

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065465801**

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 170 registered representatives at its seven branch offices.

In June 2017, FINRA, Cboe BYX Exchange, Inc. (BYX), Cboe BZX Exchange, Inc. (BZX), Cboe EDGA Exchange, Inc. (EDGA), Cboe EDGX Exchange, Inc. (EDGX), The New York Stock Exchange LLC (NYSE), and NYSE Arca, Inc. (NYSE Arca) censured and fined Instinet a total of \$330,000, and required an undertaking to revise the Firm's WSPs in connection with findings that it violated Rule 611(c) of Regulation NMS, relevant exchange rules, and related supervisory violations, for activity that took place between September 2012 and May 2016.

In December 2014, The NASDAQ Stock Market LLC and EDGA censured and fined Instinet a total of \$185,000, and required an undertaking to revise the Firm's WSPs in connection with findings that it violated Rule 611(c) of Regulation NMS, relevant

exchange rules, and related supervisory violations, for activity that took place between January 2009 and September 2011.¹

OVERVIEW

During the period from August 1, 2019, through September 28, 2020, Instinet violated Rule 611(c) of Regulation National Market System (NMS) of the Securities Exchange Act of 1934 (Exchange Act) by failing to take reasonable steps to establish that the intermarket sweep orders (ISOs) it routed to certain market centers met the requirements set forth in Exchange Act Rule 600(b)(31).² In addition, Instinet violated FINRA Rules 3110 and 2010 by failing to establish and maintain a supervisory system, including written supervisory procedures (WSPs), reasonably designed to achieve compliance with Exchange Act Rule 611(c).

FACTS AND VIOLATIVE CONDUCT

This matter originated from surveillance conducted by FINRA on behalf of itself and multiple exchanges.

Instinet violated Rule 611 of Regulation NMS.

Exchange Act Rule 600(b)(31) defined an ISO as a limit order for an NMS stock that: (i) is identified as an ISO when routed to a trading center; and (ii) simultaneously with the routing of the 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. These additional routed orders must be marked as ISOs.

Rule 611(c) of Regulation NMS required a trading center, broker, or dealer responsible for routing an ISO to take reasonable steps to establish that the ISO met the requirements set forth in Rule 600(b)(31).

A violation of Rule 611 constitutes a violation of FINRA Rule 2010, which requires FINRA members “to observe high standards of commercial honor and just and equitable principles of trade” in the conduct of their business.

Between August 1, 2019, and September 28, 2020, Instinet failed to take reasonable steps to establish that the ISOs it routed met the requirements of Exchange Act Rule 600(b)(31). In certain instances, when Instinet routed orders to various exchanges that it

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

² In June 2021, after the conduct at issue, Rule 600(b)(31) was renumbered to Rule 600(b)(38). Because Rule 600(b)(31) was the rule in effect during the relevant period, that rule applies to the subject conduct.

marked as ISOs during this period, the firm failed to capture certain protected quotation data when it took the snapshots it used for making routing decisions due to multiple programming and system errors. As a result, the firm did not recognize, and thus did not route, additional ISOs necessary to execute against protected quotes displayed by certain market centers. Instinet sent at least 53,175 ISO orders³ that were priced through other market centers' protected quotes.

Specifically, between November 26 and December 2, 2019, an error in Instinet's coding logic in its backup data center resulted in its Smart Order Router (SOR) failing to capture current quotation data from a direct data feed when taking snapshots for making routing decisions. Multiple times throughout that period, Instinet automatically switched to its backup datacenter when the primary data center did not capture up-to-date quotations from a direct market data feed due to coding errors. The firm directed its SOR to consume market data from the backup datacenter. After switching to the backup datacenter, however, the Firm's trade through monitor began reporting potential trade-throughs and the firm then directed the SOR to switch to the Securities Information Processor (SIP) feed. As a result of the failure to capture up-to-date quotations, Instinet routed orders that potentially traded through protected quotations. A programming error in the code released to the backup datacenter on November 22, 2019, caused the potential trade-throughs. The firm corrected this issue by implementing updated code on December 2, 2019, which was effective on December 3, 2019.

Additionally, on multiple dates in 2020, Instinet experienced connectivity problems with direct market data feeds, resulting in its SOR failing to capture quotation data from multiple exchanges when taking the snapshots it used for ISO-routing decisions. For example, when the firm received more data than its server could process, its SOR disconnected from the direct market data feeds. Compounding the server capacity issue, on one relevant occasion, Instinet's trade through monitor experienced an issue comparing a direct market data feed to the SIP, and as a result, the firm failed to detect the disconnect.⁴ In other instances, the trade through monitor logged repeated unsuccessful reconnection attempts that were eventually escalated for manual reconnection. In all relevant instances, while Instinet took corrective action by switching to the SIP feed the same day, Instinet routed orders that potentially traded through protected quotations. Regarding the connectivity issues, FINRA began its investigation in or around August 2020 on behalf of FINRA and multiple exchanges. The firm took steps to address the connectivity issues by increasing its server capacity in September 2020 and, again, in May 2021. The firm also developed and implemented enhanced surveillance to detect and respond to connectivity issues in November 2020.

Also between August 1, 2019, and September 28, 2020, Instinet's system logic would treat a quote as "stale" if it did not receive an ISO execution at a protected venue and would continue to treat the quote as stale until it received a quote update from that

³ 28,496 of which were routed to exchanges for which FINRA conducts Regulation NMS reviews.

⁴ INCA has since enhanced its system to verify that the trade through monitor is connected and logged in continuously.

destination. As a result, Instinet's SOR would not re-route to any destination after a quote was marked stale and there was no quote update received from that destination. There was no limit to how long the firm would wait to re-route to the original exchange. At times, Instinet waited more than one second before re-routing after a quote was marked stale.⁵ In at least one instance, INCA traded through a protected quotation it marked stale approximately three seconds after it did not receive an execution at that protected venue.

Instinet, therefore, did not take reasonable steps to establish that ISOs it routed met the requirements of Exchange Act Rule 600(b)(31) in violation of Exchange Act 611(c). The firm revised its system logic to address this issue on or about October 5, 2020.

Therefore, Instinet violated Rule 611(c) and FINRA Rule 2010.

Instinet's supervisory system was not reasonably designed to comply with Rule 611 of Regulation NMS.

FINRA Rule 3110(a) requires a member firm to 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. FINRA Rule 3110(b) requires a member firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules.

The duty to supervise under Rule 3110 also includes the responsibility to reasonably investigate red flags that suggest that misconduct may be occurring and to act upon the results of such investigation.

A violation of FINRA Rule 3110 constitutes a violation of FINRA Rule 2010.

Between August 1, 2019, and September 28, 2020, Instinet's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Exchange Act Rule 611(c).

Instinet's supervisory system was unreasonable because it did not detect potential trade throughs caused by the fact that it waited more than one second before re-routing to a trading center's protected quotation after receiving a partial-fill or no-fill response to an order seeking to execute against the trading center's quotation at the same price.

Additionally, Instinet's WSPs failed to establish processes to achieve compliance with Exchange Act Rule 611(c) during this time period. For example, even though Instinet relies on its trade through monitor to monitor for and respond to disconnections, its WSPs do not contain any information about this process.

⁵ The firm's SOR had been programmed in this manner since Regulation NMS was adopted on August 29, 2005.

Instinet also ignored red flags in its supervisory system that should have alerted the firm of the need to address its connectivity issues to ensure that the ISOs it routed complied with Exchange Act Rule 611(c). Despite experiencing data connectivity issues over multiple dates, the firm did not completely remediate the issues until after regulatory inquiries.

Thus, during the period of August 1, 2019, and September 28, 2020, Instinet's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Exchange Act Rule 611(c).

Therefore, Instinet violated FINRA Rules 3110 and 2010.

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

- a censure and
- a total fine of \$450,000, of which \$175,099.36 shall be paid to FINRA.⁶

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.

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

⁶ The balance of the sanction will be paid to BYX, BZX, EDGA, EDGX, NYSE, NYSE Arca, Investors Exchange, LLC, NYSE American LLC, NYSE National, Inc., and NYSE Chicago, Inc.

- 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 prejudice 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.

7/6/2023
Date


Instinet, LLC
Respondent

Print Name: David Sieradzki

Title: General Counsel – Americas

Accepted by FINRA:

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

7/21/2023
Date


Rebecca Carvalho
Director
FINRA
Department of Enforcement
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