

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20120313109-01**

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

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, optionsXpress, Inc., ("OXPS", the "Firm", or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

I.

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 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, and its registration remains in effect. The Firm was purchased by The Charles Schwab Corporation on September 1, 2011.

RELEVANT DISCIPLINARY HISTORY

OXPS does not have any relevant disciplinary history.

SUMMARY

In connection with matter 20120313109, FINRA Department of Market Regulation staff ("staff") originally conducted a review of the Firm's reporting to the Options Clearing Corporation ("OCC") Large Options Positions Report ("LOPR") for compliance with options reporting rules during the period between October 1, 2011 and December 31, 2011. As a result of staff's initial investigation, staff conducted a more extensive investigation into the Firm's LOPR submission practices from September 2006 through

February 2013. Staff's investigation found that, as a result of systemic deficiencies during the period between September 11, 2006 through January 15, 2010 (the "Review Period"), the Firm failed to report, or inaccurately reported, a significant number of positions to the Securities Industry Automation Corporation ("SIAC") LOPR as required by pertinent rules. In addition, the Firm failed to have an adequate system of supervision to ensure compliance with LOPR reporting and had deficient written supervisory procedures.

FACTS AND VIOLATIVE CONDUCT

Reporting of Options Positions

1. LOPR data is used extensively by FINRA and self-regulatory organizations to identify holders of large option positions who may be, among other things, attempting to manipulate the market or otherwise violate securities rules and regulations.
2. The accuracy of LOPR data is essential for the analysis of potential violations related to, among other things, insider trading, position limits, exercise limits, front-running, capping and pegging, mini-manipulation, and marking-the-close.
3. During the Review Period, OXPS failed to report, or failed to accurately report, an unknown but significant number of positions to SIAC LOPR. After staff conducted an analysis through sampling OXPS' options positions data connected to its SIAC LOPR obligations during the aforementioned period, it was estimated that: (i) in approximately 1,290,679 instances¹, the Firm had failed to report options positions to the SIAC LOPR due to the Firm's failure to aggregate positions for acting in concert ("AIC") purposes; and (ii) in approximately 1,546,196 instances, the Firm had failed to report options positions to the SIAC LOPR as AIC with others that together had established an aggregate position of 200 or more option contracts on the same side of the market covering the same underlying security; none of these positions contained their relevant AIC identifiers.
4. The above-described violations resulted, in part, from the Firm's failure to properly identify and aggregate the positions of all accounts under common control or those AIC.
5. The conduct described in paragraphs three and four above constitutes a violation of NASD Rule 2360(b)(5) (for the period prior to February 17, 2009) and FINRA Rule 2360(b)(5) (for the period after February 16, 2009).

¹ An "instance" is a single failure to report, or inaccurately report, a given option position. The number of instances is determined by multiplying a given reportable position by the number of trade dates the position had not been reported or was reported incorrectly.

Supervision

6. Pursuant to the former NASD Rule 3010, now FINRA Rule 3110,² broker-dealers must provide for appropriate supervisory control of the organization, including a separate system of follow-up and review, to achieve compliance with FINRA and NASD rules, and with securities laws and regulations. Broker-dealers are required to provide for appropriate written procedures of supervision and control that are reasonably designed to achieve compliance with FINRA and NASD rules and compliance with securities laws and regulations. NASD Rule 2110 required a broker-dealer to observe high standards of commercial honor and just and equitable principles of trade in the conduct of its business. Effective December 15, 2008, NASD Rule 2110 was re-numbered as FINRA Rule 2010.
7. During the period from September 2006 through August 2013, OXPS failed to maintain an adequate system of supervision, including systems of follow-up and review, that were reasonably designed to achieve compliance with the rules governing the reporting of positions to the LOPR system. The Firm also lacked sufficient written supervisory procedures requiring reviews to determine that LOPR submissions were accurate or that all reportable positions had actually been reported.
8. The conduct described in paragraph seven above constitutes a violation of NASD Rule 3010 and NASD Rule 2110 (for the period prior to December 15, 2008), and FINRA Rule 2010 (for the period after December 14, 2008).

Other Considerations

In accepting this AWC, FINRA considered: (i) the remedial measures implemented by the Firm, including the creation and enhancement of written supervisory procedures applicable to the reporting of options positions; (ii) the voluntary implementation of an extensive plan to conduct in-depth reviews of the Firm's completeness and accuracy of its reporting to the LOPR, and to ascertain and ensure the adequacy of the Firm's policies, systems, procedures, and training relating to achieving complete and accurate reporting to the LOPR system; and (iii) the voluntary on-going submission of reports to FINRA by the Firm related to its in-depth reviews, which will include but not be limited to assessments of the degree to which the Firm has taken steps, as well as those still needed to be taken, to confirm that the data it submits to the LOPR system is complete and accurate.

- B. Respondent also consents to the imposition of the following sanctions:

A censure and a total fine of \$2,400,000, of which \$650,000 shall be paid to FINRA.³

² FINRA Rule 3110 replaced NASD Rule 3010 effective December 1, 2014.

³ The balance of the Firm's fine will be paid to The Nasdaq Options Market pursuant to a separate settlement agreement.

Additionally, acceptance of this AWC is conditioned upon acceptance of an equivalent settlement agreement in a related matter between the Firm and The Nasdaq Options Market.

Respondent 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.

Respondent 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

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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 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

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it

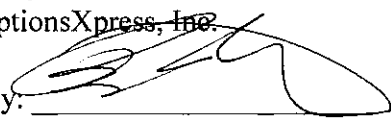
has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs (“ODA”), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; 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 accordance with FINRA Rule 8313;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. 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. Respondent 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondent 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 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.

3/2/15
Date

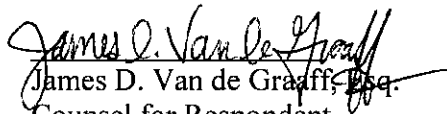
Respondent
optionsXpress, Inc.

By: 

Name: Barry Metzger

Title: CEO - optionsXpress

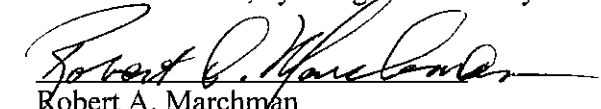
Reviewed by:


James D. Van de Graaff, Esq.
Counsel for Respondent
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693
(312) 902-5227
james.vandegraaff@kattenlaw.com

Accepted by FINRA:

3/19/15
Date

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


Robert A. Marchman
Executive Vice President
FINRA Department of Market Regulation