

IN THE MATTER OF THE SECURITIES ACT, SNB 2004, c. S-5.5

AND

IN THE MATTER OF

OPTIONSXPRESS, INC.

ORDER

WHEREAS on August 18, 2005, the New Brunswick Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations pursuant to section 186 of the *Securities Act* (the "Act") in respect of optionsXpress, Inc. ("Options");

AND WHEREAS Options entered into a Settlement Agreement (the "Agreement") on August 11, 2005, in which it agreed to a proposed settlement of the matters raised in the Notice of Hearing, subject to the approval of the New Brunswick Securities Commission, among others;

AND UPON reviewing the Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from counsel for Options and from staff of the Commission;

AND WHEREAS the New Brunswick Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT, pursuant to s.191 of the Act, the Agreement in this matter dated August 11, 2005, is approved.

DATED at the City of Saint John this 31st day of August, 2005.


Donne W. Smith, Chair


David Hashey, Q.C.

New Brunswick Securities Commission
Suite 606, 133 Prince William Street
Saint John, New Brunswick
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**IN THE MATTER OF THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, SASKATCHEWAN, MANITOBA,
ONTARIO, QUÉBEC, NOVA SCOTIA, NEW BRUNSWICK, NEWFOUNDLAND
AND LABRADOR, AND PRINCE EDWARD ISLAND**

- and -

IN THE MATTER OF OPTIONSPRESS, INC.

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. In this settlement agreement (the “Settlement Agreement”), the staffs (the “Staffs” and individually, the “Staff”) of the Securities Regulatory Authorities (as defined in National Instrument 14-101, collectively, the “Authorities” and individually, the “Authority”) in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, and Prince Edward Island, (collectively, the “Jurisdictions” and individually, the “Jurisdiction”) and optionsXpress, Inc. (“Options”) wish to settle certain issues outstanding between the Authorities and Options.
2. The Staff of the Ontario Securities Commission (“OSC”) have acted throughout the settlement negotiations on behalf of the Staffs of the Authorities with their knowledge and approval.
3. The Staffs of the Authorities each agree to recommend the terms set out in the Settlement Agreement for approval pursuant to the required procedure in each Jurisdiction.

II. AGREED STATEMENT OF FACTS

4. Options acknowledges the following facts as correct:

- (a) Options is a corporation organized under the laws of Delaware and is registered as a broker-dealer with the United States ("U.S.") Securities and Exchange Commission in each of the U.S. states;
- (b) In late 2000, Options began operations as a web-based Internet securities firm from its principal office in Chicago, Illinois;
- (c) In early 2001, Options started to trade U.S. securities on behalf of residents in the Jurisdictions without being registered in the Jurisdictions;
- (d) Residents in the Jurisdictions could log onto the Options website and open an Options account to execute on-line trades of securities listed or traded in the U.S.;
- (e) The Securities Legislation (as defined in National Instrument 14-101) in each of the Jurisdictions requires a securities firm trading with residents of that Jurisdiction to be registered as a dealer in the category of investment dealer or equivalent in that Jurisdiction. Options is not registered in any capacity in any of the Jurisdictions;
- (f) All Options accounts are self-directed as Options employees do not offer advice or make recommendations regarding the purchase or sale of securities. Options has no offices or employees in the Jurisdictions, and does not advertise for or otherwise solicit customers in the Jurisdictions; and
- (g) In May 2004, as a result of inquiries by the Authorities, Options stopped opening accounts for residents in the Jurisdictions.

Options has subsequently continued to preclude the opening of accounts by residents in the Jurisdictions pending resolution of this matter and has otherwise co-operated with the Authorities.

- (h) A summary of accounts opened by Options for residents of the Jurisdictions (the "Accounts"), and gross commissions earned by Options from January 1, 2001 to May 6, 2004 is attached hereto as Schedule "A".

III. MITIGATING FACTORS

- 5. Options represents that in 2001, as a start-up Internet securities firm focussed on its U.S. operations, Options had limited knowledge and experience regarding the regulatory requirements of the Jurisdictions. Options erroneously believed in good faith that its non-solicitation of residents in the Jurisdictions exempted Options from registration requirements in the Jurisdictions.
- 6. The Staffs of the Authorities are not aware of any complaints by Options' customers in the Jurisdictions and Options represents that it has not received complaints from any customers in the Jurisdictions.

IV. AGREEMENT AND UNDERTAKING BY OPTIONS

- 7. Options agrees and undertakes as follows:
 - (a) Options agrees to pay to the Authorities the sum of (CDN) \$550,000 in accordance with the Protocol attached hereto as Schedule "B".
 - (b) Options undertakes to seek from each Authority an exemption from registration ("Registration Exemption") until December 31, 2005 in respect of the Accounts pending the registration of its affiliate, optionsXpress Canada Corp./Corporation optionsXpress

Canada ("Options Canada"), as required under the Securities Legislation.

- (c) Options Canada will diligently seek membership with the Investment Dealers Association of Canada and registration as a dealer in the category of investment dealer or equivalent in each Jurisdiction with the goal of meeting all requirements to permit registration by December 31, 2005, or such later date as provided in paragraph 9. For greater certainty, neither Options nor Options Canada shall be required to open an office in Canada or to employ Canadian residents in connection with such registration. Prior to obtaining registration, and subject to the Registration Exemption with respect to the Accounts, Options will comply with all other requirements of the Securities Legislation as though it were registered as a dealer in the category of investment dealer or equivalent in each Jurisdiction, and it will not open any new client accounts on behalf of residents of the Jurisdictions.
- (d) During the term of any Registration Exemption, Options and Options Canada will provide information and will co-operate fully with each Authority to which an application for registration has been made in a manner equivalent to that required of a registrant in the Jurisdiction.
- (e) After obtaining registration, Options Canada will comply with the Securities Legislation in each Jurisdiction.
- (f) Options consents to an order by the OSC in the form attached hereto as Schedule "C" and to a no-action letter in the form attached hereto as Schedule "D" or, where appropriate, to the issuance by other Authorities or, in Québec, the Bureau de décision et de révision en valeurs mobilières (the "Bureau") of

substantially equivalent orders or substantially equivalent no-action letters.

- (g) Upon approval of the Settlement Agreement, Options and Options Canada each waives any right it may have under the Securities Legislation of the Jurisdictions to a full hearing, hearing and review, judicial review or appeal related to the Settlement Agreement.
- (h) Any obligation of Options Canada under this Settlement Agreement will be considered to be an obligation of Options by Staffs of the Authorities and by Options.

V. STAFF COMMITMENT

- 8. If the Settlement Agreement is approved by an Authority or the Bureau in the manner described in paragraph 7(f) above, Staff will not initiate any complaint or request that Authority or Bureau to hold a hearing or issue any order in respect of any conduct or alleged conduct of Options or any of its affiliates or subsidiaries or the officers, directors, employees or agents of Options or any of its affiliates or subsidiaries in relation to the facts set out in the Settlement Agreement.
- 9. If the Registration Exemption is granted by an Authority or the Bureau in the manner described in paragraph 7(b) above, and provided that Options Canada has been diligently seeking registration in the Jurisdiction, Staff will not oppose a request from Options to extend the Registration Exemption past December 31, 2005, as reasonably required to complete the registration process.

VI. PROCEDURE FOR APPROVAL OF SETTLEMENT AGREEMENT

- 10. If the Settlement Agreement must be approved by a hearing before an Authority or the Bureau, Staff agree that the Settlement Agreement and, where required, the Registration Exemption application for Options made under paragraph 7(b)

above, will constitute the entirety of the evidence to be submitted respecting this matter.

11. If the Settlement Agreement is approved by an Authority or the Bureau, neither Staff nor Options or Options Canada will make any statement inconsistent with the Settlement Agreement.
12. If the Settlement Agreement is not approved by an Authority or the Bureau in the manner described above in paragraph 7(f), then:
 - (a) The Settlement Agreement, including all discussions and negotiations leading up to its presentation to the Authorities or the Bureau, and all negotiations between Staffs and counsel for Options concerning proposed settlement terms shall be without prejudice to Staff and to Options;
 - (b) Staff and Options will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing unaffected by the Settlement Agreement or the settlement negotiations;
 - (c) Except in connection with the registration applications by Options Canada, the terms of the Settlement Agreement will not be referred to or relied upon in any subsequent proceeding or disclosed to any person, except with the written consent of Staff and Options, or as may be required by law; and
 - (d) Options and Options Canada each agree that it will not, in any proceeding, refer to or rely upon the Settlement Agreement or the negotiations or process of approval of the Settlement Agreement as the basis for any attack on

the jurisdiction of any Authority or the Bureau, alleged bias, appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

VII. DISCLOSURE OF SETTLEMENT AGREEMENT

13. Staff or counsel for Options may refer to any part or all of the Settlement Agreement during any hearing convened to consider the Settlement Agreement before any Authority or the Bureau. Otherwise, except in connection with the registration applications by Options Canada, the Settlement Agreement and its terms will be treated as confidential by all parties to the Settlement Agreement until approved by the Authorities or the Bureau and, forever, if for any reason the Settlement Agreement is not approved by the Authorities or the Bureau.
14. Any obligation as to confidentiality shall terminate upon approval of the Settlement Agreement by the Authorities or the Bureau.

VIII. EXECUTION OF SETTLEMENT AGREEMENT

15. The Settlement Agreement may be signed in one or more counterparts, which together shall constitute a binding agreement.
16. A facsimile copy of any signature shall be as effective as an original signature.

SIGNED AT TORONTO, ONTARIO this day of August, 2005.

Authorized Signatory for optionsXpress,
Inc.

Witness Signature

SIGNED at Toronto, Ontario on
August , 2005.

Michael Watson, Director, Enforcement
Ontario Securities Commission

SIGNED at Vancouver, British Columbia
on August , 2005.

Brenda M. Leong, Executive Director
British Columbia Securities Commission

SIGNED at Calgary, Alberta on
August , 2005.

John Petch, Director of Enforcement
Alberta Securities Commission

SIGNED at Winnipeg, Manitoba on
August , 2005.

Douglas R. Brown, Director of Legal and
Enforcement
Manitoba Securities Commission

SIGNED at Montreal, Québec on
August , 2005.

Richard Perron, Manager of Inquiries
Autorité des marchés financiers

SIGNED at Halifax, Nova Scotia on
August , 2005.

R. Scott Peacock, Deputy Director,
Compliance and Enforcement
Nova Scotia Securities Commission

SIGNED at St. John's, New Brunswick on
August , 2005.

David R. Colwell, Director Enforcement
New Brunswick Securities Commission

SCHEDULE "A"

SUMMARY OF ACCOUNTS & COMMISSIONS

Jurisdiction	Number of Accounts	Commissions Received (\$ CDN)
Ontario	784	\$1,037,525.00
British Columbia	370	\$ 551,500.37
Alberta	173	\$ 270,685.63
Québec	85	\$ 102,715.51
Manitoba	21	\$ 14,411.28
New Brunswick	12	\$ 9,510.53
Nova Scotia	10	\$ 5,378.44
Saskatchewan	10	\$ 9,758.96
Newfoundland & Labrador	1	\$ 359.52
Prince Edward Island	<u>1</u>	<u>\$ 483.18</u>
Totals	1,467	\$2,002,328.42

SCHEDULE "B"

PROTOCOL FOR IMPLEMENTATION OF SETTLEMENT AGREEMENT

1. In this protocol (the "Protocol"), capitalized terms not otherwise defined shall have the meanings ascribed to them in the settlement agreement (the "Settlement Agreement") among optionsXpress, Inc. ("Options") and the staffs (the "Staffs" and individually, the "Staff") of the Securities Regulatory Authorities (collectively, the "Authorities" and individually, the "Authority") as defined in National Instrument 14-101, in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, and Prince Edward Island (collectively, the "Jurisdictions" and individually, the "Jurisdiction").
2. When the Settlement Agreement is in agreed form, counsel for Options shall deliver to Staff of the Ontario Securities Commission ("OSC") an executed Settlement Agreement together with a certified cheque or bank draft in the amount of (CDN) \$550,000 payable to, or to the order of the OSC, all of which will be held by the OSC in escrow until released therefrom in accordance with paragraph 4 and delivered to the Authorities in accordance with this Protocol.
3. Prior to the issuance of any Notice of Hearing in relation to the matters addressed by the Settlement Agreement, Staff of the OSC will advise Options' counsel in a letter delivered on behalf of the Staff of each Authority that:
 - (i) the Authority in each of Alberta, Manitoba, Ontario, Nova Scotia, New Brunswick and, in Québec, the Bureau de décision et de révision en valeurs mobilières (the "Bureau") will consider the Settlement Agreement at a hearing on a date specified in the letter;
 - (ii) The Executive Director of the Authority in British Columbia has executed the Settlement Agreement and has advised that no further approvals are required from the Authority to implement the terms of the Settlement Agreement; and
 - (iii) Staff for the OSC has received a letter from Staff of the Authority in each of Saskatchewan, Newfoundland and Labrador, and Prince Edward Island, which explicitly adopts the terms of the Settlement Agreement and states that no further approvals are required from the Authority to implement the terms of the Settlement Agreement.
4. The OSC will release from escrow the original executed Settlement Agreement and the certified cheque or bank draft for (CDN) \$550,000 in complete satisfaction of Options' obligations to all Authorities upon acknowledgement by

counsel for Options to Staff of the OSC of a receipt from the OSC for the certified cheque or bank draft and the following documentation evidencing implementation of the Settlement Agreement by each of the Authorities as follows:

- (i) an order issued by the Authority in each of Alberta, Manitoba, Ontario, Nova Scotia, New Brunswick and by the Bureau in Québec which approves the Settlement Agreement;
 - (ii) the Settlement Agreement executed by the Executive Director of the Authority in British Columbia; and
 - (iii) the letters contemplated in paragraph 3(iii) above from Staff of the Authority in each of Saskatchewan, Newfoundland and Labrador and Prince Edward Island.
5. In the event the Settlement Agreement is not approved by each Authority or the Bureau as outlined in this Protocol, Staff of the OSC will return the certified cheque or bank draft and the executed Settlement Agreement to Options forthwith.

SCHEDULE "C"

IN THE MATTER OF THE *SECURITIES ACT*,

R.S.O. 1990, CHAPTER S. 5, AS AMENDED

- AND -

IN THE MATTER OF OPTIONSXPRESS, INC.

ORDER

WHEREAS on • , 2005, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of optionsXpress, Inc. ("Options");

AND WHEREAS Options entered into a settlement agreement dated August • , 2005 (the "Settlement Agreement") in which it agreed to a proposed settlement of the proceeding, subject to the approval of the Commission;

AND UPON reviewing the Settlement Agreement, the Notice of Hearing, the Statement of Allegations, and upon considering submissions from counsel for Options and from staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT the Settlement Agreement dated August • , 2005 attached to this Order, is approved.

Dated at Toronto, Ontario this • day of • , 2005

SCHEDULE "D"

- , 2005

All Jurisdictions

Attention: •

Dear Sirs/Mesdames:

Re: In the matter of optionsXpress, Inc.

This is to confirm that the • Securities Commission, having reviewed the terms of the settlement agreement dated August • , 2005 (the "Settlement Agreement") entered into among optionsXpress, Inc. ("Options") and staffs of the Securities Regulatory Authorities, as defined in National Instrument 14-101 and described in paragraph 1 of the Settlement Agreement, adopts the terms of the Settlement Agreement. No further approvals are required to implement the terms of the Settlement Agreement.

The • Securities Commission will take no action against Options unless Options fails to comply with the terms of the Settlement Agreement. The • Securities Commission relies upon the terms of the Settlement Agreement in settling with Options.

This will also confirm that the • Securities Commission will take no action against Options for non-registration in respect of Options' accounts within this jurisdiction as described in Schedule "A" to the Settlement Agreement provided that Options' affiliate, optionsXpress Canada Corp./Corporation optionsXpress Canada ("Options Canada"), obtains registration as a dealer in the category of investment dealer or equivalent in • on or before December 31, 2005. Further, staff of the • Securities Commission undertake not to oppose a future request by Options to extend this date beyond December 31, 2005, as reasonably required to complete the registration process, provided that Options Canada has diligently been seeking registration in •.

Yours truly,

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508DC9;http://doc01.osc.gov.on.ca/enforcementlib.nsf