

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9400 / April 30, 2013

SECURITIES EXCHANGE ACT OF 1934
Release No. 69478 / April 30, 2013

INVESTMENT COMPANY ACT OF 1940
Release No. 30498 / April 30, 2013

Admin. Proc. File No. 3-14848
Admin. Proc. File No. 3-14853

In the Matter of

OPTIONSXPRESS, INC.,
THOMAS E. STERN, and
JONATHAN I. FELDMAN

In the Matter of

OX TRADING, LLC,
OPTIONSXPRESS, INC., and
THOMAS E. STERN

ORDER GRANTING EXTENSIONS

I.

The Chief Administrative Law Judge, Brenda P. Murray, has moved, pursuant to Commission Rule of Practice 360(a)(3),¹ for extensions of time to issue the initial decisions in these proceedings. For the reasons set forth below, we have determined to grant the law judge's motion.

¹ 17 C.F.R. § 201.360(a)(3).

The April 16, 2012 optionsXpress OIP

On April 16, 2012, we issued an Order Instituting Administrative and Cease-and-Desist Proceedings against optionsXpress, Inc., a registered broker-dealer; Thomas E. Stern, chief financial officer of optionsXpress; and Jonathan I. Feldman, an optionsXpress customer.² The OIP alleges that between October 2008 and March 2010, six optionsXpress customers, including Feldman, employed illegal options trading strategies with no legitimate economic purpose and resulting in "continuous failure-to-deliver position[s] in . . . securities for extended periods of time," improperly "extracting a profit at the expense of the true purchasers of the shares."³ It further alleges that Feldman knowingly engaged in this trading strategy from at least June 2009 to March 2010 without intending to deliver shares by the relevant settlement dates. The OIP alleges that optionsXpress willfully violated the securities delivery requirements in Rules 204 and 204T of Regulation SHO⁴ and that Stern caused and willfully aided and abetted these violations. The OIP further alleges that Feldman willfully violated Securities Act § 17(a)⁵ and Exchange Act § 10(b)⁶ and Rules 10b-5 and 10b-21,⁷ and that Stern and optionsXpress caused and aided and abetted Feldman's violations.

The April 19, 2012 OX Trading OIP

On April 19, 2012, we issued another Order Instituting Administrative and Cease-and-Desist Proceedings against OX Trading, LLC, an optionsXpress affiliate; optionsXpress; and Stern, chief financial officer of optionsXpress and chief financial officer, secretary, director, and chief compliance officer of OX Trading.⁸ The OX Trading OIP alleges that OX Trading was formed in August 2007 to "provide price improvement on orders from optionsXpress customers and to profit from those trades."⁹ It charges that, from 2009 to 2010, OX Trading willfully violated § 15(a) of the Exchange Act,¹⁰ which makes it unlawful for any unregistered dealer to induce or attempt to induce any purchase or sale of a security, and willfully violated Exchange Act § 15(b)(8),¹¹ which makes it illegal to effect securities transactions unless such broker-dealer is a member of a registered national securities association or effects transactions solely on a

² *optionsXpress, Inc.*, Exchange Act Release No. 66815, 2012 SEC LEXIS 1222 (Apr. 16, 2012).

³ *Id.* at *8 & 13–14.

⁴ 17 C.F.R. §§ 242.204 and 242.204T.

⁵ 15 U.S.C. § 77q(a).

⁶ *Id.* § 78j(b).

⁷ 17 C.F.R. §§ 240.10b-5 and 240.10b-21.

⁸ *OX Trading, LLC*, Exchange Act Release No. 66831, 2012 SEC LEXIS 1251 (Apr. 19, 2012).

⁹ *Id.* at *3.

¹⁰ 15 U.S.C. § 78o(a).

¹¹ *Id.*, § 78o(b)(8).

national exchange of which it is a member. The OIP also alleges that Sterns and optionsXpress caused and willfully aided and abetted OX Trading's violations of §§ 15(a) and 15(b)(8).

II.

Each OIP directs the presiding law judge to issue an initial decision no later than 300 days from the date of service of the OIP. On January 16, 2013, Chief Administrative Law Judge Brenda P. Murray filed a motion stating that the initial decisions are due on February 19, 2013 and requesting extensions pursuant to Commission Rule of Practice 360(a)(3).¹²

We adopted Rules of Practice 360(a)(2) and 360(a)(3) to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings by setting deadlines for administrative hearings.¹³ The rules further provide for extensions under certain circumstances, if supported by a motion from the Chief Administrative Law Judge and we determine that "additional time is necessary or appropriate in the public interest."¹⁴

In the motion, Chief Judge Murray states that the "size, complexity, and interrelationship of the two proceedings" renders it impossible to complete the initial decisions by February 19, 2013 and seeks a six-month extension for each decision.¹⁵ She notes that the optionsXpress hearing spanned seventeen days and that the final brief for that proceeding is due on February 1, 2013. Moreover, the same counsel are representing optionsXpress, Stern, and the Division of Enforcement in both proceedings, and the OX Trading proceeding has been stayed because "the parties agreed that it would be impossible to conduct both proceedings simultaneously."¹⁶ Under

¹² 17 C.F.R. § 201.360(a)(3).

¹³ *See Adopting Release*, Securities Act Release No. 8240, 2003 SEC LEXIS 1404, at *2–3 (June 11, 2003).

¹⁴ 17 C.F.R. § 201.360(a)(3).

¹⁵ Motion to the Commission for Extension, Administrative Proceedings Rulings Release No. 739 (Jan. 16, 2013) at 1–2.

¹⁶ *Id.*

the circumstances, it appears appropriate in the public interest to grant the Chief Administrative Law Judge's request and to extend the initial decision deadlines.

Accordingly, IT IS ORDERED that the deadlines for filing the initial decisions in these matters are extended to August 19, 2013.

By the Commission.

Elizabeth M. Murphy
Secretary