

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2018057165801**

TO: Department of Enforcement
Financial Industry Regulatory Authority (FINRA)

RE: Instinet, LLC (Respondent)
Member Firm
CRD No. 7897

Pursuant to FINRA Rule 9216, Respondent Instinet, LLC 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 in this AWC.

I.

ACCEPTANCE AND CONSENT

- A. Respondent accepts and consents to the following findings by FINRA without admitting or denying them:

BACKGROUND

Instinet has been a FINRA member since January 1980. The firm provides market access, trading support, and execution services to institutional market participants. The firm's principal place of business is New York, New York, and it currently employs approximately 160 registered representatives at its seven branch offices.¹

OVERVIEW

From February 2015 through July 2019, Instinet published inaccurate data in 54 monthly reports it was required to publish pursuant to Regulation NMS Rule 605 (Rule 605 reports). As a result, Instinet violated Rule 605 and FINRA Rule 2010.

From February 2015 through May 2019, Instinet did not maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with Rule 605. Through this conduct, Instinet violated FINRA Rules 3110(a) and 2010.

¹ For more information about the firm, including prior regulatory events, visit BrokerCheck® at www.finra.org/brokercheck.

FACTS AND VIOLATIVE CONDUCT

This matter originated from a FINRA examination of Instinet.

Instinet published 54 inaccurate monthly reports of order executions.

In June 2005, the Securities and Exchange Commission adopted Regulation NMS, which established new rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Regulation NMS Rule 605² requires market centers³ to disclose certain order execution information, facilitating the uniform public disclosure of order execution information.

Rule 605 requires a market center that trades NMS securities to make available to the public monthly electronic reports containing uniform statistical measures of execution quality. Those measures include categorization of covered orders⁴ executed or canceled by security, order type, and order size. Rule 605 also requires the classification of order types, including marketable limit orders and inside-the-quote limit orders. A violation of Rule 605 is also a violation of FINRA Rule 2010, which states that “[a] member, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.”

From February 2015 through February 2019, Instinet operated the Instinet Continuous Block Cross ATS (CBX), which received covered orders reportable under Rule 605. During this time, the firm excluded from its Rule 605 reports potentially reportable orders submitted to CBX by certain business units and systems at the firm. The firm had erroneously determined that all orders received through these particular business units and systems were subject to special handling and excluded from the definition of a covered order. As a result, the firm underreported by approximately five percent its total covered orders during the relevant period. In March 2019, after this issue was identified by FINRA during a firm exam, the firm began evaluating each order individually to determine whether the order should be included in the firm’s Rule 605 report.

² Regulation NMS, among other things, renumbered certain SEC rules, including former Rule 11Ac1-5 of the Securities Exchange Act of 1934.

³ Regulation NMS Rule 600(b)(46) defines “market center” as “any exchange market maker, OTC market maker, alternative trading system, national securities exchange, or national securities association.”

⁴ Regulation NMS Rule 600(b)(22) defines a “covered order” as “any market order or any limit order (including immediate-or-cancel orders) received by a market center during regular trading hours at a time when a national best bid and national best offer is being disseminated, and, if executed, is executed during regular trading hours, but shall exclude any order for which the customer requests special handling for execution, including, but not limited to, orders to be executed at a market opening price or a market closing price, orders submitted with stop prices, orders to be executed only at their full size, orders to be executed on a particular type of tick or bid, orders submitted on a ‘not held’ basis, orders for other than regular settlement, and orders to be executed at prices unrelated to the market price of the security at the time of execution.”

Additionally, from June 2017 through July 2019, due to logic errors in the Rule 605 report-generating software used by the firm,⁵ the firm inaccurately classified midpoint peg immediate-or-cancel orders by order type. The firm inaccurately classified such orders as marketable limit orders, rather than inside-the-quote limit orders. The software logic error was corrected in August 2019.

In total, from February 2015 through July 2019, the firm published 54 inaccurate monthly Rule 605 reports.

Therefore, the firm violated Regulation NMS Rule 605 and FINRA Rule 2010.

Instinet's supervisory system was not reasonably designed to achieve compliance with Regulation NMS Rule 605.

FINRA Rule 3110(a) provides, in part, that “[e]ach member shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.” A violation of Rule 3110 is also a violation of FINRA Rule 2010.

From February 2015 through May 2019, the firm’s supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Regulation NMS Rule 605. The firm had no procedure to review or test that it was correctly excluding all orders submitted to CBX by certain business units and systems at the firm. Additionally, the firm had no procedure to check that orders included in its Rule 605 reports were properly classified by order type.

Therefore, the firm violated FINRA Rules 3110(a) and 2010.

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

- a censure; and
- a \$165,000 fine.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent 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 an inability to pay, now or at any time after the execution of this AWC, the monetary sanction imposed in this matter.

The sanctions imposed in this AWC shall be effective on a date set by FINRA.

⁵ The firm used a third-party vendor to generate its Rule 605 reports during the relevant period.

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 it;
- 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 its acceptance or rejection.

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 Respondent's permanent disciplinary record and may be considered in any future action brought by FINRA or any other regulator against Respondent;
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 its subject matter 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 Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party. Nothing in this provision affects Respondent's testimonial obligations in any litigation or other legal proceedings.

D. Respondent may attach a corrective action statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on Respondent's 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 Respondent 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 in this AWC and the prospect of avoiding the issuance of a complaint, has been made to induce Respondent to submit this AWC.

12/8/2022
Date



Instinet, LLC
Respondent

Print Name: David Sieradzki

Title: General Counsel - Americas

Reviewed by:



William J. Barbera
Counsel for Respondent
Schulte Roth & Zabel LLP
919 Third Ave.
New York, NY 10022

Accepted by FINRA:

12/9/2022

Date

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



Kimberly G. Koziara
Counsel
FINRA
Department of Enforcement
1601 Market Street, Suite 2700
Philadelphia, PA 19103