

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060039467-01

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REGISTRATION
ENCLOSURE

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

RE: BrokersXpress LLC, Respondent
Broker-Dealer
CRD No. 127081

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

I.

ACCEPTANCE AND CONSENT

- A. The firm 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm has been a member of FINRA (f/k/a NASD) since September 30, 2003, and its registration remains in effect. The firm has no relevant disciplinary history.

OVERVIEW

In Review No. 20060039467, the staff of the Department of Market Regulation ("the staff") reviewed the firm's compliance with NASD Rules applicable to OATS Reporting from April 1, 2005 through June 30, 2005 ("the review period").

VIOLATIVE CONDUCT BY RESPONDENT

1. During the review period, the firm submitted to OATS 19,634 Route Reports that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. These Route Reports represented 100 percent of all match-eligible Route Reports (19,634) submitted to OATS by the firm during the review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

2. During the review period, the firm failed to enforce its written supervisory procedures which specified that the firm will review the data sent by the firm to insure that the Routed Order Ids are passed properly to the Routing Firm from the Receiving Firm. The conduct described in this paragraph constitutes violations of NASD Conduct Rules 2110 and 3010.

B. The firm hereby consents to the imposition of the following sanctions:

A censure and a fine of \$11,000 (\$6,000 for the OATS reporting violations and \$5,000 for the supervision violations).

The firm agrees to pay any monetary sanction(s) imposed on it upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which the firm proposes to pay the fine imposed.

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm 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.

The firm 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.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 4. The firm 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. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

11/29/07
Date

**Respondent,
BrokersXpress LLC**

By: 

Name: Phillip Hoeh

Title: Chief Compliance Officer

Reviewed by:

Counsel for Respondent

Accepted by FINRA:

12/31/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

Signed on behalf of the Director of
ODA, by delegated authority

2007 DEC -6 P 2: 01

December 5, 2007

NASD REGULATION, INC.
MARKET REGULATION

Mr. Gary Jackson
Counsel-FINRA
9509 Key West Avenue
Rockville, MD 20850-3329

Re: Statement of Corrective Action regarding the Acceptance, Waiver and Consent 20060039467

Dear Mr. Jackson:

Please find enclosed brokersXpress, LLC's ("BRXP") executed Letter of Acceptance, Waiver and Consent ("AWC") for the resolution of the above-referenced charges currently under consideration by FINRA. In support of BRXP's acceptance of the AWC, BRXP submits this Statement of Corrective Action for consideration by the Department of Enforcement, Office of Disciplinary Affairs, and/ or the National Adjudicatory Council Review Subcommittee. BRXP explains the following for the sole purpose of assuring the Department that any cause for concern has been mediated and any misunderstanding, if there has been one, is avoided for the future.

This Statement of Corrective Action is submitted by the respondent. It does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA, or its staff.

Please find below corrective actions BRXP has taken, or intends to take, to address the matters raised in the AWC.

- I. Section one of the AWC relates to brokersXpress' submission of Route Reports that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data.**

brokersXpress through its clearing and reporting firm, optionsXpress, Inc., undertook a thorough review in response to inquiry 20050014710 and the result of such review resulted in initially lowering the unmatched route reports down to approximately 5% and over the last few months, near perfect unmatched route reports. BRXP, regularly reviews the data it sends to OATS through its clearing and reporting firm optionsXpress, Inc., and has dramatically improved its order match statistics.

We are pleased to report that our review into the matter and the improved processes employed at brokersXpress in coordination with its reporting firm OptionsXpress, Inc. has resulted in the unmatched route reports currently being at approximately 0%.

- II. Section two of the AWC notes that, during the review period, the firm failed to enforce its written supervisory procedures which specified that the firm will review the data sent by the firm to insure that the Routed Order IDs are passed properly to the Routing Firm from the Receiving Firm.**

The firm has since instituted a process of review that should evidence that the firm is enforcing its written supervisory procedures, and is in the process of continuing to review and revise those procedures. The firm conducts periodic reviews of its OATS data to ensure the firm is generating timely and accurate data to OATS and if applicable, repairing any rejected data. The firm evidences such review and maintains in accordance with the firm's books and records.

We would like to take this time to thank you for bringing this matter to our attention and hope that the information contained in this Statement of Corrective Action and Mitigating Circumstances evidences how seriously we have taken this matter and how committed we are to adhering to our regulatory obligations.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'P. Hoeh', with a long horizontal line extending to the right.

Phillip J. Hoeh
Chief Compliance Officer, brokersXpress, LLC

Cc: Benjamin M. Morof, Chief Compliance Officer, optionsXpress Holdings, Inc.
Hillary A. Victor, Corporate Counsel, optionsXpress Holdings, Inc.