



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

22nd Floor
20 Queen Street West
Toronto ON M5H 3S8

22e étage
20, rue queen ouest
Toronto ON M5H 3S8

IN THE MATTER OF EXECUTION ACCESS, LLC

SETTLEMENT AGREEMENT

PART I - INTRODUCTION

1. This matter concerns a company carrying on business in Ontario as a marketplace without complying with National Instrument 21-101 (*Marketplace Regulation*) (“NI 21-101”). It is essential for the protection of investors that marketplaces are appropriately recognized as exchanges or registered in a manner that allows them to operate as an alternative trading system.
2. The Ontario Securities Commission (the “Commission”) will issue a Notice of Hearing (the “Notice of Hearing”) to announce that it will hold a hearing (the “Settlement Hearing”) to consider whether, pursuant to sections 127 and 127.1 of the Securities Act (the “Act”), it is in the public interest for the Commission to make certain orders against Execution Access, LLC. (“EA” or “the Respondent”) in respect of the conduct described herein.

PART II - JOINT SETTLEMENT RECOMMENDATION

3. Staff of the Commission (“Staff”) recommend settlement of the proceeding (the “Proceeding”) against the Respondent commenced by the Notice of Hearing, in accordance with the terms and conditions set out in Part V of this Settlement Agreement. The Respondent consents to the making of an order (the “Order”) in the form attached as Schedule “A” to this Settlement Agreement based on the facts set out herein.
4. For the purposes of the Proceeding, the Respondent agrees with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III - AGREED FACTS

A. Overview

5. In 2013, EA acquired the assets of a business (the “Initial Platform”) that provided certain Canadian entities operating in Ontario with access to a trading platform for US treasury bills (“US Treasuries”). The assets acquired comprised the fully electronic portion of the asset vendor’s

benchmark U.S. Treasury brokerage, data and co-location service business. The Initial Platform was not operated as a recognized exchange or an alternative trading system pursuant to NI 21-101.

6. From 2013 to 2017 (the “Material Time”) EA has operated the Nasdaq Fixed Income trading system (“NFI”) (formerly called eSpeed), a fully executable central limit order book for electronic trading of U.S. Treasuries. NFI is an electronic system that brings together orders from multiple buyers and sellers and matches orders using established, non-discretionary methods. NFI therefore falls within the definition of “marketplace” in section 1(1) of the *Securities Act*, R.S.O. 1990, c. S.5 as amended (the “Act”). Because EA provided access to NFI to entities operating in Ontario during the Material Time, EA is considered to be carrying on business in Ontario.

B. The Respondent

7. EA is a Delaware company. In June, 2013, EA was approved by the Financial Industry Regulatory Authority in the United States to operate as the broker-dealer for NFI.

C. Carrying on Business as ATS without registration

8. During the Material Time, EA operated NFI to facilitate matching of client orders in U.S. Treasuries, in Ontario.

9. Subscribers to NFI are institutional entities, including but not limited to banks, broker-dealers and proprietary trading firms. EA has no natural person clients. Orders entered by subscribers may interact with other subscriber orders.

10. NFI is available to all subscribers with authorized access. Prospective subscribers must satisfy certain eligibility criteria, and are required to complete all onboarding documentation and execute an Electronic Trading Agreement (“ETA”).

11. Pursuant to the terms of the ETA, subscribers have contractual obligations to abide by all applicable rules and regulations, and the procedural, operational and technical requirements of NFI. Subscribers have access to all NFI’s features and functionalities once approved by EA.

12. During the Material Time, EA operated a marketplace in Ontario without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer so it could operate as an alternative trading system under NI 21-101.

13. By operating from June 2013 to July 2017 without either obtaining an order recognizing it as an exchange under the Act or registering as an investment dealer with the Commission, EA did not pay regulatory fees estimated in the amount of \$470,000.

D. Mitigating Factors

13. Since Staff advised the Respondent that it was operating without recognition or registration, the Respondent has cooperated with Staff of the Market Regulation Branch to regularize its operations and its method of operation has been described in a public notice on which comment was invited. No comment was received on the proposed method of operation.

14. During the Material Time there have been no customer complaints to the Staff.

15. The Respondent has cooperated with Enforcement Staff.

PART IV - CONDUCT CONTRARY TO THE PUBLIC INTEREST

16. By carrying on business in Ontario as a marketplace without complying with NI 21-101, EA-acted contrary to the public interest.

PART V - TERMS OF SETTLEMENT

17. The Respondent agrees to the terms of settlement set forth below.

18. The Respondent has given an undertaking (the "Undertaking") to the Commission in the form attached as Schedule "B" to this Settlement Agreement, which includes an undertaking to make a voluntary payment, before the commencement of the Settlement Hearing, in the amount of \$970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act.

19. The Respondent consents to the Order, pursuant to which it is ordered that:

- (a) this Settlement Agreement be approved;
- (b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and
- (c) the Respondent pay costs in the amount of \$25,000 pursuant to section 127.1 of the Act;

20. The amounts set out in paragraph 18 and sub-paragraph 19(c) shall be paid by EA in separate certified cheques to the Commission.

PART VI - FURTHER PROCEEDINGS

21. If the Commission approves this Settlement Agreement, Staff will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case Staff may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

22. The Respondent acknowledges that, if the Commission approves this Settlement Agreement and the Respondent fails to comply with any term in it, the Commission is entitled to bring any proceedings necessary.

23. The Respondent waives any defences to a proceeding referenced in paragraph 21 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII - PROCEDURE FOR APPROVAL OF SETTLEMENT

24. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Commission, which shall be held on a date determined by the Secretary to the Commission in accordance with this Settlement Agreement and the Commission's Rules of Procedure (2014), 37 O.S.C.B. 4168.

25. The Respondent will attend the Settlement Hearing by causing a representative to be present.

26. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

27. If the Commission approves this Settlement Agreement:
- (a) the Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and
 - (b) the parties will not make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.
28. Whether or not the Commission approves this Settlement Agreement, the Respondent will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII - DISCLOSURE OF SETTLEMENT AGREEMENT

29. If the Commission does not make the Order:
- (a) this Settlement Agreement and all discussions and negotiations between Staff and the Respondent before the Settlement Hearing will be without prejudice to Staff and the Respondent; and
 - (b) Staff and the Respondent will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.
30. The parties will keep the terms of this Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

32. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 17th day of October, 2017.

EXECUTION ACCESS, LLC

By: “Christopher M. Setaro”
Name: Christopher M. Setaro
Title: Chief Compliance Officer

DATED at Toronto, Ontario, this 18th day of October, 2017.

ONTARIO SECURITIES COMMISSION

By: “Jeff Kehoe”
Name: Jeff Kehoe
Title: Director, Enforcement Branch

SCHEDULE "A"



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

[INSERT COMMISSIONERS OF THE PANEL]

____, 2017

ORDER
Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5

THIS APPLICATION, made jointly by Execution Access, LLC (the "Respondent") and Staff of the Commission ("Staff") for approval of a settlement agreement dated ____, 2017 (the "Settlement Agreement"), was heard on ____, 2017 at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON READING the Statement of Allegations dated ____, 2017, and the Settlement Agreement and on hearing the submissions of representatives of each of the parties, and on considering the Undertaking of the Respondent dated October ____, 2017 to make a payment of \$970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

IT IS ORDERED THAT:

- (a) this Settlement Agreement be approved;
- (b) the Respondent be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act; and

- (c) the Respondent pay costs in the amount of \$25,000, pursuant to section 127.1 of the Act.

Commissioner

Commissioner

Commissioner

SCHEDULE "B"

IN THE MATTER OF EXECUTION ACCESS, LLC

UNDERTAKING TO THE ONTARIO SECURITIES COMMISSION

1. This Undertaking is given in connection with the settlement agreement dated October 17, 2017 between Execution Access, LLC and Staff of the Commission.
2. Execution Access, LLC undertakes to the Commission to make a payment of \$970,000 to be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act;

DATED at Toronto, this 17th day of October, 2017.

EXECUTION ACCESS, LLC

By: “Christopher M. Setaro”

Name: Christopher M. Setaro
Title: Chief Compliance Officer