

**THE NASDAQ OPTIONS MARKET LLC
NOTICE OF ACCEPTANCE OF AWC**

Certified, Return Receipt Requested

TO: **optionsXpress, Inc.
Mr. Barry Metzger
Chief Executive Officer
311 West Monroe Street
Suite 1000
Chicago, IL 60606**

FROM: The NASDAQ Options Market LLC ("Nasdaq")
c/o Financial Industry Regulatory Authority ("FINRA")
Department of Market Regulation
9509 Key West Avenue
Rockville, MD 20850

DATE: March 20, 2015

RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20100236861-01

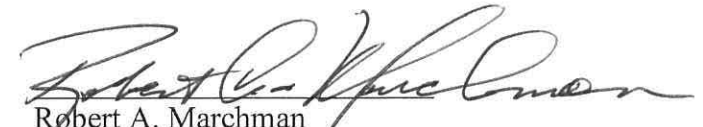
Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **March 19, 2015** by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Nasdaq if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You will be notified by the Registration and Disclosure Department regarding sanctions, and Nasdaq's Finance Department will send you an invoice regarding the payment of any fine.

optionsXpress, Inc.
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If you have any questions concerning this matter, please call Theresa Clarkson, Senior Counsel,
at (212) 858-4326.



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

Signed on behalf of Nasdaq

Enclosure

FINRA District 8 – Chicago
Edward Wegener, Vice President and Regional Director
55 West Monroe Street, Suite 2700
Chicago, IL 60603-5052

James D. Van de Graaff, Esq.
Counsel for Respondent
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693

**THE NASDAQ OPTIONS MARKET
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20100236861-01**

TO: The NASDAQ Options Market
c/o Department of Market Regulation
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC (“Nasdaq”)¹ 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, Nasdaq will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. OXPS 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

BACKGROUND

OXPS has been a member of FINRA since August 16, 2000, and its registration remains in effect. The Firm was approved for NASDAQ Options Market, LLC (“NOM”) membership on March 11, 2009, and its registration remains in effect. During 2010 and 2011, OXPS was allocated to NOM in accordance with the Intermarket Surveillance Group 17d-2 Agreement.² The Firm was purchased by The Charles Schwab Corporation on September 1, 2011.

¹ All NASDAQ Options Market disciplinary matters are governed by The Nasdaq Code of Procedure.

² The Securities and Exchange Commission and options self-regulatory organizations (“SROs”) are parties to a 17d-2 Agreement, which allocated among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, the Options Clearing Corporation (“OCC”) trade adjustments, and Large Options Positions Report (“LOPR”) reviews.

RELEVANT DISCIPLINARY HISTORY

OXPS does not have any relevant disciplinary history.

SUMMARY

In connection with matter 20100236861, FINRA Department of Market Regulation staff (“staff”), on behalf of NOM, conducted a review of the Firm’s reporting to OCC LOPR for compliance with Chapter III, Section 10 of the NOM Rules during the period between April 1, 2010 through June 30, 2010.

In connection with matter 20110287078, staff, on behalf of NOM, conducted a review of the Firm’s reporting to the OCC LOPR for compliance with Chapter III, Section 10 of the NOM Rules during the period between April 1, 2011 through June 30, 2011.

In connection with matter 20120313109, staff, on behalf of NOM, conducted a review of the Firm’s reporting to the OCC LOPR for compliance with Chapter III, Section 10 of the NOM Rules during the period between October 1, 2011 through December 31, 2011.

As a result of staff’s initial investigations, 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 January 19, 2010 and February 19, 2013 (the “Review Period”), the Firm failed to report, or inaccurately reported, a significant number of positions to the OCC 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 SROs to identify holders of large options 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 the OCC LOPR connected to accounts that were acting in concert (“AIC”) with others that together had established an aggregate position of 200 or more options contracts on the same side of the market covering the same underlying security. After staff conducted an analysis through sampling OXPS’ options positions data connected to its OCC LOPR obligations, it was estimated that: (i)

in approximately 2,074,489 instances³, the Firm had failed to report options positions to the OCC LOPR due to the Firm's failure to aggregate positions for AIC purposes; and (ii) in approximately 1,612,304 instances, the Firm had failed to report options positions with the relevant AIC identifier to the OCC LOPR.

4. During the Review Period, OXPS attempted to modify a position that had not been reported to the OCC LOPR, and as a result failed to report to the LOPR: (a) approximately 495 instances between April 5, 2010 and May 10, 2010; and (b) approximately 1,629 instances between November 23, 2010 and December 10, 2010.
5. During the period from January 19, 2010 through December 31, 2013, OXPS failed to adequately address its LOPR rejects, which caused OXPS to have failed to report positions to the OCC LOPR in at least 341,103 instances.
6. During the period from January 19, 2010 through December 31, 2011, OXPS failed to report positions correctly to the OCC LOPR as follows:
 - a. From April 8, 2010 through April 13, 2010, in approximately 5,276 instances, the Firm had failed to report the correct Effective Date⁴;
 - b. From January 19, 2010 through July 18, 2011, in approximately 12,872 instances, the Firm had failed to report the following positions to the OCC LOPR: (a) expiring weekly options on their expiration date from June 25, 2010 through February 28, 2011; (b) month-end option positions on their expiration date from January 19, 2010 through May 6, 2011; and (c) standard options on the Friday prior to Saturday expiration from January 19, 2010 through July 18, 2011;
 - c. From April 1, 2011 through December 31, 2011, in approximately 2,069,110 instances, the Firm had reversed the Tax Number Type codes for Employer Identification Numbers and Social Security Numbers for all of the Firm's positions;
 - d. From April 1, 2011 through December 31, 2011, in approximately 339,156 instances, the Firm had allowed certain Account Names to run over into the Account Street Address field;
 - e. From April 1, 2011 through December 31, 2011, in approximately 1,713,954 instances, the Firm had allowed certain unrelated accounts to be reported with the same data in the Account Street Address field; and

³ 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.

⁴ The "Effective Date" is the date the LOPR record is established, modified, or deleted. The Effective Date must be supplied for each LOPR submission.

- f. From January 19, 2010 through on or about November 9, 2011, in approximately 23,688 instances, the Firm's service provider's internal nine-digit options series identification number contained an incorrect value in the seventh digit of the nine-digit number.
7. The above-described violations resulted, in part, from programming errors committed by OXPS's third-party vendor. In addition, OXPS failed to properly identify and aggregate the positions of all accounts under common control or those AIC and to adequately supervise the third-party vendor.
8. The conduct described in paragraphs three through seven above constitutes a violation of Chapter III, Section 10 of the NOM Rules.

Supervision

9. During the period from January 2010 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.
10. The conduct described in paragraph nine above constitutes a violation of Chapter III, Section 2(a)(i) of the NOM Rules and NASDAQ Exchange Rules 3010, 2110 (for the period prior to November 21, 2012), and 2010A (for the period after November 20, 2012).

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 provided to FINRA by the Firm, on behalf of the Exchange, 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. The Firm also consents to the imposition of the following sanctions:

A censure and a total fine of \$2,400,000, of which \$1,750,000 shall be paid to NOM.⁵

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

OXPS agrees to pay the monetary sanctions upon notice that this AWC has been accepted and that such payments are due and payable. OXPS has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

OXPS 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

OXPS specifically and voluntarily waives the following rights granted under Nasdaq'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, OXPS specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq Review Council, 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.

⁵ The balance of the Firm's fine will be paid to FINRA pursuant to a separate settlement agreement.

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

OXPS 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 FINRA's Department of Market Regulation and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against OXPS and
- C. If accepted:
 1. This AWC will become part of OXPS's permanent disciplinary record and may be considered in any future actions brought by Nasdaq or any other regulator against the Firm;
 2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; and
 3. OXPS 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects OXPS's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq is not a party.
- D. OXPS may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. OXPS 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 Nasdaq, nor does it reflect the views of Nasdaq or its staff.

The undersigned, on behalf of OXPS, 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 OXPS to submit it.

3/2/15
Date

Respondent
optionsXpress, Inc.

By: 

Name: Barry Metzger

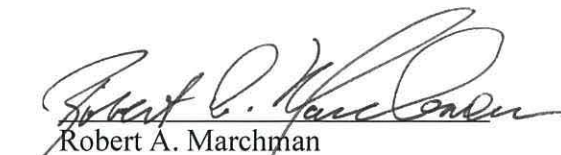
Title: CEO - optionsXpress

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 Nasdaq:

3/19/15
Date


Robert A. Marchman
Executive Vice President
Department of Market Regulation

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

ELECTION OF PAYMENT FORM

OXPS intends to pay the fine proposed in the attached AWC by the following method (check one):

- A firm check or bank check for the full amount;
- Wire transfer;
- The installment payment plan.¹
 - Monthly
 - Quarterly

Respectfully submitted,
Respondent
optionsXpress, Inc.

3/2/2015
Date

By: Ronald L. Wetzel
Name: Ronald L. Wetzel
Title: C.F.O.

¹ The installment payment plan is only available for a fine of \$50,000 or more. Certain requirements apply.