

**FINANCIAL INDUSTRY REGULATORY AUTHORITY  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 20130376517-05**

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 has been a member of FINRA since January 14, 1980 and its registration remains in effect. The firm has no relevant prior disciplinary history.

**SUMMARY**

This matter arose from four separate reviews of the firm's compliance with Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 and related exchange rules pertaining to the handling of intermarket sweep orders ("ISOs"), as well as related supervisory requirements respectively conducted by FINRA's Department of Market Regulation staff on behalf of FINRA and/or various exchanges, spanning the timeframes of September 17, 2012 through March 17, 2013, the fourth quarter 2013 and the third quarter 2014, all consolidated under Review/STAR Number 20130376517.<sup>1</sup>

Review Nos. 20130376517 and 20150446981 resulted from certain regulatory trading alerts of FINRA and other exchanges associated with the firm's handling of ISOs subject

<sup>1</sup> The above self-regulatory organizations for which the reviews were undertaken, included, in addition to FINRA, Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX"), Bats EDGA Exchange, Inc. ("EDGA"), Bats EDGX Exchange, Inc. ("EDGX"), New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc. ("NYSE Arca") (collectively, the "SROs"). Related disciplinary actions on behalf of each of the above SROs in addition to FINRA concurrently are being taken against the firm in conjunction with this matter.

to disciplinary action by BZX, BYX, FINRA and NYSE Arca that the firm generally attributed to certain systems issues during the period of September 17, 2012 through March 17, 2013 (the "September 17, 2012 - March 17, 2013 Review Period").

Review No. 20140405595 resulted from a FINRA cross market surveillance sweep from fourth quarter 2013 (the "4Q2013 Review Period") that identified ISO trading conduct by the firm during that time subject to disciplinary action on behalf of FINRA, EDGA, NYSE Arca and the NYSE.

Review No. 20140437882 resulted from a FINRA cross market surveillance sweep from third quarter 2014 (the "3Q2014 Review Period") that identified ISO trading conduct by the firm during that time subject to disciplinary action on behalf of FINRA, EDGA, EDGX, NYSE Arca and the NYSE.

As further described below, the firm violated Rule 611(c) of Regulation NMS, NASD Rule 3010 and FINRA Rule 2010.

#### **FACTS AND VIOLATIVE CONDUCT**

1. Rule 611(c) requires trading centers and broker-dealers to take reasonable steps to establish that ISOs meet the requirements set forth in the definition of an ISO in Rule 600(b)(30). Rule 600(b)(30) requires that simultaneously with the routing of a limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO. In structuring their ISO routing arrangements, trading centers and broker-dealers should reasonably address the potential for systems problems. In particular, the routing arrangements should be highly reliable and incorporate appropriate policies and procedures to monitor performance of routing systems to affirm that they are functioning properly.
2. During the September 17, 2012 – March 17, 2013 Review Period, two systems issues associated with the firm's transition to using a NYSE data feed caused the firm not to capture protected quotations, as defined by Rule 600 of Regulation NMS, for certain NYSE-listed symbols, for purposes of complying with Rule 600(b)(30). As a consequence, in some instances, the firm failed to simultaneously send ISOs to execute against the full displayed size of certain protected quotations of a subset of NYSE-listed symbols during that time when routing ISOs elsewhere, which led to certain trade throughs of such protected quotations subject to disciplinary action by FINRA, BZX, BYX and NYSE Arca.
3. During the 4Q2013 Review Period, the firm failed to simultaneously send an ISO to execute against the full displayed size of certain protected quotations, as defined by Rule 600 of Regulation NMS, for purposes of complying with Rule 600(b)(30), when routing ISOs to various markets, which led to certain trade throughs of such protected quotations that the firm generally attributed to three reasons. The first reason

involved a data capture issue of the firm that resulted in the firm not capturing certain protected quotations from The NASDAQ Stock Market LLC for at least five days from Oct. 31, 2013 to Nov. 5, 2013. The second reason concerned a coding issue impacting protected quotations from the NYSE for 43 months from April 21, 2010 through Nov. 19, 2013 that caused the firm's router to errantly only recognize a quote as executable after the first reported trade in a security. The third reason concerned a systemic programming issue that existed for at least five years and eight months, from August 2010 until May 18, 2016, whereby the firm's router incorrectly failed to resend ISO(s) to a protected quotation as required absent a quote update if it had sent an ISO to that quote and received only a partial or no fill of the ISO (on the basis that the quote was "stale").

4. During the 3Q2014 Review Period, the firm failed to simultaneously send an ISO to execute against the full displayed size of certain protected quotations, as defined by Rule 600 of Regulation NMS, for purposes of complying with Rule 600(b)(30), when routing ISOs to various markets, which led to certain trade throughs of such protected quotations. The firm acknowledged that some of the above instances were attributable to a systems issue that caused certain NYSE protected quotations not to be captured by the firm for approximately seven months from November 19, 2013 until July 2, 2014, because they were miscategorized as "pre-market" quotes.
5. As a consequence of the above conduct, the firm failed to take reasonable steps to establish that the ISOs it routed met the definitional requirements set forth in Rule 600(b)(30) of Regulation NMS during the September 17, 2012 - March 17, 2013, 4Q2013 and 3Q2014 Review Periods. The conduct described in this paragraph constitutes violations of Rule 611(c) of Regulation NMS and FINRA Rule 2010.
6. In addition, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 611(c) of Regulation NMS during the September 17, 2012 - March 17, 2013, 4Q2013 and 3Q2014 Review Periods. Specifically, the firm's supervisory system did not include written supervisory procedures providing for sufficient supervisory steps to be taken by person(s) responsible for supervision with respect to the rule in that the firm's sample of ISOs to be reviewed for compliance with Rule 611 was insufficient relative to its volume of ISO activity to reasonably be expected to detect and prevent systems or other issues that could result in noncompliance with the rule. The conduct described in this paragraph constitutes violations of NASD Rule 3010 and FINRA Rule 2010.

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

1. A censure;
2. A total fine of \$330,000 for the above combined reviews of which \$78,375 shall be paid to FINRA in connection with the above reviews; and,
3. an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.6 above. Within 30 business days of notice of

acceptance of this AWC by the National Adjudicatory Council ("NAC"), a registered principal of the Respondent who is a senior executive officer 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](mailto: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 paragraph I.A.6; and, (3) the date the revised procedures were implemented. Upon written request showing good cause, FINRA staff, on behalf of FINRA, may extend any of the procedural dates set forth herein.

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 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.

5/19/17

Date

Respondent

Instinet, LLC

By: Faron W. Webb

Name: Faron Webb

Title: Executive Managing Director

Reviewed by:



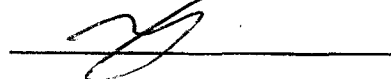
David S. Sieradzki  
Counsel for Respondent  
Schulte Roth & Zabel LLP  
1152 Fifteenth Street, NW, Suite 850  
Washington, DC 20005  
(202) 729-7473

Accepted by FINRA:

JUNE 29, 2017

Date

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



James J. Nixon  
Chief Litigation Counsel  
FINRA Department of Market Regulation