

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2010021317901**

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

RE: brokersXpress LLC, Respondent
(CRD No. 127081)

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, brokersXpress LLC ("brokersXpress" or the "Firm") 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. brokersXpress 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

brokersXpress LLC became registered with the Securities and Exchange Commission ("SEC") and FINRA on September 30, 2003. The Firm conducts a general securities business on a fully disclosed basis. The Firm's registrations with FINRA and the SEC remain in effect.

RELEVANT DISCIPLINARY HISTORY

On June 18, 2007, brokersXpress submitted a Letter of Acceptance, Waiver and Consent, which found that the Firm violated SEC Rule 17a-4, NASD Rules 2110, 3110, and 3010 and Municipal Securities Rulemaking Board ("MSRB") Rules G-14 and G-27(c). The Firm failed to timely report municipal securities transactions, to accurately report these transactions and to establish written supervisory procedures to ensure timely and accurate reporting of municipal

securities transactions. brokersXpress also was found to have failed to: enforce its procedures that all incoming electronic correspondence be printed and reviewed; provide notification prior to implementing electronic storage media for primary record retention purposes for electronic correspondence; capture, retain and preserve in a readily accessible location originals of all electronic communications originating from and received by one of its branch offices; and enforce its written supervisory procedures regarding e-mail retention and review, and notifications to NASD (n/k/a FINRA) prior to implementing electronic storage media for primary record retention purposes for its electronic correspondence. The Firm agreed to a censure and a \$50,000 fine.

OVERVIEW

brokersXpress failed to properly report 257 municipal securities riskless principal and agency transactions over a two-year period, in violation of MSRB Rule G-14. The Firm also failed to prepare accurate confirmations for 121 of these transactions, in violation of MSRB Rule G-8. In addition, brokersXpress failed to maintain adequate written supervisory procedures for the reporting of municipal securities transactions, in violation of MSRB Rule G-27.

FACTS AND VIOLATIVE CONDUCT

Failure to Report or Failure to Accurately Report Municipal Securities Transactions Violation of MSRB Rule G-14

1. MSRB Rule G-14 requires all brokers, dealers and municipal securities dealers (collectively "dealers") to report trades to MSRB within 15 minutes of the time of execution 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 or included erroneous data, dealers and investors alike, experience harm because they cannot obtain an accurate picture of market activity and prices. If municipal securities transactions are not reported, or inaccurately reported, the transaction data collected by the MSRB may hinder a dealer's ability to price municipal securities accurately for customers and, in turn, interferes with an investor's decision-making process.¹ Additionally,

¹ 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

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.

2. From July 2008 to June 2010, brokersXpress effected a total of 257 municipal securities transactions on a riskless principal or agency basis. Since the trades were effected on a riskless principal or agency basis, brokersXpress should have submitted reports to the MSRB for both the 257 trades that it effected with other dealers and the 257 trades it effected with its customers. Therefore, brokersXpress should have submitted a total of 514 reports of trades to the MSRB. During this time, however, brokersXpress submitted only 213 reports of municipal transactions to the MSRB.
3. Of the 514 reports of trades with dealers and customers that brokersXpress should have submitted to the MSRB, it failed to submit reports for any of the 257 trades it effected with dealers.
4. brokersXpress failed to submit 44 reports out of 257 trades it effected with customers. Reports for 37 of these trades appear to have been submitted to MSRB, however, the reports reflected that the trades were effected by brokersXpress' affiliated dealer, when in fact, the trades were effected by brokersXpress. The remaining 7 reports of trades were not submitted to MSRB in any manner.
5. The 213 reports that brokersXpress actually submitted to MSRB were inaccurate or deficient in the following manner:
 - a. For 35 reports of trades, brokersXpress reported an inaccurate time of trade;
 - b. For 2 reports, brokersXpress reported an inaccurate trade date;
 - c. For 21 of the 37 inaccurate reports listed in items a and b above, the Firm's reports of trades were also submitted late;
 - d. For 17 reports, the Firm reporting multiple customers' transactions as one "block" transaction;
 - e. For 10 reports, brokersXpress reported an inaccurate price of the bond transaction;
 - f. For 6 reports, the Firm reported an inaccurate yield for the bonds; and,

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).

- g. For 10 reports, brokersXpress inaccurately reported that the trades were done on a riskless principal basis when in fact they were done on an agency basis.
- 6. During this time period, brokersXpress also reported 4 corporate bond trades to the MSRB, which was improper because MSRB does not report corporate bond trades.
- 7. By failing to report or failing to accurately report the above described municipal securities transactions, brokersXpress violated MSRB Rule G-14.

**Failure to Prepare Accurate Confirmations
for Municipal Securities Transactions
Violation of MSRB Rules G-8**

- 8. MSRB Rule G-8 requires that every dealer make and keep current a memorandum of each transaction in municipal securities (whether purchase or sale) for the account of such broker, dealer or municipal securities dealer, showing the price and date of execution and, to the extent feasible, the time of execution. The Rule further provides that in the event such purchase or sale is with a customer, a record of the customer's order, showing the date and time of receipt, the terms and conditions of the order, and the name or other designation of the account in which it was entered and, if such order is entered pursuant to a power of attorney or on behalf of a joint account, corporation, or partnership, the name and address (if other than that of the account) of the person who entered the order.
- 9. Of the 257 transactions that brokersXpress effected from July 2008 to June 2010, the confirmations for 121 of these municipal securities trades, which were sent to customers of the Firm, were inaccurate in that the confirmations stated that the bonds were "traded flat," or were in default, when the bonds were not in default
- 10. By creating and disseminating to customers inaccurate trade confirmations, brokersXpress violated MSRB Rule G-8.

**Failure to Maintain Adequate Written Supervisory Procedures and Failure
to Supervise the Reporting of Municipal Securities Transactions
Violation of MSRB Rule G-27**

11. MSRB Rule G-27 requires each dealer to adopt, maintain and enforce written supervisory procedures reasonably designed to ensure that the conduct of the municipal securities activities of the dealer and its associated persons are in compliance with the MSRB Rules. Such procedures are required to codify the dealer's supervisory system for ensuring compliance, with among other things, the reporting of municipal securities transactions. MSRB Rule G-27 also requires each dealer to supervise the conduct of the municipal securities activities of the dealer to ensure compliance with MSRB Rules.
12. From July 2008 to June 2010, brokersXpress' written supervisory procedures required among other things, that the Firm periodically test its system for reporting client transactions and review the Dealer Feedback System (DFS) for transactions which were: unmatched with other reported transactions; had invalid trade times; resulted in input errors; were reported late; and, involved cancelled or amended trades. The written supervisory procedures failed to provide sufficient detail and instruction necessary to clarify what supervisory steps should be taken by the principal responsible for overseeing the reporting of municipal securities transactions. Specifically, the written supervisory procedures failed to:
 - a. describe the documentation that should be reviewed by the principal to ensure that the Firm's trades were being reported accurately;
 - b. state when the principal would review the documentation; and
 - c. instruct the principal how to evidence his or her review.
13. In addition, from July 2008 to June 2010, brokersXpress failed to adequately supervise its municipal securities trade reporting because the Firm failed to:
 - a. document that it conducted tests of its system for reporting MSRB transactions;
 - b. document any reviews of the DFS to ensure that the municipal transactions were accurately reported; and,
 - c. implement an effective supervisory system for municipal securities reporting.

14. By failing to maintain adequate written supervisory procedures related to the reporting of municipal securities transactions, failing to document any tests or reviews of the reported trades which was required pursuant to the written supervisory procedures, and failing to implement an effective supervisory system for municipal securities reporting, brokersXpress violated MSRB Rule G-27.

- B. brokersXpress also consents to the imposition of the sanctions of a censure and a \$60,000 fine.

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. brokersXpress has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

brokersXpress specifically and voluntarily waives any right to claim that the Firm is unable to pay, now or at any time hereafter, the 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

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

- A. To have a Complaint issued specifying the allegations against the Firm;
- B. To be notified of the 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, brokersXpress 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.

brokersXpress further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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

brokersXpress understands that:

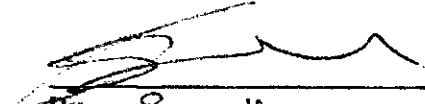
- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will 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 it;
 - 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 FINRA Rule 8313; 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. brokersXpress 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. brokersXpress 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.

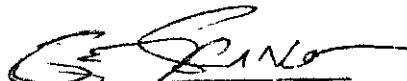
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that brokersXpress has agreed to its provisions voluntarily; and that no offer, 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.

brokersXpress LLC

6/26/12
Date


By Gary Marquis
Its CEO

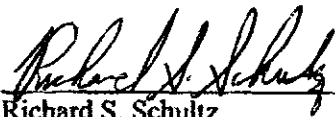
Reviewed by:


Counsel for Respondent

Accepted by FINRA:

6/28/12 7/6/12
Date

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


Richard S. Schultz
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