

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060055253-01**

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REGISTRATION & DISCLOSURE

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

RE: **optionsXpress, Inc., Respondent**
Broker-Dealer
CRD No. 103849

Pursuant to NASD Rule 9216 of the FINRA Code of Procedure, optionsXpress, Inc. (the "firm" or "OXPS") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described 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

OXPS has been a member of FINRA since August 16, 2000. The firm's registration remains in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

On September 20, 2005, an AWC became final wherein OXPS was censured and fined \$14,000 for Order Audit Trail System ("OATS") reporting and supervision violations.

SUMMARY

This matter arose out of the following reviews:

- 20060055253, a review by the staff of the Department of Market Regulation (the "staff") of the firm's compliance with OATS reporting requirements during the period October 1, 2005 through December 31, 2005 (the "2005 OATS review period"). The staff also reviewed OXPS' written supervisory procedures regarding OATS in effect during the 2005 OATS review period.
- 20060070209, a review by the staff of the firm's compliance with OATS reporting requirements during the period September 2006 and November 2006 (the "2006 OATS review period").
- 20070086552, the 2007 Trading and Market Making Surveillance Examination of the firm conducted by the staff, wherein the staff reviewed the items set forth on Exhibit A. Unless otherwise stated, the samples were from trade dates March 19, 2007 and March 20, 2007 ("2007 TMMS review period").

FACTS AND VIOLATIVE CONDUCT

20060055253

1. During the 2005 OATS review period, 18,621 Route Reports were transmitted to OATS where OXPS was named the Sent To Firm that the OATS system was unable to link to the corresponding New Order Report transmitted by OXPS due to inaccurate, incomplete or improperly formatted data. These 18,621 unmatched Route or Combined Order/Route Reports represented 100% percent of all match-eligible Route or Combined Order/Route Reports transmitted to OATS where OXPS was named as the Sent To Firm (18,621) during the 2005 OATS review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
2. The firm failed to provide documentary evidence that during the 2005 OATS review period it performed the supervisory reviews set forth in its written supervisory procedures concerning OATS. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.

20060070209

3. During the 2006 OATS review period, the firm failed to transmit required information to OATS on three business days. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20070086552

4. During the 2007 TMMS review period, the firm failed to submit required information to OATS and submitted inaccurate information to OATS relating to 21 orders. Specifically, in 16 instances, the firm submitted the incorrect time in force to OATS. In one instance, the firm failed to submit a New Order Report to OATS. In one instance, the firm incorrectly submitted a Cancel Report instead of a canceled timestamp and canceled by flag; in three instances, the firm incorrectly submitted two combined Order Route Reports instead of a New Order Report and a Route Report; and in five instances, the firm failed to submit a combined Order Route Report. These inaccurate and/or missing reports represented 38 percent of the sample of orders reviewed in the TMMS examination during the 2007 TMMS review period. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
5. The firm failed to provide documentary evidence that on the trade date(s) reviewed in the TMMS examination it performed the supervisory reviews set forth in its written supervisory procedures concerning Regulation SHO, SEC Rules 200 and 203(b)(1) and OATS. The conduct described in this paragraph constitutes violations of NASD Rules 2110 and 3010.
6. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or the Rules of NASD. At a minimum, adequate written supervisory procedures addressing quality of markets topics should describe the following:
 - (a) specific identification of the individual(s) responsible for supervision;
 - (b) the supervisory steps and reviews to be taken by the appropriate supervisor;
 - (c) the frequency of such reviews; and
 - (d) how such reviews shall be documented.

The firm's written supervisory procedures failed to provide for one or more of the four above-cited minimum requirements for adequate written supervisory procedures, in the following subject areas: supervisory systems, procedures and qualifications, record keeping and SEC Rule 606 [b through d]; best execution [d]; and trade reporting, OATS clock synchronization, use of multiple market participant identifiers and SEC Rule 203(b)(3)(iii) [a through d]. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. The firm also consents to the imposition of the following sanctions: a censure; a fine of \$40,000 (composed of a \$10,000 fine for the OATS violations in 20060055253, a \$5,000 fine for the supervision violation in 20060055253, a \$10,000 fine for the OATS violations in 20060070209, a \$10,000 fine for the OATS violations in 20070086552, and a \$5,000 fine for the supervision violations in 20070086552); and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph six. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph six; and, (3) the date the revised procedures were implemented.

The firm agrees to pay the monetary sanction(s) 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 it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) 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 NASD Rule 9143 or the separation of functions prohibitions of NASD 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:

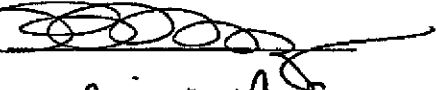
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

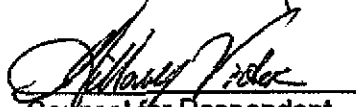
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and**
- C. If accepted:**
- 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other 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 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 the AWC's 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.

11/26/08
Date

Respondent
optionsXpress, Inc.

By: 
Name: Benjamin H. Reed
Title: CEO

Reviewed by: Hillary Victor, Associate General Counsel

Counsel for Respondent

Accepted by FINRA:

1/6/09
Date

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

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

Exhibit A

**2007 MRE Exam Samples
optionsXpress, Inc. ("OXPS")
Exam No. 200700786552**

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
72	Customer and proprietary sales, reviewed for compliance with SEC Rule 200(g) long/short/exempt sale recording requirements.	From trade dates March 19 & 20, 2007.
72	Customer and proprietary short sales, reviewed for compliance with SEC Rule 203(b) security location requirements.	From trade dates March 19 & 20, 2007.
0	Customer and proprietary sales reported to a TRF or OTCRF, for compliance with NASD Rules 6130, 4632 and 6620 sale indicator reporting requirements.	From trade dates March 19 & 20, 2007.
N/A	Customer and proprietary sales reported to the ADF/TRACS, for compliance with NASD Rule 4632A sale indicator reporting requirements.	N/A
N/A	Short sales in Nasdaq Global Market securities executed otherwise than on an exchange, for compliance with NASD Rule 5100 bid test requirements.	N/A
N/A	Short sales in exchange-listed securities executed otherwise than on an exchange, for compliance with SEC Rule 10a-1 tick test requirements.	N/A
0	Customer and proprietary sales entered into the Nasdaq Exchange execution systems, for compliance with Nasdaq Rule 4755 long/short/exempt sale indicator entry requirements.	From trade dates March 19 & 20, 2007.
4	Cancellations of trades reported to a TRF or OTCRF, for compliance with NASD Rules 4632(g), 6420(f), 6620(f) and 6130(f) trade report cancellation requirements.	From trade dates March 19 & 20, 2007.
N/A	Cancellations of trades reported to ADF/TRACS, for compliance with NASD Rule 4632A(l) trade report cancellation requirements.	N/A
N/A	Limit and market orders executed as principal, for compliance with the order protection and best execution requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and 2320, and Nasdaq Rules 2110, IM-2110-2, 2111 and 2320	N/A
N/A	Limit orders for NMS stocks in which the member acts as an exchange or OTC market maker, for compliance with the display requirements of SEC Rule 604, 604 and Nasdaq Rule 3390.	N/A
N/A	Market orders with "not held" terms or from institutional customers, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements.	N/A
N/A	Market orders executed as principal, for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements.	N/A

Exhibit A

**2007 MRE Exam Samples
optionsXpress, Inc. ("OXPS")
Exam No. 200700786552**

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
N/A	Order memoranda for net trades effected by non-institutional and institutional customers, for compliance with NASD Rule 2441 documentation requirements.	N/A
N/A	Net trading agreements with institutional customers, for compliance with NASD Rule 2441 documentation requirements.	N/A
N/A	Principal and riskless principal trade executions effected otherwise than on an exchange for <u>Q</u> limit or market orders, for compliance with NASD Rules 4632, 6420, 6620 and 6130 requirements for TRF and OTCRF reporting.	N/A
N/A	Principal and riskless principal trade executions effected otherwise than on an exchange for <u>Q</u> limit or market orders, for compliance with NASD Rule 4632A requirements for ADF/TRACS reporting.	N/A
N/A	NASD Market Surveillance breaks for principal and riskless principal trades, for compliance with NASD Rules 4632, 6420, 6620, 6130 and 4632A requirements for TRF, OTCRF and ADF/TRACS reporting.	N/A
N/A	Trade executions effected otherwise than on an exchange for 0 orders in Nasdaq-listed or exchange listed securities, received from customers with accounts subject to a soft dollar agreement, for compliance with the SEC '34 Act section 28(e) safe harbor which limits the accrual of soft dollar credits for riskless principal transactions to those reporting in compliance with NASD Rules 4632 and 6420.	N/A
3	Open limit orders to buy and/or open stop orders to sell securities that traded ex-dividend, for compliance with NASD Rule 3220 and Nasdaq Rule 4761.	For ex-dividend date March 19 & 20, 2007.
0	Trades reported to a TRF or OTCRF with a .PRP modifier, for compliance with NASD Rules 4632, 6420, 6620 and 2320.	From trade dates March 19 & 20, 2007.
N/A	Trades reported to ADF/TRACS with a .PRP modifier, for compliance with NASD Rule 4632A.	N/A
N/A	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements.	N/A
N/A	Orders for NMS stocks in which the firm acts as a market center, for compliance with SEC Rule 605 order classification requirements.	N/A
N/A	Datasets published for on the monthly order execution report, for compliance with SEC Rule 605 requirement to publish accurate data. (A "dataset" is all required statistical data for a single order category, with each category representing a single unique combination of a security, order type and order size, as described in Rule 605.)	N/A

Exhibit A

**2007 MRE Exam Samples
optionsXpress, Inc. ("OXPS")
Exam No. 200700786552**

<u>Sample Size:</u>	<u>Sample Description:</u>	<u>Sample Source/Period:</u>
N/A	Quarterly order routing report, for compliance with SEC Rule 606 requirements.	Report published for the first quarter 2007.
10	Customer orders in OTC equity securities, for compliance with NASD Rules 2320(g) and 3110(b) requirements to ascertain and document the best interdealer market for transactions in such securities.	From trade dates March 19 & 20, 2007.
55	Orders in securities required to be submitted to OATS, for compliance with NASD Rules 6954 and 6955, and Nasdaq Rules 6954 and 6955 requirement to submit OATS information.	From trade dates March 19 & 20, 2007.
N/A	ADF orders and/or quotes which were accessed by others, for compliance with NASD Rule 4300A requirements to submit Order and Order Response reports.	N/A
153	Order/Trade records prepared and maintained in connection with the above samples, for general compliance with requirements of NASD Rule 3110 and SEC Rules 17a-3 and 17a-4.	From trade dates March 19 & 20, 2007.
7	Trades reported to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for general compliance with requirements of NASD Trade Reporting and ADF rules.	From trade dates March 19 & 20, 2007.
83	Customer confirmations prepared and maintained in connection with the above samples, for compliance with SEC Rule 10b-10 disclosure requirements.	From trade dates March 19 & 20, 2007.
12	CRD registration records for persons conducting and/or supervising the member's trading and market making activities, for compliance with NASD Rule Series 1020, 1030 and 1040, and Nasdaq Rule Series 1020, 1030 and 1040.	List of trading personnel and supervisory personnel for March 2007.
All, as provided by the member	The member's supervisory system, written supervisory procedures ("WSPs") and documents evidencing the implementation of the WSPs, for compliance with NASD Rule 3010 requirements to establish an implement a system that is reasonably designed to prevent and detect violations of applicable securities rules.	WSPs provided by the member for March 2007, and documentation of supervisory reviews conducted for March 2007.
All, as provided by the member	The member's "Regular & Rigorous" review procedures (for assessing the execution quality of orders sent to other trading centers and/or internalized, for compliance with NASD Rules 2320 and 3010.	Procedures provided by the member as those in effect during March 2007.
N/A	Trades reported by the ATS/ECN to a TRF, OTCRF or ADF/TRACS in connection with the above samples, for compliance with requirements of NASD-Rules 6130(c)(5) and/or 6130A(b)(5).	N/A

Exhibit A

**2007 MRE Exam Samples
optionsXpress, Inc. ("OXPS")
Exam No. 200700786552**

Sample
Size:

N/A

Sample Description:

Trading halts declared during the on-site portion of the examination, for which NASD staff observed the operation of the ATS.

Sample Source/Period:

N/A