

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130358254-01

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 (the "firm" or "Respondent") 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 Respondent alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 became a member of FINRA on January 14, 1980, and its registration remains in effect.

RELEVANT DISCIPLINARY HISTORY

On June 29, 2010, the firm finalized an AWC for violating Nasdaq Rules 3010 and 2110 for conduct which occurred during the period of January 1, 2008 through June 30, 2008. The firm was censured and fined \$10,000 for failing to have a written supervisory procedures ("WSPs") in place reasonably designed to ensure compliance with The NASDAQ Stock Market LLC's clearly erroneous rules.

FACTS AND VIOLATIVE CONDUCT

In matter 20130358254, the Trading and Market Making Surveillance ("TMMS") Group of the Department of Market Regulation (the "staff") reviewed the firm's trading activity, as set forth in Exhibit A, for the trade date of April 17, 2013 (the "review period") and found that:

1. During the review period, in seven instances the firm failed to adjust the price of an open limit order after a dividend occurred. The conduct described in this paragraph constitutes separate and distinct violations of FINRA Rule 5330.
2. During the review period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to certain applicable securities laws and regulations, and/or Rules of NASD/FINRA and SEC. At a minimum, adequate WSPs addressing trading and market making and quality of markets should describe the following:
 - a. specific identification of the individual(s) responsible for supervision;
 - b. the supervisory steps and reviews to be taken by the appropriate supervisor;
 - c. the frequency of such reviews; and
 - d. how such reviews shall be documented.

The firm's WSPs failed to provide for one or more of the four above-cited minimal requirements for adequate WSPs in the following areas:

- **Order Handling:** FINRA Clearly Erroneous [(b)];
- **Algorithmic Trading:** Testing and implementation of algorithms [(d)]; Monitoring of customer and proprietary algorithms [(a), (b), (c), (d)]; Controls to monitor algorithms in the event of malfunctions [(a), (b), (c), (d)]; Ensuring that algorithms are functioning properly during periods of excessive volatility [(a), (b), (c), (d)]; and
- **Extraordinary Market Volatility (Limit Up/Limit Down):** Execution of trades that are below the Lower Price Band or above the Upper Price Band for an NMS Stock [(a), (b), (c), (d)].

The conduct described in the above paragraphs constitutes separate and distinct violations of NASD Rule 3010 and FINRA Rule 2010.

B. Respondent also consents to the imposition of the following sanctions:

A censure, a fine of \$15,000 (comprised of \$5,000 for the violations of FINRA Rule 5330 and \$10,000 for the supervision violations), and an undertaking to revise the firm's WSPs with respect to the areas described in paragraph I.A.2. 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, or an e-mail from a work-related account of the registered principal to MarketRegulationComp@finra.org, 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 this paragraph; and, (3) the date the revised procedures were implemented.

Respondent 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.

Respondent 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

Respondent 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Legal Officer, 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.

Respondent 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

Respondent 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 Respondent; 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 accordance with FINRA Rule 8313;
3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
4. Respondent 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. Respondent 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: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondent 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.

4/23/15
Date

Respondent
Instinet, LLC

By: Marc Chiatamonte

Name: Marc Chiatamonte

Title: Chief Compliance Officer

Reviewed by:

David S. Sieradzki

David S. Sieradzki
Counsel to Instinet, LLC
Bracewell & Giuliani LLP
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Washington, D.C. 20006
(202) 828-5826

Accepted by FINRA:

5/5/15
Date

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

Tina Salehi Gubb

Tina Salehi Gubb
Chief Counsel
FINRA Department of Market Regulation