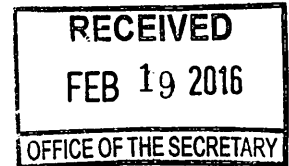


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



In the Matter of

optionsXpress, Inc.,
Thomas E. Stern, and
Jonathan I. Feldman,

Respondents.

ADMINISTRATIVE PROCEEDING
File No. 3-14848

**RESPONDENT JONATHAN I. FELDMAN'S REPLY IN SUPPORT OF HIS MOTION
FOR LEAVE FOR ADDITIONAL BRIEFING ADDRESSING IMPERMISSIBLE
RETROACTIVE APPLICATION OF DODD-FRANK ACT WITH REGARD TO
\$2,000,000.00 CIVIL MONETARY PENALTY**

Respondent Jonathan I. Feldman, by his attorneys, hereby submits this Reply in Support of his Motion for Additional Briefing Addressing Impermissible Retroactive Application of Dodd-Frank Act with Regard to \$2,000,000.00 Civil Monetary Penalty. In support, Mr. Feldman states as follows:

The Division's argument that Mr. Feldman's brief is untimely is incongruous given that the Commission has yet to issue its decision. The Commission should absolutely consider—before potentially imposing civil penalties—whether it actually has the authority to do so in light of *Koch v. S.E.C.*, 793 F.3d 147 (D.C. Cir. 2015).

Unlike the Division's intransigence here, the Commission took swift action in the wake of *Koch*. Specifically, the Commission recognized that anyone improperly subject to a municipal bar for pre-Dodd-Frank activity could apply to have the bar lifted. See Commission Statement Regarding Decision in *Koch v. SEC* (Oct. 19, 2015), available at: <https://www.sec.gov/news/statement/commission-statement-regarding-koch-v-sec.html> (last accessed February 18, 2016). The Commission rightly imposed no requirement that anyone affected have previously

raised this issue in the proceedings in which the bar was imposed. Here, Mr. Feldman has raised the issue in this proceeding, and the Commission should squarely address it before imposing any penalties against him.

The Division baldly argues that *Koch* is inapplicable but cites no authority and fails to address substantial contrary authority. The contrary authority includes an opinion by Chief Administrative Law Judge Murray—the author of the Initial Decision in this matter—declining to impose the Dodd–Frank Act’s civil monetary penalties to pre-Act conduct. *See Total Wealth Management, Inc.*, S.E.C. Release No. 860, S.E.C. Release No. ID-860, 2015 WL 4881991 at *43, n.39 (Aug. 17, 2015). Given the importance of this issue, the Commission is obliged to at least address it squarely if it is considering imposing civil monetary penalties against Mr. Feldman. Of course, for the reasons stated elsewhere, Mr. Feldman should not be found liable. If the Commission agrees, the Commission need not address this issue.

Respectfully submitted,



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Counsel for Jonathan I. Feldman

Certificate of Service

I HEREBY CERTIFY that on this 19th day of February, 2016 I caused the foregoing Reply in Support of the Motion for Leave to File Supplemental Brief Addressing Impermissible Retroactive Application of Dodd-Frank Act with Regard to \$2,000,000.00 Civil Monetary Penalty to be served upon the following individuals by first-class mail:

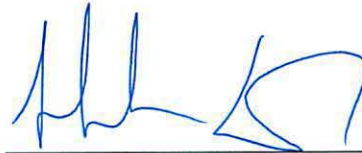
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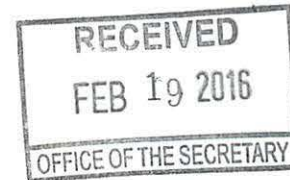
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February 19, 2016

VIA HAND DELIVERY

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-0609



Re: In the Matter of optionsXpress, Inc., et al., AP File No. 3-14848

Dear Mr. Fields:

Enclosed please find the original and four (4) copies of Respondent Jonathan I. Feldman's Reply In Support of his Motion for Leave to File Supplemental Brief Addressing impermissible Retroactive Application of Dodd-Frank Act with Regard to \$2,000,000.00 Civil Monetary Penalty to be filed in regard to the above-referenced case.

Please date stamp the additional copy of the motion and return it to our office in the enclosed, self-addressed, stamped envelope. Please do not hesitate to contact our office if you have any questions regarding the enclosed.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Tanya M. Metz".

Tanya M. Metz
Paralegal

Enclosures

cc: All Counsel of Record (First-Class Mail)