

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT

20042000114-01

TO: Department of Market Regulation
NASD

RE: Instinet Clearing Services, Inc., Respondent
CRD No. 7897

Pursuant to Rule 9216 of the NASD Code of Procedure, Instinet Clearing Services, Inc. ("ICLS" or "the firm"), submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
 - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by the NASD or any other regulator against the firm;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. the firm 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 allegation in this AWC or create the

impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

ICLS also understands that the firm's experience in the securities industry and the firm's disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

ICLS has been a member of NASD since January 14, 1980, and its registration remains in effect. ICLS has no disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

ICLS specifically and voluntarily waives the following rights granted under NASD'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 NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, ICLS specifically and voluntarily waives any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, 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.

ICLS 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.

II.

ACCEPTANCE AND CONSENT

The staff of NASD's Department of Market Regulation ("the staff") conducted a review, No. 20042000114 (formerly known as MRD200342092), of ICLS's compliance with Order Audit Trail System ("OATS") rules during the periods April 1, 2003 through June 30, 2003¹ and January 1, 2004 through June 30, 2004.

- A. ICLS hereby accepts and consents, without admitting or denying the allegations or findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD 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 NASD:
1. ICLS failed to timely report to OATS 1,052,014 Reportable Order Events ("ROEs"). These late ROEs represented 13 percent of all ROEs (8,168,310) submitted by ICLS to OATS during January 1, 2004 through June 30, 2004.
 2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and NASD Conduct Rule 2110.

- B. ICLS also consents to the imposition, at a maximum, of the following sanctions:

A censure and a \$15,000 fine.

The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. ICLS understands that it may attach a Corrective Action Statement to this AWC which is a statement of demonstrable corrective steps taken to prevent future misconduct. ICLS 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 NASD nor does it reflect the views of NASD or its staff.
- B. ICLS agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable, and has

¹ No actionable violations were found during the period April 1, 2003 through June 30, 2003.

attached the Election of Payment form showing the method by which the firm proposes to pay any fine imposed.

- C. ICLS specifically and voluntarily waives any right to claim that ICLS is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

ICLS certifies that the firm has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce ICLS to submit it.

Instinet Clearing Services, Inc.
Respondent

9/27/05
Date

By: [Signature]
Name: ALEX POST
Title: COO

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD

11/14/05
Date

[Signature]
Thomas R. Gira
Executive Vice President and Deputy
Market Regulation Department

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

Corrective Action Statement

Instinet Group Incorporated ("INGP") and its wholly owned subsidiary Instinet Clearing Services ("ICS") take very seriously their responsibilities as NASD member firms and *their roles as significant participants in the U.S. securities markets*. INGP and ICS devote substantial resources towards ensuring their ongoing compliance with NASD rules. In response to the issues raised by NASD exams, reviews, and investigations discussed in the AWC related to MRD200342093/2004000114, ICS has taken the following corrective actions:

REPOSTED REPORTS IN QUESTION: As stated in the correspondence related to this matter (dated September 22, 2003 and April 29, 2004), ICS reposted the Order Audit Trail System ("OATS") reports at issue soon after the issues were identified by the NASD.

CEASED OATS REPORTABLE BUSINESS: The OATS reports in question solely resulted from the order routing business known as Gr8Trade operated by ICS from June 2, 2003 (previously doing business as ProTrader Securities, L.P.). ICS disposed of Gr8Trade in June 2004. Furthermore, ICS ceased clearing for non-affiliated, correspondent accounts in the fourth quarter of 2004.

THIS CORRECTIVE ACTION STATEMENT IS SUBMITTED BY THE RESPONDENT, ICS. IT DOES NOT CONSTITUTE FACTUAL OR LEGAL FINDINGS BY NASD, NOR DOES IT REFLECT THE VIEWS OF NASD, OR ITS STAFF.