

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130384274-01**

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

RE: optionsXpress, Inc. ("OXPS"), Respondent
Broker-Dealer
CRD No. 103849

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, optionsXpress, Inc. (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. 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 since August 16, 2000, and its registration remains in effect. The Firm has no relevant disciplinary history.

SUMMARY

In Review No. 20130384274, the Trading and Financial Compliance Examinations Equities Team of the Department of Market Regulation conducted a review of the Firm's compliance with NASD Rule 3220 and FINRA Rule 5330, NASD Rule 2110 and FINRA Rule 2010 and NASD Rule 3010 during the time period of September 11, 2006 through October 28, 2013 (the "Review Period").

OVERVIEW

This matter involves the Firm's failure to adjust the price or number of shares on open orders received from Firm customers involving securities that were subject to a dividend, payment or distribution prior to executing or permitting the orders to be executed, and the

Firm's failure to disclose to its customers that it had a practice of not adjusting open orders, as well as supervisory violations.

FACTS AND VIOLATIVE CONDUCT

1. During the Review Period, the Firm failed to adjust the price or number of shares on numerous open orders received from customers of the Firm involving a security that was subject to a dividend, payment or distribution prior to executing or permitting the order to be executed as required by NASD Rule 3220 (prior to April 19, 2010) and FINRA Rule 5330 (on and after April 19, 2010).
2. For example, between July 1, 2013 and September 30, 2013, the Firm was holding a total of 8,664 open orders, 66 of which the Firm should have adjusted (*i e*, 9 sell orders and 57 buy orders). Customers could have been harmed as a result of orders that were not adjusted.
3. Moreover, between September 11, 2006 and September 8, 2012, the Firm failed to disclose to its customers that it had a practice of not adjusting open orders
4. The conduct set forth above in paragraphs 1 and 3 constitutes separate and distinct violations of NASD Rule 3220 (for conduct prior to April 19, 2010) and FINRA Rule 5330 (for conduct on and after April 19, 2010).
- 5 Beginning on September 9, 2012 through the end of the Review Period, the Firm affirmatively disclosed that it would adjust open orders pursuant to FINRA Rule 5330, despite its ongoing practice not to adjust open orders. The conduct described in this paragraph constitutes separate and distinct violations FINRA Rule 2010.
6. During the Review Period, the Firm failed to establish and maintain a supervisory system that was reasonably designed to achieve compliance with the applicable securities laws and regulations, and NASD and FINRA Rules, concerning the adjustment of open orders subject to a dividend, payment or distribution, and its practice of not adjusting open orders pursuant to the requirements of NASD Rule 3220 and FINRA Rule 5330. In addition, the Firm's supervisory system did not include sufficient written supervisory procedures providing for compliance with NASD Rule 3220 and FINRA Rule 5330, specifically: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Rule 2110 (for conduct prior to December 15, 2008), FINRA Rule 2010 (for conduct on and after December 15, 2008) and NASD Rule 3010.

OTHER FACTORS

7. In determining to resolve this matter in the manner set forth herein, and in determining the appropriate monetary sanction,¹ Market Regulation took into consideration that the Firm self-reported the violations at issue and took action to correct the violative activity prior to the close of this investigation.

B. The Firm consents to the imposition of the following sanctions.

a censure; and fine of \$165,000 (constituting \$55,000 for the NASD Rule 3220 and FINRA Rule 5330 violations, \$30,000 for the FINRA Rule 2010 violations, and \$80,000 for the NASD Rule 3010, NASD Rule 2110 and FINRA Rule 2010 violations).

The Firm agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. The Firm 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 sanctions 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 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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals

¹ See Principal Consideration 12 of the FINRA Sanction Guidelines and Notice to Members 08-70

Further, the Firm 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.

The Firm 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

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 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 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. 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: (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. 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 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.

7/16/15
Date

Respondent
optionsXpress, Inc.

By: 

Name: Barry Metzger

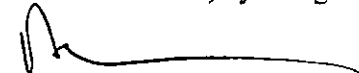
Title: CEO

Reviewed by:

Accepted by FINRA:

7-20-15
Date

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


David R. Rosenstein, Senior Vice President
Legal Section
Department of Market Regulation