

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
NASD

RE: brokersXpress, LLC
Broker-Dealer
CRD No. 127081

Pursuant to Rule 9216 of NASD Code of Procedure, brokersXpress, LLC [or Respondent] submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against me alleging violations based on the same factual findings.

Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

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- d. Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

brokersXpress, LLC entered the securities industry in September 2003 as a Broker-Dealer Member of NASD and registrant of the Securities Exchange Commission ("SEC"). Its NASD Membership and SEC registration remain currently in effect. brokersXpress, LLC's disciplinary history includes an Acceptance Waiver and Consent for failing to timely submit required information to the Order Audit Trail System ("OATS")

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this

AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:
1. During the relevant time period, MSRB Rule G-14 required all brokers, dealers and municipal securities dealers (collectively "dealers") to report trades to MSRB within 15 minutes of the time of execution¹ and the MSRB published data about all reported municipal securities transactions, including, but not limited to, time of trade, price and volume information. If municipal trade data is unavailable or incorrect because trades were not reported in a timely manner or included erroneous data, dealers and investors alike, experience harm because they cannot obtain an accurate picture of market activity and prices. Late or inaccurate transaction data may hinder a dealer's ability to price municipal securities accurately for customers, and, in turn, interferes with an investor's decision-making process.²

Additionally, accurate and timely municipal trade reporting forms the primary audit trail for regulators to conduct surveillance for potentially manipulative practices, as well as detect sales practice violations and other violations of the federal securities laws and MSRB rules.

¹ On January 31, 2005, the reporting requirement changed from midnight of the date that the trade was executed, to within 15 minutes of the trade.

² Since 1994, NASD and the MSRB have repeatedly advised dealers of their responsibility to report transactions accurately. See "Enforcement Initiative," *MSRB Reports*, Vol. 14, No. 3 (June 1994) at 35; *NASD Regulatory and Compliance Alert: "Introducing Firm Responsibility When Reporting Municipal Trades Through Service Bureaus and Clearing Firms"* (Winter 2000); *NASD Regulatory and Compliance Alert: "Municipal Securities Transaction Reporting Compliance Information"* (Spring 2001); and *NASD Notice to Members 03-13: "MSRB Rules G-12 and G-14"* jointly issued with the MSRB in March 2003 as *MSRB Notice 2003-7*. The MSRB has also advised dealers of their responsibility to ascertain the market value of municipal securities they trade so their customers receive prices that are reasonably related to the market value of the securities (See *MSRB Notice 2004-3: "Review of Dealer Pricing Responsibilities,"* January 26, 2004).

2. During the period from on or about June 1 through June 30, 2005, and January 1, 2006 through February 28, 2006, Respondent executed 30 customer transactions in municipal securities, of which 27 (90%) were not timely reported, in that they were not reported to the Municipal Securities Rulemaking Board ("MSRB") within 15 minutes of the time of execution; and transaction information was reported inaccurately to MSRB for 16 of 30 trade tickets.

Such acts, practices, and conduct constitute separate and distinct violations of MSRB Rule G-14 by brokersXpress, LLC.

3. From approximately June 1, 2005 through February 28, 2006, Respondent failed to establish written supervisory procedures to ensure the timely and accurate reporting of municipal securities transactions within 15 minutes of trade execution.

Such acts, practices, and conduct constitute a violation of MSRB Rule G-27(c) by brokersXpress, LLC.

4. SEC Rule 17a(f) provides, in pertinent part, that broker-dealers may preserve e-mail records on "electronic storage media," which includes any digital storage medium or system. The storage medium, however, must preserve the e-mail records exclusively in a non-rewritable and non-erasable format (e.g. "write once read many" or "WORM" format).
5. From approximately September 30, 2004 until April 16, 2006, Respondent failed to:
 - a) enforce its written supervisory procedures which provided that all incoming electronic correspondence would be printed and reviewed by a principal of the firm. In practice, electronic correspondence was maintained electronically and only a sample was reviewed;
 - b) provide notifications to NASD prior to implementing electronic storage media for primary record retention purposes for its electronic correspondence; a different electronic storage system for one of its branch offices located in Chicago; and an electronic storage system for maintenance of advertising files, as required by SEC Rule 17a-4;
 - c) capture, retain and preserve in a readily accessible location originals of all electronic communications originating from and received by one of its branch offices located in Chicago, IL; and
 - d) enforce its written supervisory procedures regarding e-mail retention and review at one of its branch offices located in Chicago IL.

6. From approximately September 30, 2004 until April 16, 2006, Respondent failed to provide notifications to NASD prior to implementing electronic storage media for primary record retention purposes for its electronic correspondence; a different electronic storage system for one of its branch offices located in Chicago; and an electronic storage system for maintenance of advertising files, as required by SEC Rule 17a-4.

Such acts, practices and conduct constitute separate and distinct violations of SEC Rule 17a-4 and NASD Conduct Rules 2110, 3110 and 3010 by brokersXpress, LLC.

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:

Censure and

Fine of \$50,000.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed on time AWC has been accepted and that such payments are due and payable and have attached an Election of Payment form showing the method by which Respondent proposes to pay any fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

Respondent certifies that a duly authorized representative has read and understands all of the provisions of this AWC and it has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce me to submit it.

brokersXpress, LLC

6/14/07
Date

Reviewed by:

[Signature]
Attorney Name

Counsel for Respondent

Firm Name

Address

City/State/Zip

Phone Number

Benjamin Hurst

brokersXpress, LLC

39 S. LaSalle, Ste 220

Chicago, IL 60603

312-670-3500

[Signature]
By: [Name and title]

Benjamin Hurst, Counsel
brokersXpress, LLC

Accepted by NASD:

June 18, 2007
Date

Signed on behalf of the

Director of ODA, by delegated authority

[Signature]
Pamela Shu

Regional Counsel

NASD Department of Enforcement

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