

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2012034190001**

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

RE: optionsXpress, Inc., Respondent  
CRD No. 103849

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

**I.**

**ACCEPTANCE AND CONSENT**

- A. OX 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**

OX, a subsidiary of the Charles Schwab Corporation, is headquartered in Chicago, Illinois, and has been a FINRA member since 2000. OX has approximately 24 branches and approximately 224 registered representatives.

**OVERVIEW**

Between February 2012 and April 2012 ("the relevant period"), OX failed to implement adequate written supervisory policies and procedures reasonably designed to review and monitor certain transmittals of funds from customer accounts to outside bank accounts using the Automated Clearing House ("ACH") process. During the relevant period, the Firm did not adequately follow-up on red flags with regard to certain transfers from a particular customer's account that appeared on exception reports that the Firm used to identify potentially suspicious activity. As a result, an identity thief was able to cause unauthorized stock sales and misappropriate a total of \$452,100 from an OX customer by way of six ACH electronic fund transfers to an outside bank account not in the OX customer's name. By failing to implement written policies and procedures reasonably designed to review and monitor ACH transfers of funds from customer accounts to outside bank accounts, OX violated NASD Rule 3012(a)(2)(B)(i). By failing to adequately respond to red flags relating to transmittals of a particular customer's funds,

OX violated NASD Rule 3010. As a result of those violations, OX also violated FINRA Rule 2010.<sup>1</sup>

### **FACTS AND VIOLATIVE CONDUCT**

#### **FACTS**

##### **An OX Customer's Account is Improperly Accessed by an Identity Thief**

In February, 2012, an OX customer's account was accessed by an identity thief who changed the email address on the account profile. OX sent email confirmation of the profile change to both the old and new email addresses on file for the customer.

Thereafter, on several occasions in February and March 2012, the identity thief attempted unsuccessfully to reset the personal identification number ("PIN") associated with the account, which was required for a funds transfer. Later, in March 2012, the identity thief passed certain security questions and was able to reset the security PIN in the customer's account. Thereafter, the identity thief established a new ACH link connecting the customer's OX account to an outside bank account controlled by the identity thief's agent.

On March 28, 2012, the identity thief made an ACH transfer for \$9,100 from the customer's account to the outside bank account the identity thief had linked to the customer's account. Over the next few weeks, the identity thief engaged in a series of stock sales and ACH transfers totaling \$443,000. The transactions are summarized in the following chart:

<b>DATE</b>	<b>TRANSACTION</b>
4/4/12	\$91,000 ACH from OX customer account to outside bank account
4/10/12	\$89,000 ACH from OX customer account to outside bank account
4/16/12	\$87,000 ACH from OX customer account to outside bank account
4/19/12	\$83,000 ACH from OX customer account to outside bank account
4/23/12	10,000 shares of stock sold in OX customer account
4/24/12	\$93,000 ACH from OX customer account to outside bank account
4/27/12	14,000 shares of stock sold in OX customer account

After each ACH transfer, OX placed an automated telephone call to the customer's cell phone confirming the transfer. However, OX did not confirm that the customer received the messages or otherwise speak with him regarding the transfers. OX also sent emails to

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<sup>1</sup> NASD Rules 3010 and 3012 are applicable to conduct prior to December 1, 2014. FINRA Rules 3110 and 3120 will apply for conduct on or after December 1, 2014. Since the conduct at issue occurred prior to December 1, 2014, NASD Rules 3010 and 3012 apply.

the address on file, which the customer did not receive because the identity thief had changed the email associated with the account.

On April 30, 2012, the customer contacted OX and informed OX that the ACH transfers and the stock sales in April 2012 were unauthorized. OX then froze the account. OX ultimately reimbursed the customer the money misappropriated by the identity thief.

### **OX Did Not Adequately Respond to Red Flags**

During the relevant period, OX generated a daily report of ACH transactions greater than a specified dollar threshold ("Large ACH Report"). OX personnel reviewed the Large ACH Report by looking at various factors and customer activity.

Although OX had a process for reviewing the Large ACH Report, OX did not have written procedures providing detail about who was responsible for performing reviews of ACH activity, how the reviews were to be performed, or what to do with any findings with respect to the Large ACH Report. OX also failed to adequately follow up on possible red flags indicating potential fraudulent conduct in the customer's account.

The combined red flags to which OX failed to adequately respond included: (1) the customer's online account was repeatedly accessed from what appeared to be a Texas IP address (when the customer lived in Illinois); (2) the email address associated with the account was changed from a Texas IP address; and, (3) there were multiple failed attempts to reset the account security PIN from a Texas IP address, as well as the following:

- In early April, 2012, the identity thief, pretending to be the OX customer, called the OX customer service center and was unable to verify security questions. The identity thief called from a Skype phone account, had a heavy Eastern European accent, appeared not be able to understand English, and could not answer the security question (the customer's mother's maiden name). The OX employee who took the call failed to escalate the matter to appropriate personnel at the firm.
- On five dates later in April 2012, there were transfers totaling \$443,000 from the OX customer's account initiated from a Texas IP address. Each of these transfers was reflected on the Firm's Large ACH Report on the date it was made, but the reports omitted relevant information. For example, the comments sections in the reports for two of the transactions omitted that the customer had previously failed account security questions, and one of the reports incorrectly stated that there were no recent profile edits when in fact the customer's email address had been changed. In addition, the account's appearance on five reports in less than a month did not cause the Firm to engage in an escalated review of the transactions.

## **VIOLATIONS**

NASD Rule 3012(a)(2)(B) provided that firms establish and maintain written supervisory control policies reasonably designed to review and monitor transmittals of funds from customers to outside entities including banks. NASD Rule 3010 required that member firms establish, maintain and enforce supervisory procedures that are reasonably designed to achieve compliance with applicable securities laws, regulations and FINRA rules. A violation of NASD Rules 3012 and 3010 also constituted a violation of FINRA Rule 2010.

During the relevant period, OX failed to implement adequate written supervisory policies and procedures reasonably designed to review and monitor certain ACH transfers of funds from customer accounts to outside bank accounts. OX's policies and procedures for reviewing ACH transactions failed to ensure that these red flags would be adequately reviewed and escalated. OX's system of ACH review did not have clear or specific criteria for review of suspicious activity or clear delineation of responsibility for first and second level review.

OX also failed to adequately follow-up on red flags of potentially suspicious or fraudulent activity in the OX customer's account. These red flags included the use of an out-of-state computer, failure of security questions, a suspicious phone call in which the caller could not provide his mother's maiden name, a changed email address, a changed security PIN and new ACH link established and multiple ACH transfers entirely draining the account of funds within a thirty-day period. While OX personnel noted certain irregularities in its review of the large ACH Report, the Firm failed to adequately follow-up on the indicia of fraud, identify the risks in the transfers and take appropriate remedial action.

Accordingly, by failing to implement written policies and procedures reasonably designed to review and monitor certain ACH transfers of funds from a customer account to outside bank accounts, OX violated NASD Rule 3012(a)(2)(B)(i) and FINRA Rule 2010. By failing to adequately follow-up on red flags and follow its unwritten procedures relating to transmittal of funds from a customer's account, OX violated NASD Rule 3010 and FINRA Rule 2010.

B. OX also consents to the imposition of the following sanctions:

1. A censure; and,
2. A fine in the amount of \$150,000.

OX further agrees to comply with the following undertaking:

Within 30 days of the issuance of a Notice of Acceptance of this AWC, an officer of the Firm shall certify in writing to FINRA's Department of Enforcement that the Firm has implemented written ACH transfer review procedures to address and correct the violations described in this AWC. The Department of Enforcement

may, upon a showing of good cause and in its sole discretion, extend the dates for compliance with any of the terms of this provision.

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

OX 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

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

- A. To have a Complaint issued specifying the allegations against it;
- 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, OX 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.

OX 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

OX 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 it; and**
- C. **If accepted:**
  - 1. **this AWC will become part of OX’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 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. **OX 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. OX 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 OX’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. **OX may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. OX 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.**

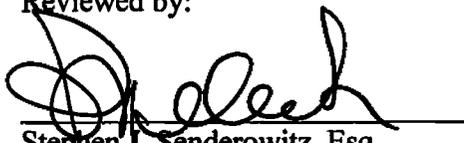
The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that OX has agreed to its provisions voluntarily; and that no offer, threat,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

3/4/2015  
Date (mm/dd/yyyy)

  
optionsXpress, Inc.  
Respondent

By: Barry Metzger  
CEO

Reviewed by:

  
Stephen J. Senderowitz, Esq.  
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Accepted by FINRA:

3/17/15  
Date

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



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