

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20060051008-01**

FINRA

2011 MAR -8 AM 9:31

TO: Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Instinet, LLC ("INCA" 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

The firm has been a member of FINRA since January 14, 1980. The firm's 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.

RELEVANT DISCIPLINARY HISTORY

On November 11, 2005, an AWC became final wherein the firm was censured and fined \$15,000 for Order Audit Trail System ("OATS") reporting violations.

SUMMARY

This matter arose out of the following reviews:

- 20060051008, wherein the Market Regulation Department staff (the "staff") reviewed the firm's compliance with short sale indicator reporting requirements during the period January 1, 2006 through March 31, 2006 (the "short sales review period").
- 20080123395, wherein the staff reviewed the firm's compliance with OATS reporting during the period July 1, 2007 through September 30, 2007 (the "2007 OATS review period").
- 20080146456, wherein the staff reviewed the firm's compliance with OATS reporting during the period April 1, 2008 through June 30, 2008 (the "2008 OATS review period").
- 20080150440, the 2008 Trading and Market Making Surveillance examination of the firm conducted by the staff, wherein the staff reviewed the items set forth on Exhibit A. Unless otherwise stated, the samples were from trade dates September 22-23, 2008 (the "2008 TMMS review period").

FACTS AND VIOLATIVE CONDUCT

20060051008

1. During the short sales review period, the firm executed 45 short sale transactions and failed to report each of these transactions to the Nasdaq Market Center with a short sale modifier. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6130(d).

20080123395

2. During the 2007 OATS review period, the firm transmitted to OATS 837,153 Reportable Order Events ("ROEs") that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 156,824 of these rejected ROEs during the 2007 OATS review period, representing 19 percent of all rejected repairable ROEs. As a result of the firm's failure to repair these ROEs, the firm failed to transmit 156,824 ROEs to OATS during the 2007 OATS review period. The firm also failed to repair 655,447 of the 837,153 rejected ROEs

within the required five business days. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20080146456

3. During the 2008 OATS review period, the firm transmitted to OATS 92,062 ROEs that were rejected by OATS for context or syntax errors and were repairable. The firm failed to repair 23,829 of these rejected ROEs during the 2008 OATS review period, representing 26 percent of all rejected repairable ROEs. As a result of the firm's failure to repair these ROEs, the firm failed to transmit 23,829 ROEs to OATS during the 2008 OATS review period. The firm also failed to repair 455 of the 92,062 rejected ROEs within the required five business days. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).
4. During the 2008 OATS review period, the firm failed to populate the Rejected ROE Resubmit Flag with a "Y" for seven ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

20080150440

5. During the 2008 TMMS review period, the firm transmitted to OATS reports related to 34 orders that contained inaccurate, incomplete, or improperly formatted data. Specifically, the firm transmitted to OATS 22 ROEs to OATS that contained inaccurate Special Handling codes. In 12 instances, the firm submitted reports that omitted Special Handling codes. The conduct described in this paragraph constitutes separate and distinct violations of NASD Rule 6955(a).

- B. The firm also consents to the imposition of the following sanctions:

A censure and a fine of \$32,500 (composed of a \$10,000 fine for the short sale violations in 20060051008; a \$7,500 fine for the OATS violations in 20080123395; a \$7,500 fine for the OATS violations in 20080146456; and a \$7,500 fine for the OATS violations in 20080150440).

The firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. It has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Complaint issued specifying the allegations against the firm;
- B. To be notified of the 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 National Adjudicatory Council ("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 FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

The firm understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
- C. If accepted:
 - 1. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the firm;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the firm's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. 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. The firm may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the firm's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. The firm 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to the AWC's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce the firm to submit it.

3/1/2011
Date

Respondent
Instinet, LLC

By: Jonathan Helber

Name: Jonathan Helber

Title: President

Reviewed by:
Bracewell & Giuliani LLP
by [Signature]
Counsel for Respondent

Accepted by FINRA:

4/5/11
Date

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

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

2008 Market Regulation Examination Samples

Instinet, LLC

("INCA")

Exam No. 200801050440

Sample Source/Period*: September 22 and 23, 2008

<u>Sample Size</u>	<u>Sample Description</u>
397	Sales reviewed for compliance with SEC Rule 200(g) long/short sale recording requirements
389	Short Sales reviewed for compliance with SEC Rule 203(b) security location requirements
121	Trades reported to a TRF or OTCTRF for compliance with NASD Rule 6130
<u>98</u>	for general trade reporting requirements
<u>0</u>	for Cancellation of reported trade requirements
<u>90</u>	for Principal, Riskless Principal, or Agency executions effected otherwise than on an exchange
<u>1</u>	for compliance with the use of the .PRP (Prior Reference Price) trade modifier
<u>30</u>	for compliance with the requirements of odd-lot trade reporting
<u>0</u>	for compliance with the use of the .RA trade modifier (prices away from the market)
<u>0</u>	for compliance with the use of the .RX trade modifier (exercise OTC options contract)
<u>0</u>	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
<u>23</u>	for Sale Indicator requirements
0	Disclosures to customers relating to trading in the Extended Hours session for compliance with Nasdaq Rule 4631
45	Orders entered into Nasdaq Exchange execution systems for compliance with Nasdaq Rules 4755 and 2110
0	Limit orders for NMS securities in which the member acts as an exchange market maker for compliance with the display requirements of SEC Rules 602 and 604 and Nasdaq Rule 3390
0	Orders for compliance with best execution requirements of NASD Rule 2320
<u>0</u>	Orders executed as principal for compliance NASD Rule 2320 and with the order protection requirements of NASD Rules 2110, IM-2110-2, 2111, 6541 and Nasdaq Rules 2110, IM-2110-2, and 2111
<u>0</u>	'Not Held' orders for compliance with NASD Rule 2320 and Nasdaq Rule 2320 best execution requirements
<u>10</u>	Customer orders in OTC equity securities for compliance with NASD Rules 2320 and 3110(b) requirements to ascertain and document best interdealer market related to execution of orders
5	Open Limit orders to buy and/or open Stop orders to sell securities that traded ex-dividend for compliance with NASD Rule 3220 and Nasdaq Rule 4761
0	Order memoranda and Net Trading agreements for compliance with NASD Rule 2441 requirements
50	Orders in securities required to be submitted to OATS for compliance with NASD Rules 6954 and 6955 and Nasdaq Rules 6954 and 6955 requirements
10	Customer confirmations prepared and maintained in connection with select samples
<u>10</u>	for compliance with SEC Rule 10b-10 disclosure requirements
<u>0</u>	for compliance with SEC '34 Act Section 28(e) guidelines relating to Soft Dollar Agreements
25	Orders for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
4	Data sets published for August 2008 monthly order execution report for compliance with SEC Rule 605 requirement to publish accurate data (a 'data set' encompasses all required statistical data for single security and order type/size category as described in SEC Rule 605)

* unless otherwise noted

2008 Market Regulation Examination Samples

Instinet, LLC

("INCA")

Exam No. 200801050440

Sample Source/Period*: September 22 and 23, 2008

<u>Sample Size</u>	<u>Sample Description</u>
32	Orders underlying data sets reviewed for August 2008 for NMS securities in which the Firm acts as a market center for compliance with SEC Rule 605 order classification requirements
1	Quarterly Routing Report for compliance with SEC Rule 606 requirements
10	CRD registration records for persons conducting and/or supervising Firm's trading and/or market making activities for compliance with NASD Rule Series 1020, 1030, 1040 and Nasdaq Rule Series 1020, 1030, 1040
All Provided	Member's "Regular & Rigorous" review procedures regarding order execution quality for compliance with NASD Rules 2320 and 3010
All Provided	Member's supervisory system, written supervisory procedures ("WSPs") and documentation evidencing execution of the WSPs for compliance with NASD Rule 3010 requirements
All Provided	Member's supervisory and operational policies and procedures and documentation evidencing execution of the policies and procedures for compliance with SEC Regulation NMS Rules 610, 611, and 612
520	Records prepared and maintained in connection with the above samples for compliance with SEC Rules 17a-3 and 17a-4 and NASD Rule 3110
0	Trading Halts declared during the on-site portion of the examination for which FINRA Staff observed the operation of the ATS.