

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020067139101**

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 is headquartered in New York, New York. Instinet provides market access, trading support, and execution services to institutional customers. Instinet has over 170 registered representatives and seven branch offices.¹

OVERVIEW

From the start of its Consolidated Audit Trail (CAT) reporting obligation on June 22, 2020, through the present, Instinet failed to timely and accurately report data for tens of billions of order events to the CAT Central Repository in violation of FINRA Rules 6830, 6893, and 2010. Instinet also failed to establish and maintain a supervisory system, including written supervisory procedures, reasonably designed to achieve compliance with CAT reporting rules in violation of FINRA Rules 3110 and 2010.

FACTS AND VIOLATIVE CONDUCT

This matter originated from FINRA's review of the firm's CAT reporting compliance.

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

CAT reporting requirements

The SEC adopted Rule 613 under the Securities Exchange Act of 1934 to create a comprehensive audit trail that would allow regulators to more efficiently and accurately track all activity throughout the U.S. markets in national market system (NMS) securities. In November 2016, the SEC approved a CAT NMS Plan. In March 2017, the SEC approved FINRA's proposal to adopt the FINRA Rule 6800 Series (CAT Compliance Rule) to implement the CAT NMS Plan.

Beginning on June 22, 2020, large industry members² that originated or received an order involving NMS or over-the-counter (OTC) equity securities were required to report data to the CAT Central Repository and comply with Rule 613 of Regulation NMS and the FINRA Rule 6800 Series. In July 2020, large industry members were required to report data for options orders to the CAT Central Repository. As of December 2021, all FINRA members, regardless of size, were required to comply with these requirements. All proprietary trading activity, including market-making activity, is subject to CAT reporting.

CAT data is as an integral part of FINRA's automated market surveillance program. FINRA uses CAT data to detect manipulative activity and other potential violations of federal securities laws and FINRA rules. Inaccurate, incomplete, or untimely transaction and order reporting can negatively affect the regulatory audit trail and the quality of FINRA's surveillance patterns, as well as FINRA's ability to accurately reconstruct market events.

FINRA Rule 6830(a) requires each member to record and electronically report to the CAT Central Repository specific details for each order and each "Reportable Event," as applicable. Reportable Event is defined to include, but is not limited to, the original receipt or origination, modification, cancellation, routing, execution (in whole or in part) and allocation of an order, and receipt of a routed order. FINRA Rule 6893(a) requires members to "record and report data to the Central Repository as required by this Rule Series in a manner that ensures the timeliness, accuracy, integrity and completeness of such data."

A violation of FINRA Rules 6830 and 6893 also is a violation of FINRA Rule 2010, which requires members, in the conduct of their business, to observe high standards of commercial honor and just and equitable principles of trade.

Instinet failed to timely and accurately report data for tens of billions of order events.

As a large industry member, Instinet was required to begin reporting its order event data to the CAT Central Repository on June 22, 2020. After evaluating various internal and vendor CAT reporting solutions, Instinet hired a third-party vendor to act as the firm's

² A large industry member is a member that does not qualify as a small broker-dealer as defined under 17 CFR 240.0-10(c).

CAT reporting agent.³ Instinet, however, failed to maintain adequate technical specifications for its order data that would have allowed the firm's data to be converted to a CAT-reportable format. Moreover, the firm's technical specifications were not widely understood by certain individuals at the firm. This significantly hindered the reporting agent's ability to convert Instinet's data into a format that it could use for CAT reporting. In early June 2020, Instinet notified FINRA that it anticipated it would experience CAT reporting issues starting on June 22, 2020.

As it expected, Instinet experienced significant CAT reporting problems from the very beginning of its reporting obligations. The firm determined that it was not timely reporting all CAT-reportable events because its reporting agent could not fully translate the firm's data to a CAT-reportable format. As a result, from June 22, 2020, through November 6, 2020, alone, Instinet failed to timely report to the CAT Central Repository over 5.2 billion equities and options order events, which constituted approximately 17% of the firm's CAT reporting obligation for this period. By late October 2020, the firm had reported 2.7 billion of the late order events but did not report the remaining 2.5 billion until March 2021, which was up to nine months after these order events occurred. On October 26, 2020, Instinet completed the rollout of a new code that addressed some of the causes of the reporting errors.

Unrelated to the data conversion issue, Instinet experienced late reporting issues in connection with at least 26 billion events from November 2020 through December 2022, which constituted approximately 8% of the firm's CAT reporting obligation for this period. These late reports were caused by a variety of issues, such as the reporting agent's insufficient capacity to process Instinet's order event volume.

The problems translating order data and other configuration issues also caused the firm to report inaccurate data for billions of other order events. By January 2023, Instinet identified approximately 180 different types of CAT reporting errors, including inaccurate share quantity, handling instructions, department type codes, customer display instruction flags, and event timestamps. For instance, from June 2020 to October 2021, Instinet reported to the CAT Central Repository inaccurate CAT data for approximately 32 billion order events relating to special handling codes.

Therefore, Instinet violated FINRA Rules 6830, 6893, and 2010.

Instinet failed to reasonably supervise its compliance with its CAT reporting obligations.

FINRA Rule 3110 requires member firms to establish and maintain a supervisory system, including written procedures, to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws, regulations,

³ A CAT reporting agent means any third party that reports data to the CAT Central Repository pursuant to an agreement with a member firm in which the CAT reporting agent agrees to fulfill the member's CAT reporting obligations. The reporting member, however, remains responsible for complying with all CAT reporting rules.

and FINRA rules. A violation of FINRA Rule 3110 also is a violation of FINRA Rule 2010.

In Regulatory Notice 20-31, FINRA explained that “[a] well designed and implemented supervisory system is particularly important when a member is using a reporting agent to comply with the CAT Rules to ensure that such third party is conducting CAT activities as agreed upon and in compliance with the CAT Rules.” FINRA further explained that “reasonably designed written supervisory procedures should address the CAT Rules and...should incorporate frequent reviews by the firm of the data posted on the CAT Reporter Portal.” FINRA further stated:

Members’ written supervisory procedures also must be reasonably designed to ensure that the data reported by them or on their behalf is transmitted in a timely fashion and that it is complete and accurate. Among other things, firms should review this data to verify that: (1) the data is sent to CAT by 0800 (8:00 a.m. Eastern Time) the following Trading Day; (2) the data is complete with no missing events; and (3) the data is accurate with all of the appropriate data fields reported correctly. It will not be sufficient for firms to only review rejected data.

The duty of supervision imposed by these rules includes the responsibility to investigate red flags that suggest misconduct may be occurring and to act upon the results of such investigation.

From June 22, 2020 through the present, Instinet’s supervisory system, including written procedures, was not reasonably designed to achieve compliance with FINRA Rules concerning CAT reporting. Instinet did not conduct a supervisory review of the accuracy of data it reported to the CAT Central Repository until the third quarter of 2021. Even then, Instinet conducted this review only once per quarter. This frequency was not reasonable given the volume of data that Instinet reports to the CAT Central Repository (each quarter averaging billions of CAT events).

Further, Instinet did not reasonably respond to red flags of significant problems with the accuracy of its CAT reports. While Instinet became aware of reporting issues in 2020, it did not reasonably respond to its CAT reporting errors until FINRA raised concerns to the firm in 2021. In late 2021 and early 2022, Instinet began to expedite its remediation program, but the remediation of known issues is still not complete.

Therefore, by failing to establish and maintain a supervisory system, including written procedures, reasonably designed to achieve compliance with CAT reporting rules, Instinet violated FINRA Rules 3110 and 2010.

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

- a censure;
- a \$3,800,000 fine; and

- an undertaking to retain an independent consultant as described below:

1. Respondent has undertaken to do the following:

- a. Retain at its own expense and within 120 days of the date of the notice of acceptance of this AWC an independent consultant not unacceptable to FINRA to conduct a comprehensive review of the adequacy of Respondent's compliance with its CAT reporting obligations and related supervisory obligations, including but not limited to:
 - (i) Instinet's current and planned systems and processes to comply with its CAT-reporting obligations; and
 - (ii) Instinet's written supervisory procedures and controls related to CAT reporting obligations.
- b. Ensure that the independent consultant, any firm with which the independent consultant is affiliated or of which he or she is a member, and any person engaged to assist the independent consultant in performance of his or her duties, shall not have provided consulting, legal, auditing, or other professional services to, or had any affiliation with, Respondent during the two years prior to the date of the notice of acceptance of this AWC.
- c. Cooperate with the independent consultant in all respects, including providing the independent consultant with access to Respondent's files, books, records, and personnel, as reasonably requested for the above-mentioned review. Respondent shall require the independent consultant to report to FINRA on its activities as FINRA may request and shall place no restrictions on the independent consultant's communications with FINRA. Further, upon request, Respondent shall make available to FINRA any and all communications between the independent consultant and the Respondent and documents examined by the independent consultant in connection with this review.
- d. Refrain from terminating the relationship with the independent consultant without FINRA's written approval. Respondent shall not be in and shall not have an attorney-client relationship with the independent consultant and shall not seek to invoke the attorney-client privilege or other doctrine or privilege to prevent the independent consultant from transmitting any information, reports, or documents to FINRA;
- e. Require the independent consultant to submit an initial written report to Respondent and FINRA at the conclusion of the

independent consultant's review, which shall be no more than 210 days after the date of the notice of acceptance of this AWC. The initial report shall, at a minimum, (i) evaluate and address the adequacy of Respondent's systems and processes implemented and utilized to comply with the firm's CAT reporting obligations and the written supervisory procedures and controls related to CAT reporting obligations; (ii) provide a description of the review performed and the conclusions reached; and (iii) make recommendations as may be needed regarding how Respondent should modify or supplement its processes, controls, policies, systems, procedures, and training to manage its regulatory and other risks in relation to Instinet's CAT reporting obligations; and

- (i) Within 90 days after delivery of the initial report, Respondent shall adopt and implement the recommendations of the independent consultant or, if Respondent considers a recommendation to be, in whole or in part, unduly burdensome or impractical, propose an alternative procedure to the independent consultant designed to achieve the same objective. Respondent shall submit such proposed alternative procedures in writing simultaneously to the independent consultant and FINRA.
- (ii) Respondent shall require the independent consultant to (A) reasonably evaluate the alternative procedures and determine whether it will achieve the same objective as the independent consultant's original recommendation and (B) provide Respondent and FINRA with a written report reflecting its evaluation and determination within 30 days of submission of any Respondent's proposed alternative procedures. In the event the independent consultant and Respondent are unable to agree, Respondent must abide by the independent consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the independent consultant.
- (iii) Within 30 days after the issuance of the later of the independent consultant's initial report or any written report regarding proposed alternative procedures, Respondent shall provide the independent consultant and FINRA with a written implementation report, certified by an officer of Respondent, attesting to, containing documentation of, and setting forth the details of Respondent's implementation of the independent consultant's recommendations. The certification shall identify the undertakings, provide written

evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. FINRA may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

- f. Require the independent consultant to enter into a written agreement that, for the duration of the engagement and for a period of two years from the completion of the engagement, the independent consultant shall not enter into any other employment, consultant, attorney-client, auditing, or other professional relationship with Respondent, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the independent consultant is affiliated or of which it is a member, and any person engaged to assist the independent consultant in the performance of its duties pursuant to this AWC, shall not, without FINRA's prior written consent, enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Respondent or any of Respondent's present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
2. Upon written request showing good cause, FINRA may extend any of the procedural dates set forth above.
3. Respondent shall further retain the independent consultant to conduct a follow-up review and submit a final written report to the Respondent and to FINRA no later than one year from the date of the notice of acceptance of this AWC. In the final report, the independent consultant shall address Respondent's implementation of the systems, policies, procedures, and training, and shall make any further recommendations it deems necessary. Within 30 days of receipt of the independent consultant's final report, Respondent shall adopt and implement the recommendations contained in the final report, and inform FINRA in writing that it has done so.

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
- 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.

8/3/23

Date


Instinet, LLC
Respondent

Print Name: David Sieradzki

Title: General Counsel - Americas

Reviewed by:



Derek N. Lacarrubba, Esq.
Counsel for Respondent
Schulte Roth & Zabel LLP
919 Third Avenue
New York, NY 10022

Accepted by FINRA:

August 16, 2023

Date

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



Luis A. Prieto
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