

Respondents, paid a total of \$107,424,429 into an escrow account. This amount, plus the \$2,011,889 arising from three related actions against additional respondents,¹ will constitute the corpus of the Fair Fund from which funds may be withdrawn and distributed in accordance with the Plan. The corpus may be increased prior to distribution by additional payments arising from related actions against additional respondents that the Commission may order to be aggregated in the Fair Fund.

2. *Scope of Distribution; Eligible Fair Fund Recipients.* The purpose of this distribution is to refund a portion of the TP taken on orders placed by Respondents' Direct Customers between October 2, 2006 and December 31, 2011 (the "Relevant Period"). The proposed distribution methodology, described in Section 9, provides full refunds of TP for orders placed during the Relevant Period in U.S. securities and pro rata refunds of TP for orders in non-U.S. securities. Pursuant to this Plan, harmed customers are eligible to recover 100% of TP on U.S. securities transactions and approximately 16% of TP on non-U.S. securities transactions.² The Order provides that the Fund Administrator will develop a distribution plan with the assistance and cooperation of Respondents. The Order also provides that the Plan will include a methodology to identify and compensate affected current and former Direct Customers of Respondents and underlying intermediaries and beneficial owners of securities traded by Direct Customers ("Indirect Customers") from whom TP was taken during the Relevant Period. The Order required Respondents to pay the amounts ordered no later than 10 days from the entry of the Order. The Respondents tendered funds on December 17, 2013. This Plan sets forth the methodology to be used in paying refunds of TP and requires Respondents to make refunds of TP to Respondents' Direct and Indirect Customers.

3. *Fund Administrator.* On December 17, 2014, the Commission issued an order appointing The Garden City Group, Inc. as the Fund Administrator and setting the administrator's bond at \$108,653,021, in accordance with Rule 1105 of the Commission's Rules on Fair Fund and Disgorgement Plans.³

The Fund Administrator will oversee efforts by the Respondents to assist in the administration of this Plan. The Fund Administrator will also prepare accountings as provided in Section 13, *infra*, and will cooperate with the Respondents in providing the information necessary to accomplish income tax compliance.

¹ The related actions to date are *In the Matter of Jonathan Samuel Daspin*, Administrative Proceeding File No. 3-15652 (Exchange Act Rel. No. 71126 (Dec. 18, 2013)); *In the Matter of Thomas Lekargeren*, Administrative Proceeding File No. 3-15653 (Exchange Act Rel. No. 71127 (Dec. 18, 2013)); and *Securities and Exchange Commission v. Craig S. Lax*, Civil Action No. 2:15-cv-01079-WHW-CLW (D.N.J.).

² The estimated percentage recovery with respect to non-US securities transactions does not include TP paid by Respondents to customers in other settlements.

³ Exchange Act Rel. No. 73865 (Dec. 17, 2014).

In administering the Fair Fund, the Fund Administrator will, among other things: (a) build and maintain a case-specific database for Direct and Indirect Customers and their related payment information; (b) establish and maintain a toll-free telephone call-in number by which customers can obtain information about the Fair Fund; (c) establish and monitor an email inbox for customers to contact the Fund Administrator; (d) design and maintain a website for the administration of the Fair Fund, which will post information and relevant documents; and (e) establish a link to such website from its own website, www.gcginc.com/cases. The Fair Fund will be distributed pursuant to the distribution methodology outlined in Section 9 below.

4. *No Notice or Claim Process.* The identity of harmed Direct Customers and the amount of TP taken from them during the Relevant Period will be determined from the books and records of the Respondents. In connection therewith, the Fund Administrator will review the data provided by Respondents and verify Respondents' allocation of the Fair Fund in accordance with the distribution methodology set forth in Section 9. Accordingly, the Fair Fund is not being distributed according to a claims-made process.

5. *Qualified Settlement Fund.* The Fair Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

6. *Tax Compliance.* Respondents will serve as the "administrator" of the QSF for tax reporting and compliance purposes and may retain any professional services necessary or appropriate. The costs and expenses of any such tax compliance responsibilities and professional services, including information reporting, and the payment of any taxes, penalties, and interest due will be borne by Respondents and will not be paid out of the Fair Fund. Payments to Respondents' Direct and Indirect Customers will be made from the assets of the Fair Fund plus income it may earn from the date of deposit to a date agreed upon between the Fund Administrator and Respondents. Respondents shall calculate or shall cause to be calculated an estimated distributable amount ("EDA") which will allow for the payment of the Fair Fund's withholding tax obligations. The EDA will be the balance from which the payments to Respondents' Direct and Indirect Customers will be made. Any tax withholding required on any payment to a customer will be deducted from the gross payment to be made to that customer and will not be separately funded by Respondents. The Fund Administrator will provide such information and cooperation to Respondents as may be reasonably necessary for the Respondents to accomplish their tax reporting, withholding and compliance responsibilities.

7. *Control of Distribution Fund.* The Commission has jurisdiction and control of the Fair Fund and will retain control of the assets of the Fair Fund until distribution checks are cashed or distribution payments by wire are accepted. The assets of the Fair Fund have been deposited into an escrow account at a bank and, consistent with the terms of the escrow agreement, may only be disbursed in accordance with the written authorization of the Commission.

8. *Expenses of Administration.* All fees and expenses of administering the Plan will be paid by the Respondents.

9. *Distribution Methodology.*

(a) Overview; Intent. The methodology set forth in this Section (the “Methodology”) provides Respondents’ customers full refunds of TP on U.S. securities and pro rata refunds of TP on non-U.S. securities. Customers will receive a payment in an amount equal to (i) the TP on U.S. securities, (ii) a pro rata portion of the TP on non-U.S. securities, or, where applicable, both (i) and (ii).

(b) De Minimis. Direct Customers whose calculated payment is less than \$1,000 U.S. will not receive a payment in the distribution, provided that no de minimis threshold will apply to TP taken on orders originating from Respondents’ Global Transition Management division. For any payments made to Indirect Customers, as described below, the de minimis amount will be \$50 US.⁴

(c) Prior Refunds. In the event that Respondents have previously refunded TP to a Direct Customer or Indirect Customer who would also be paid under the Plan, or have previously made an irrevocable deposit into a QSF approved by a court of competent jurisdiction for such purpose (including, but not limited to, payments made in *United States of America v. ConvergEx Global Markets Limited*, 2:13-cr-00810-JLL (D.N.J.)), such payment will be offset from whatever payment may otherwise have been made to the Direct Customer or Indirect Customer, pursuant to the Plan’s Methodology. Respondents have agreed to provide written evidence reasonably acceptable to the Fund Administrator of such previous payment or deposit into a QSF.

(d) Calculation. Respondents shall submit to the Fund Administrator an electronic spreadsheet identifying each Direct Customer that will receive a payment, and information sufficient for the Fund Administrator to calculate, in accordance with Section 9.e. below, a payment amount for (i) the TP on U.S. securities, (ii) a pro rata portion of the TP on non-U.S. securities, or, where applicable, both (i) and (ii). Respondents shall prepare the spreadsheet using information from their books and records and include the following information for each customer: (i) the name of the customer; (ii) the order number associated with each order; (iii) the total TP on U.S. securities; and (iv) the total TP on non-U.S. securities.

⁴ After a preliminary calculation of all payments, if the Fund Administrator, in consultation with the Commission staff determines that the Indirect Customer de minimis threshold of \$50 would, in the aggregate, exclude a significant portion of the Indirect Customers otherwise eligible to participate in the distribution from receiving any payment, the Commission staff may in its discretion direct the Fund Administrator to adjust the de minimis threshold downward. An adjustment of the de minimis amount, if any, will be posted on the Information for Harmed Investors page on the Commission’s website and the Fair Fund website for this Plan maintained by the Fund Administrator.

(e) Pro Rata Methodology. Payments attributable to TP on non-U.S. securities will be calculated for each customer by multiplying the TP on non-U.S. securities for that customer by a pro rata percentage based on the funds remaining in the Fair Fund. Respondents will calculate the pro rata percentage by subtracting (x) the aggregate amount of TP on U.S. securities to be paid to all customers in the distribution, from (y) the EDA, and then dividing the resulting difference by (z) the total amount of TP on non-U.S. securities taken from all customers eligible to receive a payment in the distribution.

10. *Outreach to Direct Customers*. The Fund Administrator will make reasonable efforts to obtain complete contact information for Direct Customers within 30 days of Plan approval. Within 45 days of receipt of such contact information, the Fund Administrator will send correspondence to the Direct Customers to advise them of the distribution payment that they are eligible to receive from the Fair Fund, pursuant to the Methodology outlined above in Section 9. This correspondence will be approved by Commission staff in writing prior to its dissemination. The Fund Administrator will request that Direct Customers respond within 30 days of the correspondence date and to indicate where to send their payment, whether to the Direct Customer, or to the Indirect Customers; Direct Customers that elect to receive payment will be provided with all relevant transaction information about Indirect Customers and will be asked to provide the Fund Administrator with instructions for electronic payment and any tax information that may be required for tax reporting. Direct Customers that elect to have payment sent to the Indirect Customers will be asked to provide contact information, and any other information deemed necessary by the Fund Administrator.

Where Direct Customers provide the Fund Administrator with contact information for payment to their Indirect Customers, within 45 days of receipt of such contact information, the Fund Administrator will send correspondence to the specified Indirect Customers to advise them of the distribution payment that they are eligible to receive from the Fair Fund; the Fund Administrator will provide the Indirect Customers with all relevant transaction information, and will request that each Indirect Customer respond within 30 days and provide instructions for electronic payment and any information that may be needed for tax reporting, and any other information deemed necessary by the Fund Administrator.

In the event that a Direct Customer or Indirect Customer, as the case may be, does not provide the Fund Administrator with complete and accurate instructions for electronic payment, that Direct or Indirect Customer will be issued a check in the amount of the distribution payment, together with subaccount information for allocating such payment among Indirect Customers, as applicable.

11. *Validation and Approval of Disbursement of the Fair Fund*. The Fund Administrator will disburse the Fair Fund in accordance with the Methodology, by issuing electronic payments or by mailing checks. Before disbursement of the Fair Fund, the Fund Administrator, after consultation with Commission staff, will validate the applicable calculations for the payments to Direct or Indirect Customers, verifying that such amounts have been calculated in accordance with the Plan and the Methodology, and will obtain authorization from the Commission to disburse the Fair Fund pursuant to Rule 1101(b)(6) of the Commission's Rules on Fair Fund and Disbursement

Plans. Within 10 business days of the Commission issuing an Order to Disburse the Fair Fund, the Fund Administrator will cause the payments to be distributed from the Fair Fund. The Fund Administrator will notify Commission staff of any returned payments due to non-delivery, insufficient addresses, and/or other deficiencies and will exercise reasonable efforts in good faith to research and explain any errors that result in non-delivery. If requested by Commission staff, the Fund Administrator will submit a calculation for payment of the returned items.

The Fund Administrator is also responsible for accounting for all payments in a form acceptable to Commission staff. In the event that any distribution is in the form of a paper check in lieu of an electronic transfer, each check will state on its face that it is valid for 90 days. After 90 days from the date on the distribution check, the Fund Administrator will notify Commission staff of all uncashed checks. The Fund Administrator will cancel/void all outstanding payments and, if applicable, return any tax withholding funds to the Fair Fund escrow account. The Fund Administrator will account for all uncashed checks, and at the direction of Commission staff, will make best efforts to contact payees of distribution checks that were not cashed and to locate payees of checks returned as undeliverable to facilitate the acceptance of the payments, including reissuance of checks when applicable.

12. *Information Mailing to Accompany Payments.* All payments will be accompanied by a written communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the QSF and related tax consequences, if required; (c) a statement that checks will be void after 90 days; (d) contact information for customers with questions; (e) the amount of payment that represents TP on orders in U.S. securities; (f) the amount of payment that represents TP on orders in non-U.S. securities; and (g) subaccount information for allocating such payment among Indirect Customers, as applicable. The Fund Administrator will provide each Direct or Indirect Customer receiving a refund of TP taken in connection with an order in non-U.S. securities with a written communication stating the total amount of TP taken on transactions in non-U.S. securities. Any such written communication will be submitted to Commission staff for review and written approval. The written communication will clearly indicate that the money is being distributed from a Fair Fund established by the Commission.

All payments made by the Fund Administrator in accordance with this Plan will be final and not subject to appeal.

13. *Progress Reports and Final Accounting.* Within 20 days after the end of each calendar quarter, the Fund Administrator will provide to Commission staff a progress report and a quarterly account statement of all monies earned or received and all monies spent in connection with the administration of the Plan, and the Fund Administrator will submit a final accounting to Commission staff, both accountings in a format provided by the Commission staff. Commission staff will review the final accounting and submit it for approval by the Commission prior to termination of the Fair Fund and discharge of the Fund Administrator.

14. *Amendments and Procedural Deadline Extensions.* The Fund Administrator will take reasonable and appropriate steps to cause the Fair Fund to be distributed according to this Plan. Where the Fund Administrator deems necessary, the Fund Administrator, after consultation with and written agreement from Commission staff, may implement immaterial changes to the Plan. If a proposed change is deemed material by Commission staff, Commission approval will be required prior to implementation by amending the Plan, which may be done upon the motion of any party, the Fund Administrator, or upon the Commission's own motion. For good cause shown, the Commission staff may extend any of the procedural deadlines set forth in this Plan.

15. *Assistance by Respondents.* Respondents will assist the Fund Administrator and the Commission staff by promptly providing requested information necessary for the administration and implementation of the Plan.

16. *Disposition of Undistributed Funds.* After payments have been accepted and cashed, any amounts remaining in the Fair Fund will constitute the Fair Fund residual ("Residual"). The Residual may include distributions from checks that have not been cashed or from checks that were not delivered or from funds returned to the Fund Administrator. In the event there is a residual of undistributed Fair Fund funds that in the Commission staff's view would warrant consideration of an additional disbursement from the Fair Fund, the Commission may exercise its discretion to enter an order for an additional distribution to investors who, after an initial disbursement of the Fair Fund, and in accordance with the methodology set forth in Section 9, remain eligible to receive additional funds. Otherwise, the Residual will be transferred to the U.S. Treasury after the final accounting is approved by the Commission.

17. *Termination of the Fair Fund.* Upon completion of the distribution of the Fair Fund, the Respondents will make arrangements for the final payment of taxes and filing the final tax returns, and the Fund Administrator will provide a final accounting to Commission staff for submission to the Commission. The Fair Fund will be eligible for termination, and the Fund Administrator will be discharged, after all of the following have occurred: (a) a final accounting, in the accounting format provided by the Commission staff, has been submitted by the Fund Administrator for approval of, and has been approved by, the Commission; (b) all income taxes and other fees due and owing by the Fair Fund have been paid by the Respondents; (c) all taxes withheld from distributions to customers have been tendered to the appropriate tax agencies; (d) all expenses associated with the administration of the Fair Fund have been paid by the Respondents; and (e) any amount remaining in the Fair Fund has been received by the Commission. When the Commission has approved the final accounting, the Commission staff will arrange for the transfer of any amount remaining in the Fair Fund to the U.S. Treasury, and will seek an order from the Commission to approve the termination of the Fair Fund and discharge the Fund Administrator. Upon the transfer of the Residual, if any, to the U.S. Treasury, in accordance with Section 16, the Fund Administrator will shut down the website, toll-free number and email inbox, and destroy all paper documents that have electronic duplicates. The Fund Administrator will preserve all electronic and relevant paper copies of documents for six years after its discharge, at which time it will provide the electronic and preserved paper copies of the documents to Commission staff in accordance with the SEC's Data Delivery Standards, which will be provided upon request.

