



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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Citation: Execution Access, LLC (Re), 2017 ONSEC 37
Date: 2017-10-20

**IN THE MATTER OF
EXECUTION ACCESS, LLC**

**ORAL REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)**

Hearing: October 20, 2017

Decision: October 20, 2017

Panel: D. Grant Vingoe Vice-Chair and Chair of the Panel
Deborah Leckman Commissioner

Appearances: Raphael T. Eghan For Staff of the Commission
Matthew Britton
Cullen Price

Rene Sorell For Execution Access, LLC

ORAL REASONS FOR APPROVAL OF SETTLEMENT

The following reasons have been prepared for publication in the Ontario Securities Commission Bulletin, based on the reasons delivered orally in the hearing as edited and approved by the panel, to provide a public record of the oral reasons.

- [1] This hearing concerns a settlement agreement (the **Settlement Agreement**) between Staff of the Ontario Securities Commission (**Staff**) and Execution Access, LLC (**Execution Access**).
- [2] As set out in the Settlement Agreement, in 2013, Execution Access acquired the assets of a business that provided an electronic trading platform to subscribers, which included certain sophisticated Canadian subscribers, enabling them to trade US treasury bills. It continued to operate a business with this functionality during the Material Time, defined in the Settlement Agreement as the period between 2013 and 2017. Execution Access engaged in this activity in Ontario without registering as a dealer in Ontario and complying with the rules applicable to alternative trading systems and without seeking the status of a recognized exchange.
- [3] As a result of these non-compliant activities, Execution Access also failed to pay regulatory fees in the estimated amount of \$470,000.
- [4] As mitigating factors, the Settlement Agreement states that once Staff advised the Respondent that it was operating without the required recognition or registration, it cooperated with the Staff of the Market Regulation Branch of the Commission to regularize its operations, as described in a NASDAQ CXC Limited notice issued by the Commission entitled *Notice of Proposed Changes and Request for Comment, Access to NASDAQ Fixed Income Trading System*, the comment period for which ended on July 31st of this year.
- [5] The Settlement Agreement states that no comments were received on the method of operation as a result of the NASDAQ CXC Notice. In addition, there have been no subscriber complaints to Staff resulting from these activities.
- [6] A settlement will ordinarily be approved if the sanctions agreed to by the parties are within a reasonable range of appropriateness in light of the facts admitted in the settlement agreement, taking into account the settlement process and its benefits as well as mitigating factors. The agreed sanctions are not necessarily the sanctions that a panel would have imposed after a hearing on the merits. Similarly, a panel, after a contested hearing, may or may not have found facts that are the same or different from those agreed to by the parties. In addition, even if substantially the same facts were found by the panel following a contested hearing, other sanctions than agreed might be imposed by such a panel.
- [7] A panel considering a proposed settlement relies on Staff's negotiations in reaching the settlement. A panel cannot know of facts that are excluded in the settlement agreement or of the range of sanctions that were considered. A panel can only rely upon the facts agreed to by Staff in the settlement agreement and the context and responses to questions from the panel provided by the parties in a confidential settlement conference convened pursuant to Rules 12.1 to 12.5 of

the Commission's *Rules of Procedure*. One such conference as I alluded to was held in this matter.

- [8] In the case of a settlement, a Commission panel must be satisfied that the settlement is fair and reasonable and that approval of the settlement is in the public interest, based on the facts and sanctions agreed to by the parties, in light of applicable regulatory principles, prior Commission sanctions and the regulatory settlement process.
- [9] The purpose of the Commission's sanctioning authority is to protect investors and the fair operation of our securities markets and to deter, both specifically and generally, future conduct that is inconsistent with securities laws or the public interest. These goals are furthered, in this case, by taking action against a marketplace using electronic facilities that operated across international borders into Ontario and that sought Ontario subscribers without obtaining the appropriate registration or recognition to conduct these activities.
- [10] Marketplaces are among the most important entities in the securities regulatory environment, performing a critical role in bringing together buyers and sellers of securities, demonstrating available liquidity and facilitating price discovery. They are subject to regulatory supervision designed to ensure that marketplace structure, operations and governance are consistent with our goals of market integrity and investor protection. These goals cannot be advanced if marketplaces reach into Ontario without appropriate regulatory oversight.
- [11] In this case, the operations of Execution Access are being brought into our structure of regulatory oversight, and Staff has stated that the firm has been cooperative. There is no evidence before us of investor losses due to this non-compliance.
- [12] Approval of the settlement with Execution Access is in the public interest on the basis of the Agreed Facts and the agreed sanctions are within a reasonable range of appropriate sanctions.
- [13] Execution Access has made a payment in the amount of \$970,000, hereby designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Ontario *Securities Act*. It has also made a payment in the amount of \$25,000 for costs of the Commission.
- [14] The Respondent shall be reprimanded.
- [15] The voluntary payment that has been paid and the terms and conditions of the Settlement Agreement, together with the steps that have been taken to regularize the operations of this trading facility, demonstrate the Respondent's acceptance of responsibility for this non-compliance. This acceptance is highlighted by the attendance here today of a representative of the Respondent, Mr. Stephen Matthews. We appreciate your attendance here today for that purpose. Execution Access is hereby reprimanded.

[16] For all of these reasons, the Panel has determined to approve the settlement and will sign an order substantially in the form of the order in Schedule "A" to the Settlement Agreement. So with that, the Panel wishes to thank counsel for their submissions in the settlement conference that preceded this hearing and in this hearing today. With that, the hearing is now concluded.

Dated at Toronto this 20th day of October, 2017.

"D. Grant Vingoe"

"Deborah Leckman"

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Deborah Leckman