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December 18, 2013

Via Email & Overnight Mail

Mr. Steeve David Encaoua
Case Administrator
FINRA Dispute Resolution
Boca Center Tower 1
5200 Town Center Circle, Suite 200
Boca Raton, FL 33486-1015
[steeve.encaoua@finra.org; FL-Main@finra.org]


Re: Jonathan Perlman, Esq. as court-appointed Receiver of Creative Capital Consortium LLC, et al., and as assignee of Gabrielle Alexis, Detra Pasby and Edwidge Benoit vs. optionsXpress, Inc.; FINRA No. 12-01304

Dear Mr. Encaoua:

We represent Respondent optionsXpress, Inc. in the above-referenced arbitration. Enclosed please find the original and three copies of Respondent's Motion to Adjourn January 2014 Hearing Dates. Kindly forward the Motion to the Panel for their consideration.

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,


Joseph DaProcida

cc: Robert Linkin, Esq. (w/enc.; via email and overnight mail)
Dimond Kaplan & Rothstein, P.A.
Offices at Grand Bay Plaza
2665 South Bayshore Drive
Penthouse 2B
Miami, Florida 33133
Attorneys for Claimants

**BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY
DISPUTE RESOLUTION**

**IN THE MATTER OF THE ARBITRATION
BETWEEN**

**JONATHAN PERLMAN, ESQ., as court-appointed
Receiver of A Creative Capital Concepts, LLC, et. al.,
and as assignee of Gabrielle Alexis, Detra Pasby and
Edwige Benoit,**

Claimants,

v.

OPTIONSXPRESS, INC.,

Respondent.

FINRA NO. 12-01304

MOTION TO ADJOURN JANUARY 2014 HEARING DATES

Respondent optionsXpress, Inc. (“OX” or “Respondent”) respectfully requests pursuant to FINRA Rule 12601(a)(2) that the Panel adjourn the January 27-31, 2014 hearing dates currently scheduled. Respondent requests that the hearing begin on February 24-28, 2014, which dates have already been scheduled for the hearing of this matter. Because the nature and scope of the number of accounts that are at issue in this arbitration is uncertain, and will not be resolved until the Panel rules on the parties’ cross-motions to compel discovery, an adjournment of the January 2014 dates is appropriate and necessary.

INTRODUCTION

The hearing on this matter is currently scheduled for 10 days, on January 27-31, 2014 and February 24-28, 2014. The 20-day exchange is on January 7, 2014, which is the same date the parties’ pre-hearing briefs are due. In addition, the parties have a telephonic pre-hearing conference with the Panel on December 19, 2013 on their respective motions to compel. The pre-hearing conference will resolve significant discovery issues in this case, which will impact

the current final hearing schedule. The outcome of the panel's orders on the parties' cross-motions may require the parties to undertake significant work, which will make the pending January 2014 dates difficult to abide by. Thus, an adjournment is necessary.

In accordance with FINRA Rule 12503(a)(1), prior to filing this motion, OX requested the receiver's consent to adjourn the January 2014 hearing dates. The receiver refused OX's request.

ARGUMENT

As the Panel is aware, both parties have filed motions to compel discovery, which have been fully briefed. At the core of the dispute in Claimants' motion to compel is a disagreement regarding whether the receiver's claim encompasses *three* OX accounts or *sixteen* OX accounts. Despite being on notice since at least *November 2012* of this issue and OX's position, the receiver only first raised it on *November 19, 2013*—a mere three days before the deadline for motions to compel. The receiver claimed that until then, he was completely unaware that OX had limited its document production to records related to the individuals that maintained the three accounts. The receiver's motion to compel has requested that the Panel direct OX to produce a voluminous number of additional documents *for an additional twelve OX accounts* on the eve of the final hearing, including account statements, new account documents, emails and supervisory documents related to those accounts. Although OX disputes the basis for the receiver's motion, if the Panel grants the motion, OX will have to gather and review the additional documents, produce the documents to the receiver, and prepare for possible use of the documents at the final hearing. Similarly, the receiver will need sufficient time to analyze these documents in preparing for the final hearing.

Further, in response to the receiver's motion, OX has brought to the Panel's attention a fundamental issue regarding standing, which has been present from the inception of this case. OX has requested that the Panel require the receiver to further amend the Amended Statement of Claim ("ASOC") to clarify the accounts, claims and alleged damages at issue. If the Panel requires the receiver to amend the ASOC, this will take time, after which OX will have the opportunity to file an answer. Thereafter, the parties will likely engage in further discovery, the scope of which will be defined by the number of accounts placed at issue in the amended ASOC.

Concurrent with the receiver's motion, OX filed a motion to compel the receiver to fulfill his discovery obligations and produce documents responsive to FINRA's Discovery Guide List 2 items, as well as OX's document and information requests. OX has requested that the Panel require the receiver to obtain and produce responsive documents from the account holders/assignors on whose behalf the receiver is bringing claims against OX. OX has also asked that the Panel compel the receiver to submit affirmations, as provided for in FINRA's Discovery Guide, detailing his efforts to gather documents, to the extent he is unable to secure responsive documents.

All of the above actions will take time to accomplish. It is very possible and perhaps even likely that the parties will not be able to fulfill their discovery obligations, to be determined by the Panel on December 19, with sufficient time to prepare for the January 7, 2014 date for pre-hearing briefs, the 20-day exchange, and the final evidentiary hearing on January 27, 2014. Accordingly, OX requests that the January 27-31, 2014 hearing dates be adjourned and the final hearing begin on February 24-28, 2014. The parties will not be prejudiced because the February dates are already scheduled. To the extent additional hearing dates need to be scheduled, OX will make itself available for hearing dates as soon as practicable after February 28, 2014.

CONCLUSION

For the reasons set forth above, and for those reasons further discussed in the parties' motions to compel, responses and replies, OX requests that the Panel adjourn the January 27-31, 2014 hearing dates.

Dated: December 18, 2013

Respectfully submitted,

GREENBERG TRAUIG, LLP

By: 

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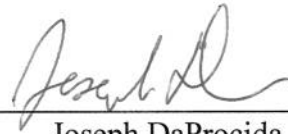
*Attorneys for Respondent
optionsXpress*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Adjourn January 2014 Hearing Dates was served by email and by overnight mail on December 18, 2013 on:

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