

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. ##**

20050020916-01

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REGISTRATION & DISCLOSURE

**TO: Market Regulation Department
NASD**

**RE: Instinet, LLC, Respondent
Broker-Dealer
CRD No. 7897**

Pursuant to Rule 9216 of NASD Code of Procedure, Instinet, LLC (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 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-8310-3; and

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- 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 finding 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.

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

The firm has been a member of NASD since January 14, 1980 and its registration remains in effect. Instinet, LLC was formerly known as Instinet Clearing Services, Inc. The former Instinet, LLC operated under CRD No. 42886 and on June 12, 2006 merged with Instinet Clearing Services, Inc. and changed the name to Instinet, LLC operating under CRD No. 7897. On November 11, 2005, an AWC became final wherein Instinet Clearing Services, Inc. was censured and fined \$15,000 for OATS violations. On October 3, 2005, an AWC became final wherein Instinet, LLC and INET ATS, Inc. were censured and fined jointly and severally \$1,475,000. INCA was sanctioned for violations of SEC Rule 11Ac1-5 and for OATS, ADF trade reporting, ADF order reporting, firm quotation and supervision violations. Instinet, LLC was also required to update its written supervisory procedures and retain an independent auditor to review its compliance with SEC Rule 11Ac1-5.

I.

WAIVER OF PROCEDURAL RIGHTS

The firm 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, the firm specifically and voluntarily waives any right to claim bias or prejudgment 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.

The firm 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

This matter arose out of the 2005 order entry examination of the firm conducted by the staff of the Department of Market Regulation of NASD, wherein the staff reviewed the items set forth on Exhibit A. Unless otherwise stated, the samples were from trade date June 23, 2005 ("review period").

- A. The firm hereby accepts and consents, without admitting or denying the 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. The firm failed on 74 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price. The conduct described in this paragraph constitutes separate and distinct violations of SEC Rule 10b-10.
 2. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning best execution, short sales, trading halts and trade reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should

take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

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

A censure, a fine of \$12,500 (composed of a \$2,500 fine for the 10b-10 violations and a \$10,000 fine for the supervision violation) and an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph two. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraph two; and, (3) the date the revised procedures were implemented.

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

III.

OTHER MATTERS

- A. The firm understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm 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. The firm 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 attached an Election of Payment form showing the method by which the firm proposes to pay any fine imposed.
- C. The firm specifically and voluntarily waives any right to claim that the firm is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The firm certifies that it 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 the firm to submit it.

7/11/07
Date

Respondent
Instinet, LLC

By: [Signature]
Name: Michael R. Dunbar
Title: President, N.A.

Reviewed by:

[Signature]
Counsel for Respondent

Accepted by NASD:

8/1/07
Date

Thomas R. Gira
Thomas R. Gira
Executive Vice President
Department of Market Regulation

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

CONFIDENTIAL

July 11, 2007

Beatrice Biso, Esq.
Counsel, Market Regulation
NASD
9509 Key West Avenue
Rockville, MD 20850-3329

Dear Ms. Biso:

RE: Corrective Action Statement by Instinet, LLC regarding the Letter of Acceptance, Waiver and Consent for Exam or Investigation No. 20050020916

Instinet, LLC (the "Respondent" or the "Firm") is submitting this Corrective Action Statement in connection with the violations noted in the Letter of Acceptance, Waiver and Consent ("AWC") resulting from the NASD's 2005 Order Entry and Trading examination of the Firm (the "2005 OE&T Exam").

1. SEC Rule 10b-10

The Firm failed on 74 occasions to provide written notification disclosing to its customer that the transaction was executed at an average price.

The Firm has completed the work necessary, both internally and with its multiple vendors, to provide an average price disclosure, where applicable, on both paper confirmations and confirmations produced by DTC's Institutional Delivery service ("DTC ID Confirms"), now known as Omgeo TradeSuite. In addition, the Firm has joined the DTC/Omgeo sponsored working group in an effort to be at the forefront of issues and resolutions concerning DTC ID Confirms.

2. NASD Conduct Rules 2110 and 3010 (WSPs)

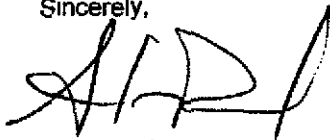
The Firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning best execution, short sales, trading halts and trade reporting. Specifically, the Firm's supervisory system did not include written supervisory procedures providing for one or more of the following: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.

As noted in its response to the Post Exam Letter for the 2005 OE&T Exam, the Firm had engaged Deloitte & Touche in or around August 2005 to assist with a review of its supervisory system. The Firm had also commenced an effort to rebuild its approach to its written supervisory

procedures ("WSPs"). Following the 2005 OE&T Exam, the Firm implemented revised WSPs to address best execution, short sales, trading halts and trade reporting in addition to other topics targeted by the Firm. The Firm has continually worked to build upon its WSPs throughout 2006 and 2007 revising and updating its supervisory program. As part of the Firm's ongoing efforts to revise its supervisory processes, the Firm established an Operations Group headed by and staffed with registered principals that supervise many of the automated systems and processes used by the Firm. The Operations Group's supervisory efforts correspond directly to many innovations that the Firm has made to its WSPs. The Firm also established the Electronic Reporting and Review Board ("ERRB"). The ERRB is comprised of key management and supervisors from both the technology and business areas of the Firm, as well as the Director of Compliance and the Compliance Technology Officer. The ERRB reviews a broad range of topics relating to the Firm's supervision of its business, including but not limited to best execution, ACT reporting and system changes.

This Corrective Action Statement is submitted by the Respondent. It does not constitute factual or legal findings by the NASD, nor does it reflect the views of NASD, or its staff.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Reed', with a stylized flourish at the end.

Alan Reed
Chief Compliance Officer

EXHIBIT A
INSTINET, LLC

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
50	customer sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),	from trade date June 23, 2005.
50	customer sales transactions for compliance with NASD Rule 6130,	from trade date June 23, 2005.
0	short sales in NNM securities, for compliance with NASD Rule 3350,	from trade date June 23, 2005.
0	short sales in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test),	from trade date June 23, 2005.
N/A	orders for NASDAQ securities in soft dollar accounts and 0 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),	from trade date June 23, 2005.
N/A	data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6,	from the report 2nd Qtr, 2005.
25	Cancelled orders in compliance with NASD Rules 4632(g), 4642(g), 4652(g), 6420(f), and 6620(f) and SEC Rule 17a-3(a)(6) and (a)(7),	from trade date June 23, 2005.
15	persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,	from trading staff in June 2005.
125	order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,	from trade date June 23, 2005.
79	trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,	from trade date June 23, 2005.
80	customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,	from trade date June 23, 2005.
50	orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,	from trade date June 23, 2005.
N/A	the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010,	based on WSPs in effect during June 2005.

EXHIBIT A
INSTINET, LLC

<u>Sample Size</u>	<u>Review Area</u>	<u>Sample Source</u>
N/A	the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,	based on WSPs in effect during June 2005.