark-downs as either "spread," "trading profits," or "TP."

7. Executive A was Chief Executive Officer of CGM Limited, head of the CGM Division, and an Executive Managing Director of CONVERGEX GROUP.

8. Executive B was head of the GTM Division.

9. Jonathan Daspin ("Daspin") was the Head Trader at CGM Limited and its predecessor entities.

10. Thomas Lekargerren ("Lekargerren") was a Sales Trader at one of the Agency Brokers.

#### **Other Relevant Entities**

11. Clients 1 through 4 used the Agency Brokers for global trading services.

12. Clients 5 through 7 used one of the Agency Brokers for transition management services.

13. Transition Management Company ("TMC") was unaffiliated with CONVERGEX GROUP and provided transition management services to its clients. TMC sent its clients' orders to an Agency Broker, knowing that such orders would be routed to CGM Limited for execution and that spread might be taken.

#### **Background Regarding Business Practices**

14. To generate spread on certain trades, the CGM and GTM Divisions often routed orders through CGM Limited instead of an Agency Broker. The CGM and GTM Divisions did so knowing that executing through CGM Limited typically would make many trades more profitable at the clients' expense and without certain clients knowing it. Such routing was particularly unnecessary when Agency Brokers in New York routed orders for securities listed on U.S. exchanges to CGM Limited.

15. G-Pro was an order management system that the Agency Brokers used to transmit client orders to CGM Limited for execution. Beginning in March 2010, the G-Pro order management system passed data through (and stored data on) a server located in Carlstadt, New Jersey.

16. Daspin and other traders at CGM Limited executed Agency Brokers' orders by trading in a riskless principal capacity, and they recorded the amount of any spread taken on a trade for a non-fiduciary client in G-Pro.

17. Some Agency Brokers' sales traders and CGM Limited's traders often consulted with each other about whether to take spread, or the amount of spread to take, in an effort at least in part to hide from clients the fact that spread was being taken.

18. Certain employees of the Agency Brokers and CGM Limited believed that, if the clients learned of CGM Limited's practice of taking spread income, CGM Limited and the Agency Brokers would lose revenue generated from these clients as well as some of the clients themselves.

### The Scheme

19. Certain employees of the Agency Brokers and CGM Limited took steps designed to conceal the fact that CGM Limited was taking spread.

20. Employees of the Agency Brokers and CGM Limited used various means to conceal from certain clients the fact that spread was included in the trade prices reported to those clients, including: taking smaller amounts of spread from certain particularly price-sensitive clients; taking larger amounts of spread from clients less likely to discover that spread was being taken; insuring that the reported price, inclusive of any spread, would be within the high or low price at which the security traded that day; and using multiple local brokers during the course of a trade so that a client would not be able to track the execution of the client's order through publicly available resources.

21. As relevant here, a time and sales report was a report that summarized each of the individual transactions, called "fills," that were entered into to execute an order. For each fill, an accurate time and sales report should have identified the number of shares involved in the trade, the time at which the trade was executed on the local exchange, and the price at which the shares involved in the trade were either purchased or sold on the local exchange.

22. As detailed below, from 2007 through 2011, CGM Limited and CGM Division employees within the Agency Brokers, with the knowledge of Executive A, provided false time and sales reports to four global trading clients on seven different dates, and the GTM Division made other false statements to transition management clients, to hide the fact that spread was being taken.

23. The Agency Brokers and CGM Limited, with the knowledge of Executive A, decided that CGM Limited would not take spread when they believed that a time and sales report would likely have to be provided to a client, because doing so would have risked exposing the fact that CGM Limited was taking spread.

24. As further detailed below, Executive A, Lekargerren, Daspin, and other traders at CGM Limited and an Agency Broker intentionally violated a large asset management client's instructions to provide the client with real time fill data in order to take spread on certain of the client's orders. Based on this client's instructions, real time fill data (i.e., an immediate data feed of the details of the trades that CGM Limited received from a broker in the local market) should have shown the client the times, prices, and number of shares bought or sold on the exchange.

**False Time and Sales Reports Sent to Global Trading Clients**

25. On seven different dates, clients requested time and

sales reports related to trades on which spread had been taken. In each instance, a false time and sales report was created and provided to the client.

26. To create the false time and sales reports, CGM Limited traders generally used exchange data from transactions entered into by others on the same trade date as the trades that had been executed by CGM Limited on behalf of the Agency Brokers' clients. To conceal mark-ups on purchase orders, the traders generally used trades that had been executed for others at higher prices than the prices obtained by CGM Limited. Conversely, to hide mark-downs on sales orders, the traders generally used trades that had been executed for others at lower prices than the prices obtained by CGM Limited.

27. A software program called Auto TP was created prior to CGM Limited being acquired by CONVERGEX GROUP in October 2006. The program was designed in part to be able to generate false time and sales reports if a client requested a time and sales report.

***Client 1***

28. On June 22, 2007, Client 1 made a request for a time and sales report showing the fills for the execution of the sale that day of 808,516 shares of ABN Amro Holding NV securities on the Amsterdam Stock Exchange.



29. CGM Limited's traders attempted to use Auto TP to create a false report to provide to Client 1, but were unsuccessful in using the program and had to create the false report manually.

30. On June 25, 2007, Daspin created a false time and sales report to respond to Client 1's request.

31. On June 25, 2007, Daspin emailed instructions to an Agency Broker sales trader about how the falsified time and sales report should be formatted before being sent to Client 1: "Please put all Prints in one spreadsheet in the least Friendly Format. . . . If possible take this out of spreadsheet Format and make a PDF - Or put this in picture file or something tricky to manipulate."

32. On June 25, 2007, Daspin sent the Agency Broker sales trader the final falsified time and sales report to send to Client 1 by email. The sales trader sent the falsified report to Client 1, and Daspin received confirmation that the sales trader had sent the falsified report shortly thereafter.

33. After the Agency Broker sales trader sent the false time and sales report to Client 1 on June 25, 2007, Client 1 did not request additional time and sales reports. Subsequent to sending Client 1 the false time and sales report, CGM Limited used G-Pro to take spread of \$7,999.36 on subsequent trade orders placed by Client 1.

*Client 2*

34. On February 5, 2008, Client 2 made a request for a time and sales report showing the fills for the execution of the sale that day of 50,000 shares of Weichai Power Co. Limited securities on the Hong Kong Stock Exchange.

35. After receiving the request for the time and sales report, a CGM Limited trader sent a false time and sales report to an Agency Broker sales trader to transmit to Client 2.

36. On February 6, 2008, the Agency Broker sales trader transmitted the false time and sales report to Client 2.

37. On January 7, 2011, Client 2 made a request for a time and sales report showing the fills for the execution of the purchase of 65,000 shares of Takeda Pharma securities and 80,000 shares of Astellas Pharma securities on the Tokyo Stock Exchange on January 6, 2011.

38. Daspin subsequently sent a false time and sales report to an Agency Broker sales trader to transmit to Client 2. Daspin separately sent the sales trader a spreadsheet that he specified was "NOT FOR CLIENT," which listed the fills, marking several as "Possible Prints to remove."

39. On January 7, 2011, the Agency Broker sales trader transmitted the false time and sales report to Client 2.

40. After the first false time and sales report was sent to Client 2 on February 6, 2008, CGM Limited used G-Pro to take

spread of \$1,090,127.41 on subsequent trade orders placed by Client 2.

**Client 3**

41. On September 2, 2008, Client 3 made a request for a time and sales report showing the fills for the execution of the purchase of 2,965 shares of Michael Page International PLC securities on the London Stock Exchange on August 26, 2008.

42. On September 2, 2008, a CGM Limited trader transmitted a false time and sales report to Client 3 knowing it was false.

43. On March 17, 2009, Client 3 made a request for a time and sales report showing the fills for the execution of the purchase of 224,000 shares and 90,700 shares of Hoya Corp. securities on the Tokyo Stock Exchange on March 16-17, 2009.

44. On March 18, 2009, a CGM Limited trader transmitted a false time and sales report to Client 3 knowing it was false.

45. On July 13, 2010, Client 3 made a request for a time and sales report showing the fills for the execution of the purchase that day of 500,000 shares of Subsea 7 S.A. securities on the Oslo Stock Exchange.

46. On July 13, 2010, a CGM Limited trader transmitted a false time and sales report to Client 3 knowing it was false.

47. After the CGM Limited trader transmitted the false time and sales report to Client 3 on July 13, 2010, Daspin notified Executive A: "[Client 3] asked for prints on a name

today. We needed to be creative putting something together as did not have time and sales for the price given. Fyi.”

48. After the first false time and sales report was transmitted to Client 3 on September 2, 2008, CGM Limited used G-Pro to take spread of \$277,498.07 on subsequent trade orders placed by Client 3.

**Client 4**

49. On August 10, 2009, Client 4 made a request for a time and sales report showing the fills for the execution of two purchase orders totaling 389,296 shares of New York Community Bank securities on the New York Stock Exchange on August 7, 2009.

50. Daspin created a false time and sales report to send to Client 4, and sent the false report to Executive A, a CGM Limited trader, and an Agency Broker sales trader, which each of them knew to be false.

51. On August 11, 2009, after consulting with Executive A, Lekargerren transmitted the false time and sales report to Client 4.

52. After the false time and sales report was sent to Client 4 on August 11, 2009, Client 4 did not request additional time and sales reports. Subsequent to sending Client 4 the false time and sales report, CGM Limited used G-Pro to take

spread of \$3,795,769.60 on subsequent trade orders placed by Client 4.

#### **Batching of Client 4's Real Time Fills**

53. Beginning at least as early as April 2009, Client 4 began requesting real-time fills in real-time capable markets. Executive A and Daspin understood at the time that if Client 4 were to receive real time fills, they would not be able to add spread on such orders for Client 4.

54. After Client 4 made repeated requests, CGM Limited and an Agency Broker began providing real time fill data to Client 4 for orders in certain markets on February 22, 2010.

55. In order to continue taking spread on such orders after Client 4 began receiving real time fills, Daspin and Executive A came up with a plan to "batch fill" certain real-time orders of Client 4. When orders were batch filled, CGM Limited traders "turned off" real time, added spread to trades, and then delivered "batch fills," i.e., fills that grouped together several smaller fills, that included spread added into the price. This was a knowing violation of Client 4's instructions to provide real time fills.

56. On several occasions, representatives of Client 4 questioned why they were not receiving real time fills, and Lekargeren blamed it on various "IT" issues.

**False Statements to Transition Clients**

***Client 5***

57. On June 10, 2008, a consultant representing Client 5 asked whether "related parties earned any remuneration and how such remuneration would arise" in connection with prior trades executed on behalf of Client 5. In response, Executive B caused a statement to be made to the consultant that Executive B knew to be false. According to the statement, a related party (CGM Limited) had taken positions onto its own books, exposed itself to the risk of any change in price, and later unwound the positions over time, which made it "difficult, if not impossible to determine" the spread taken.

***Client 6***

58. On July 24, 2010, in response to a request for information from Client 6 regarding language in the client's transition agreement, Executive B approved a response, which was sent to Client 6, that falsely informed Client 6 that "no principal trading has been carried out in any transition for [Client 6]," when Executive B was aware that CGM Limited had taken spread of approximately \$1.75 million on Client 6's trades in June 2010, and that CGM Limited had done so acting in a principal capacity.

59. After the false response was sent to Client 6 on July 24, 2010, CGM Limited used G-Pro to take spread of \$4,496,673.23 on subsequent trade orders placed by Client 6.

**Client 7**

60. In March 2011, in response to a question about why trades executed on behalf of Client 7 may have been poorly executed, Executive B caused a misleading response to be made to Client 7 that Executive B knew failed to inform Client 7 that part of the reason for the poor performance was that spread had been included in the prices provided to Client 7.

61. After the misleading response was provided to Client 7 in March 2011, CGM Limited used G-Pro to take spread of \$3,121,905.28 on subsequent trade orders placed by Client 7.

**False Invoices in Connection with Spread Shared with TMC**

62. TMC sent orders of its underlying transition clients to an Agency Broker, which routed TMC's orders to CGM Limited for execution.

63. TMC's agreements with its clients included a provision that TMC would act as a fiduciary to its clients on the transitions. In some agreements, there were additional provisions that TMC would not earn remuneration on transitions other than TMC's stated commissions.

64. TMC had a written contract to share in commission revenue generated by an Agency Broker. TMC also agreed with CGM

Limited that TMC would receive a 50-60% share of the spread taken by CGM Limited on TMC's clients.

65. From October 2008 through January 2011, TMC sent CONVERGEX GROUP invoices that billed for "trade cost analysis" ("TCA"), a type of analysis that seeks to determine the total effective cost of using a broker's services. The amounts reflected on these invoices were equal to the amount of spread revenue owed to TMC under the revenue sharing agreement.

66. Although TMC did provide TCA services to the CGM Division, the invoices were false because they reflected the amount of spread income to be shared with TMC rather than the cost of the TCA services provided by TMC. As such, the invoices concealed that such payments were for TMC's portion of the spread revenue share, which TMC was prohibited from receiving without disclosing to its clients.



ATTACHMENT B

PLEA AGREEMENT

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

|                                      |   |                         |
|--------------------------------------|---|-------------------------|
| UNITED STATES OF AMERICA             | : | Hon. Jose L. Linares    |
|                                      | : |                         |
| v.                                   | : | Criminal No. 13-811     |
|                                      | : |                         |
| CONVERGEX GLOBAL MARKETS<br>LIMITED, | : | 18 U.S.C. §§ 1343, 1349 |
|                                      | : |                         |
| Defendant.                           | : |                         |

**PLEA AGREEMENT**

Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States of America, by and through the Fraud Section, Criminal Division, United States Department of Justice (the "Department"), and the defendant CONVERGEX GLOBAL MARKETS LIMITED ("CGM LIMITED" or the "defendant"), by and through its undersigned attorneys, and through its authorized representative, pursuant to authority granted by the defendant's Board of Directors, hereby submit this Plea Agreement ("Agreement"). The terms and conditions of this Agreement are as follows:

**The Defendant's Agreement**

1. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the defendant agrees to waive its right to indictment by a grand jury and further agrees to plead guilty to the two-count criminal Information (hereinafter "Information") in this case, which charges the defendant with: (i) conspiracy to

commit wire fraud and securities fraud, in violation of Title 18, United States Code, Section 1349; and (ii) wire fraud, in violation of Title 18, United States Code, Section 1343. The defendant further agrees to persist with that plea through sentencing and, as set forth below, to cooperate fully with the Department in its investigation into all matters related to the conduct charged in the Information.

2. The defendant understands and agrees that this Agreement is between the Department and the defendant. This Agreement does not bind any other division or section of the Department of Justice, or any other federal, state, local, or foreign prosecuting, administrative, or regulatory authority. The Department will bring this Agreement and the cooperation of the defendant, its direct or indirect affiliates, subsidiaries, and parent corporation, to the attention of other prosecuting authorities or other agencies, if requested by the defendant.

3. The defendant agrees that this Agreement will be executed by an authorized corporate representative. The defendant further agrees that a Resolution duly adopted by the defendant's Board of Directors, attached to this Agreement as Exhibit 1, authorizes the defendant to enter into this Agreement and take all necessary steps to effectuate this Agreement, and that the signatures on this Agreement by the defendant's authorized representative and its counsel are authorized by the

defendant's Board of Directors, on behalf of the defendant. In connection with this Agreement, the defendant will also provide to the Department a certified resolution of the Board of Directors of ConvergeX Group, LLC, attached as Exhibit 2 hereto, or in similar form, providing as follows:

a. ConvergeX Group, LLC ("ConvergeX Group") agrees to and shall be bound by those specific terms of this Agreement that expressly apply to it, and that the signatures of ConvergeX Group's corporate representative and its counsel to this Agreement are authorized by ConvergeX Group's Board of Directors;

b. ConvergeX Group shall guarantee, secure, and deliver to the Department and to the Clerk's Office of the United States District Court for the District of New Jersey all payments due from the defendant under this Agreement;

c. ConvergeX Group agrees to waive its rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b), and any defenses based on venue or the statute of limitations, relating to the conduct described in the Statement of Facts, attached hereto as Exhibit 3, the criminal Information filed against the defendant, or conduct known to the Department prior to the date on which this Agreement was signed that is not time-barred by the applicable

statute of limitations on the date of the signing of this Agreement.

4. The defendant and ConvergeX Group agree that in the event the defendant or ConvergeX Group sells, merges, or transfers all or substantially all of its business operations as they exist as of the date of this Agreement, whether such sale(s) is/are structured as a stock or asset sale, merger, or transfer, the defendant or ConvergeX Group shall include in any contract for sale, merger, or transfer a provision fully binding the purchaser(s) or any successor(s) in interest thereto to the guarantees and obligations described in this Agreement.

5. The defendant and ConvergeX Group waive any statute of limitations defense with regard to the conduct described in the attached Statement of Facts as of the date of this Agreement through the full term of the defendant's probation and until all of the defendant's and ConvergeX Group's obligations under this Agreement have been satisfied.

6. The defendant and ConvergeX Group agree and represent that they have the full legal right, power, and authority to enter into and perform all obligations under this Agreement.

7. The defendant and ConvergeX Group agree that, within one hundred eighty (180) days of sentencing, they will pay restitution in the amount of \$12,789,972.95, in a manner to be directed by the Department, if restitution has not already been

paid either directly by ConvergeX Group or CGM LIMITED, or via the Fair Fund to be established by the United States Securities and Exchange Commission. The defendant and ConvergeX Group agree to pay to the United States a criminal fine in the amount of \$8,200,000. The defendant and ConvergeX Group agree to wire transfer \$8,200,000 within ten (10) business days of sentencing to the Clerk of the Court for the United States District Court for the District of New Jersey. The defendant and ConvergeX Group further agree to pay \$5,000,000 to the United States Postal Inspection Service Consumer Fraud Fund. The Company agrees that this amount shall be paid as a lump sum within five (5) business days from the date of sentencing. The defendant and ConvergeX Group further agree to pay the Clerk of the Court for the United States District Court for the District of New Jersey the mandatory special assessment of \$400 per count within five (5) business days from the date of sentencing. The defendant and ConvergeX Group acknowledge that no tax deductions may be sought in connection with the payment of the fine.

8. The defendant agrees that if it, ConvergeX Group, or any of its subsidiaries or affiliates, issues a press release or holds a press conference in connection with this Agreement, the defendant shall first consult with the Department to determine whether (a) the text of the release or proposed statements at any press conference are true and accurate with respect to matters

between the Department and the defendant; and (b) the Department has an objection to the release or statement. Nothing in this Paragraph restricts the defendant, its parent corporation, or any of its direct or indirect affiliates or subsidiaries, from fulfilling obligations under the federal securities laws or from interacting with investors.

9. The defendant agrees to abide by all terms and obligations of this Agreement as described herein, including, but not limited to, the following:

- a. To plead guilty as set forth in this Agreement;
- b. To abide by all sentencing stipulations contained in this Agreement;
- c. To: (i) appear, through duly appointed representatives, as ordered for all Court appearances; and (ii) obey any other ongoing Court order in this matter;
- d. To commit no further crimes;
- e. To be truthful at all times with the Court; and
- f. To pay the applicable fine, restitution, special assessment, and additional payment to the United States Postal Inspection Service Consumer Fraud Fund.

10. The defendant and ConvergEx Group shall continue to cooperate fully with the Department in any and all matters relating to the conduct described in this Agreement and Exhibit 3, and other conduct under investigation by the Department,

subject to applicable law and regulations, until the date upon which all investigations and prosecutions arising out of such conduct are concluded or until further agreement with the Department. This includes ensuring that their affiliates comply with the terms of this Paragraph and Paragraph 11 of this Agreement. At the request of the Department, the defendant and ConvergEx Group shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies in any investigation of the defendant, ConvergEx Group, or their affiliates, or any of their present and former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to this Agreement and Exhibit 3. The defendant and ConvergEx Group agree that their cooperation pursuant to this Paragraph shall include, but not be limited to, the following:

a. The defendant and ConvergEx Group shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product with respect to their activities, those of their affiliates, and those of their present and former directors, officers, employees, agents, and consultants concerning all matters relating to the conduct described in this Agreement and Exhibit 3 and other conduct under investigation by the Department about which the defendant or ConvergEx Group has any knowledge or about which the



Department may inquire, including any evidence or allegations and internal or external investigations, about which the defendant has any knowledge or about which the Department may inquire. To the extent that disclosure of any information is prohibited by applicable foreign law or regulation, the defendant and ConvergeX Group will cooperate with the Department in any effort to obtain such information. This obligation of truthful disclosure includes, but is not limited to, the obligation of the defendant and ConvergeX Group to provide to the Department, upon request, any document, record or other tangible evidence relating to the conduct described in this Agreement and Exhibit 3 and other conduct under investigation by the Department about which the Department may inquire of the defendant.

b. Upon request of the Department, with respect to any issue relevant to its investigation of the conduct described in this Agreement and Exhibit 3 and other conduct under investigation by the Department, the defendant and ConvergeX Group shall designate knowledgeable employees, agents, or attorneys to provide to the Department the information and materials described in Paragraph 10(a) above on behalf of the defendant. It is further understood that the defendant and ConvergeX Group must at all times provide complete, truthful, and accurate information.

c. With respect to any issue relevant to the Department's investigation of the conduct described in this Agreement and Exhibit 3 and other conduct under investigation by the Department, the defendant and ConvergEx Group shall use their best efforts to make available for interviews or testimony, as requested by the Department, present or former officers, directors, employees, agents, and consultants of the defendant or ConvergEx Group. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation under this Paragraph shall include identification of witnesses who, to the knowledge of the defendant or ConvergEx Group, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records, or other tangible evidence provided to the Department pursuant to this Agreement, the defendant and ConvergEx Group consent to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government of such materials as the Department, in its sole discretion, shall deem appropriate.

11. In addition to the obligations in Paragraph 10, during the Term of the Agreement, should the defendant or ConvergEx

Group discover any evidence or allegations of fraudulent conduct in connection with the taking, disclosing, or sharing of spread income on securities transactions or similar misconduct not otherwise disclosed, including the existence of internal or external investigations into such conduct, the defendant and ConvergEx Group shall promptly report such evidence or allegations to the Department.

**The United States' Agreement**

12. In exchange for the corporate guilty plea of the defendant and the complete fulfillment of all of its obligations under this Agreement, and in exchange for the agreement of the defendant's parent corporation, ConvergEx Group, to assume all of the obligations set forth in a deferred prosecution agreement in a parallel matter, the Department agrees that it will not file additional criminal charges against the defendant or any of its direct or indirect affiliates or subsidiaries, or its parent corporation, relating to:

a. the conduct described in the Statement of Facts attached as Exhibit 3; or

b. information disclosed by the defendant or its parent corporation, ConvergEx Group, to the Department prior to the date of this Agreement.

13. This Agreement does not provide any protection against prosecution for any fraudulent conduct in connection with the

taking, disclosing, and sharing of spread income on securities transactions in the future by the defendant, or by any of its officers, directors, employees, agents, or consultants, whether or not disclosed by the defendant pursuant to the terms of this Agreement. This Agreement also does not close or preclude the investigation or prosecution of any natural persons, including any officers, directors, employees, agents, or consultants of the defendant, who may have been involved in any of the matters set forth in the Information, Statement of Facts, or in any other matters.

**Factual Basis**

14. The defendant is pleading guilty because it is guilty of the charges contained in the two-count Information. The defendant agrees and stipulates that the factual allegations set forth in the Information are true and correct and accurately reflect the defendant's criminal conduct. The defendant further stipulates and agrees to the Statement of Facts attached hereto and incorporated herein as Exhibit 3.

**The Defendant's Waiver of Rights,  
Including the Right to Trial and Appeal**

15. The defendant represents to the Court that the defendant is satisfied that the defendant's attorneys have rendered effective assistance. The defendant understands that by entering into this Agreement, the defendant surrenders certain

rights as provided in this Agreement. The defendant understands that the rights of defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, the defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the Court all agree.

b. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and the defendant's attorney would be able to cross-examine them. In turn, the defendant could, but would not be required to, present witnesses and other evidence on its own behalf. If the witnesses for the defendant would not appear voluntarily, the defendant could require their attendance through the subpoena power of the Court.

c. At a trial, no inference of guilt could be drawn from the defendant's refusal to present evidence. However, if the defendant desired to do so, it could present evidence on its behalf.

16. The defendant understands that nothing in this Agreement will restrict access by the United States Probation Office or the Court to information and records in the possession of the United States or any of its investigative law enforcement

agencies, including state and local law enforcement agencies, as well as information, documents and records obtained from the defendant.

17. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Should the Court impose the sentence proposed herein, the defendant agrees that it will waive the right to appeal the plea, conviction, and sentence (or the manner in which it was determined) on the grounds set forth in Title 18, United States Code, Section 3742. This Agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

18. The defendant is also aware that the United States Constitution and the laws of the United States afford a defendant the right to contest or "collaterally attack" its conviction or sentence after the conviction has become final. Knowing that, the defendant knowingly waives the right to contest or "collaterally attack" the defendant's plea, conviction, and sentence by means of any post-conviction proceeding.

19. The defendant waives all defenses to the conduct charged in the Information based on venue, speedy trial under the United States Constitution and Speedy Trial Act, and any and all constitutional and non-jurisdictional defects.

**Penalty**

20. The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1349, is a fine of \$500,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest, 18 U.S.C. § 3571(c)(3), (d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B). The statutory maximum sentence that the Court can impose for a violation of Title 18, United States Code, Section 1343, is a fine of \$500,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest, 18 U.S.C. § 3571(c)(3), (d); five years' probation, 18 U.S.C. § 3561(c)(1); and a mandatory special assessment of \$400, 18 U.S.C. § 3013(a)(2)(B).

a. The defendant hereby stipulates and agrees not to institute or participate in any proceeding to interfere with, alter, or bar enforcement of any fine, penalty, special assessment, or forfeiture order pursuant to the automatic stay or other provision of the United States Bankruptcy Code.

b. The defendant agrees that nothing in this Agreement is intended to release the defendant from any and all of the defendant's excise and income tax liabilities and reporting obligations for any and all income not properly reported and/or legally or illegally obtained or derived.

**Sentencing Factors**

21. The parties agree that pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the Court must determine an advisory sentencing guideline range pursuant to the United States Sentencing Guidelines. The Court will then determine a reasonable sentence within the statutory range after considering the advisory sentencing guideline range and the factors listed in 18 U.S.C. § 3553(a). The parties' agreement herein to any guideline sentencing factors constitutes proof of those factors sufficient to satisfy the applicable burden of proof.

22. The Department and the defendant agree that a faithful application of the United States Sentencing Guidelines (USSG) to determine the applicable fine range yields the following analysis:

- a. The 2013 USSG Manual sets forth the appropriate guidelines to be used in this matter.
- b. Offense Level. Based upon USSG § 2B1.1, the total offense level is 33, calculated as follows:

|              |   |   |    |
|--------------|---|---|----|
| (a) (1)      | Base Offense Level                        |   | 7  |
| (b) (1) (K)  | Loss of more than \$7,000,000             | + | 20 |
| (b) (10) (C) | Sophisticated means                       | + | 2  |
| (b) (18) (A) | Associated with<br>a registered<br>broker | + | 4  |
| <b>TOTAL</b> |   |   | 33 |



- c. Base Fine: Based upon USSG §8C2.4(d), the base fine is \$22,000,000, based on a total offense level of 33 under USSG §2B1.1.
- d. Culpability Score: Based upon USSG § 8C2.5, the culpability score is 3, summarized as follows:
- |              |   |          |
|--------------|---|----------|
| (a)          | Base Culpability Score  | 5        |
| (g) (2)      | The organization fully cooperated in the investigation and clearly demonstrated recognition and affirmative acceptance of responsibility for its criminal conduct | -2       |
| <b>TOTAL</b> |   | <b>3</b> |

- e. Calculation of Fine Range: Based upon USSG § 8C2.7, the fine range is calculated as follows:

|             |                           |  |
|-------------|---------------------------|--|
| Base Fine   | \$22,000,000              |  |
| Multipliers | .6/1.2                    |  |
| Fine Range  | \$13,200,000/\$26,400,000 |  |

**Sentencing Recommendation**

23. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the Department and the defendant agree that the following represents the appropriate disposition of the case:

a. Fine. The parties agree that the imposition of a fine in the amount of \$8,200,000 is appropriate in this case.

b. Organizational Probation. The parties agree that a term of organizational probation is not appropriate in this case, as the defendant's parent corporation, ConvergEx Group, has

separately agreed to the deferred prosecution agreement referenced in Paragraph 12.

c. Other Payment. In addition to the fine outlined above in subparagraph (a), the defendant agrees that it will pay \$5,000,000 to the United States Postal Inspection Service Consumer Fraud Fund. The defendant agrees that this amount shall be paid as a lump sum within five (5) business days from the date of sentencing.

d. Mandatory Special Assessment. The defendant shall pay to the Clerk of the Court for the United States District Court for the District of New Jersey within (5) business days of the time of sentencing the mandatory special assessment of \$400 per count.

e. Court Not Bound. This Agreement is presented to the Court pursuant to Fed. R. Crim. P. 11(c)(1)(C). The defendant understands that, if the Court rejects this Agreement, the Court must: (a) inform the parties that the Court rejects the Agreement; (b) advise the defendant's counsel that the Court is not required to follow the Agreement and afford the defendant the opportunity to withdraw its plea; and (c) advise the defendant that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the defendant than the Agreement contemplated. The defendant further understands that if the Court refuses to accept any provision of this Agreement, neither

party shall be bound by the provisions of the Agreement. The defendant, however, also understands that if the Court accepts this Agreement, the Court is bound by the sentencing recommendations in Paragraph 22.

**Waiver of Presentence Investigation**

24. The parties agree, subject to the Court's approval, to waive the requirement for a presentence report, pursuant to Federal Rule of Criminal Procedure 32(c)(1)(A), based on a finding by the Court that the record contains information sufficient to enable the Court to meaningfully exercise its sentencing power. The parties, however, agree that in the event the Court orders the preparation of a presentence report prior to sentencing, such order will not affect the agreement set forth herein. Additionally, if the Court directs the preparation of a presentence report, the Department will fully inform the preparer of the presentence report and the Court of the facts and law related to the defendant's case.

**Breach of the Plea Agreement**

25. If the defendant or ConvergeX Group breaches the terms of this Agreement, or commits any new criminal offense between signing this Agreement and sentencing, the Department is relieved of its obligations under this Agreement, but the defendant may not withdraw its guilty plea. Whether the defendant has breached any provision of this Agreement shall be determined solely by the

Department.

26. In the event of a breach of this Agreement by the defendant or ConvergEx Group:

a. CGM LIMITED and ConvergEx Group shall be fully subject to criminal prosecution for any crimes, including perjury and obstruction of justice;

b. the Department will be free to use against CGM LIMITED or ConvergEx Group, directly and indirectly, in any criminal or civil proceeding any of the information or materials provided by CGM LIMITED pursuant to this Agreement, as well as the admitted Statement of Facts contained herein; and

c. should the Department elect to pursue criminal charges or any civil action that was not filed as a result of this Agreement, then CGM LIMITED and ConvergEx Group agree that any applicable statute of limitations is tolled between the date of CGM LIMITED's and ConvergEx Group's signing of this Agreement and the discovery by the Department of any breach by CGM LIMITED or ConvergEx Group plus one year, and CGM LIMITED and ConvergEx Group waive all defenses based on the statute of limitations, venue, any claim of pre-indictment delay, or any speedy trial claim with respect to any such prosecution or action, except to the extent that such defenses existed as of the date of the signing of this Agreement.

**Complete Agreement**

27. This written Agreement constitutes the complete plea agreement between the parties. No promises or representations have been made by the United States except as set forth in writing in this Agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this Agreement shall

be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

AGREED:

FOR CONVERGEX GLOBAL MARKETS LIMITED:

Date: December 12, 2013 By: Steven P. Heineman  
STEVEN P. HEINEMAN  
General Counsel  
ConvergEx Group, LLC, on behalf  
Of ConvergEx Global Markets Limited

Date: December 12, 2013 By: Craig S. Warkol  
Craig S. Warkol  
Bracewell & Giuliani LLP

FOR CONVERGEX GROUP, LLC:

Date: December 12, 2013 By: Steven P. Heineman  
STEVEN P. HEINEMAN  
General Counsel  
ConvergEx Group, LLC

Date: December 12, 2013 By: Craig S. Warkol  
Craig S. Warkol  
Bracewell & Giuliani LLP

FOR THE DEPARTMENT OF JUSTICE:

Jeffrey H. Knox  
Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice

Date: December 12, 2013 By: Justin Goodyear  
Justin Goodyear  
Jason Linder  
Patrick Pericak  
Trial Attorneys

CERTIFICATE OF AUTHORIZED REPRESENTATIVE

I have read this Agreement and carefully reviewed every part of it with counsel for ConvergeX Global Markets Limited ("CGM LIMITED"). I understand the terms of this Agreement and voluntarily agree, on behalf of CGM LIMITED, to each of its terms. Before signing this Agreement on behalf of CGM LIMITED, I consulted with counsel for CGM LIMITED. Counsel fully advised me of the rights of CGM LIMITED, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement.

I have carefully reviewed this Agreement with the Board of Directors of CGM LIMITED. I have advised, and caused outside counsel for CGM LIMITED to advise, the Board fully of the rights of CGM LIMITED, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into the Agreement. No promises or inducements have been made other than those contained in this Agreement. Furthermore, no one has threatened or forced me, or to my knowledge any person authorizing this Agreement on behalf of CGM LIMITED and ConvergeX Group, LLC, in any way to enter into this Agreement. I am also satisfied with counsel's representation in this matter. I certify that I am an

authorized representative of CGM LIMITED, and I have been duly authorized by CGM LIMITED to execute this Agreement on behalf of CGM LIMITED.

Date: December 12, 2013

CONVERGEX GLOBAL MARKETS LIMITED

By: \_\_\_\_\_

*SP. Heineman*

STEVEN P. HEINEMAN

General Counsel

ConvergEx Group, LLC, on behalf of  
ConvergEx Global Markets Limited



CERTIFICATE OF COUNSEL

We are counsel for ConvergEx Global Markets Limited ("CGM LIMITED") in the matter covered by this Agreement. In connection with such representation, we have examined relevant CGM LIMITED documents and have discussed this Agreement with the Board of Directors of CGM LIMITED and the authorized representative of CGM LIMITED. Based on our review of the foregoing materials and discussions, we are of the opinion that CGM LIMITED's representative has been duly authorized to enter into this Agreement on behalf of CGM LIMITED. This Agreement has been duly and validly authorized, executed, and delivered on behalf of CGM LIMITED and is a valid and binding obligation of CGM LIMITED.

Further, we have carefully reviewed every part of this Agreement with the Board of Directors of CGM LIMITED. We have fully advised them of CGM LIMITED's rights, of possible defenses, of the Sentencing Guidelines' provisions, and of the consequences of entering into this Agreement. To our knowledge, CGM LIMITED's decision to enter into this Agreement is an informed and voluntary one.

Date: December 12, 2013

By:   
Craig S. Warkol  
Bracewell & Giuliani LLP