CBOE EDGA EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036836007

TO: Cboe EDGA Exchange, Inc.
c/o Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Instinet, LLC, Respondent
Broker-Dealer
CRD No. 7897

Pursuant to Rule 8.3 of the Rules of Cboe EDGA Exchange, Inc. ("EDGA"), Instinet, LLC ("INCA" or the "Firm") 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, EDGA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

A. The Firm 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 EDGA, or to which EDGA 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 EDGA:

BACKGROUND

1. The Firm has been a broker-dealer registered with the Securities and Exchange Commission (the "Commission") since April 25, 1979, and registered with EDGA since May 14, 2010. Its registrations remain in effect. The Firm, among other things, provides market access and execution services to institutional market participants ("Market Access Clients") for a wide variety of products. In or about February 2007, INCA was acquired by Nomura Holdings, Inc., which shifted the majority of its global equities execution business to INCA in December 2012.

2. The Firm does not have a relevant disciplinary history.

SUMMARY

3. In Matter 20130376217, the Trading Analysis Section ("Trading Analysis") of FINRA's Department of Market Regulation ("Market Regulation") reviewed potential layering, spoofing, and wash trades by the Firm's Market Access Clients from July 17, 2013 through May 29, 2015, and the Firm's compliance with Rule

15c3-5 of the Securities Exchange Act of 1934 ("SEA") (the "Market Access Rule").[1]

4. In Matter No. 20150463452, the Market Manipulation Investigations Group of Market Regulation reviewed the Firm's layering and spoofing surveillances and exception reports in effect from April 2015 through April 2016, and the Firm's compliance with the Market Access Rule.

5. In Matter No. 20150463006, Market Analysis reviewed a Clearly Erroneous Execution ("CEE") petition filed on September 18, 2015; the Firm's pre-set credit and capital thresholds; the Firm's duplicative order controls; and the Firm's compliance with the Market Access Rule.

6. In Matter No. 20160509709, the Options Regulation Section reviewed messaging activity by the Firm on March 30 and 31, 2016, and the Firm's compliance with the Market Access Rule.

7. In Matter No. 20150482156, Trading Analysis reviewed the Firm's procedures, systems, and controls related to potential layering, pre-opening spoofing, intraday spoofing, and wash trades in place from January 1, 2015 through May 31, 2017, and the Firm's compliance with the Market Access Rule.

8. The above matters were part of investigations conducted by Market Regulation on behalf of the Exchange and other self-regulatory organizations, including The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; The NASDAQ Options Market LLC; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc. ("BZX"); Cboe BYX Exchange, Inc. ("BYX"); Cboe EDGX Exchange, Inc. ("EDGX"); Investors Exchange LLC; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Equities LLC; NYSE American Options LLC; BOX Options Exchange LLC; and FINRA (collectively, the "SROs"), to review the Firm's compliance with the Market Access Rule and the supervisory rules of the SROs, including EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2, during the period of August 2012 through at least November 2017 (the "Review Period").

9. As a result of Market Regulation's investigations, it was determined that, during the Review Period, INCA failed to establish, document, and maintain a system of risk management controls and supervisory procedures, including written supervisory procedures ("WSPs") and an adequate system of follow-up and review, reasonably designed to manage the financial, regulatory, and other risks of its market access business.

[1] The SEC adopted Rule 15c3-5 effective January 14, 2011. *See* 17 C.F.R. § 240.15c3-5, *Risk Management Controls for Brokers or Dealers with Market Access*, 75 Fed. Reg. 69792 (Nov. 15, 2010) (Final Rule Release).

10. Specifically, during the Review Period, the Firm:

a. failed to have adequate risk management controls and supervisory procedures reasonably designed to systematically limit its financial exposure and prevent the entry of orders that exceeded appropriate pre-set credit or capital thresholds in violation of SEA Rules 15c3-5(b) and (c)(1)(i), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2;

b. failed to have adequate risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous or duplicative orders and messaging resulting from malfunctioning software programs or trading systems in violation of SEA Rules 15c3-5(b) and (c)(1)(ii), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2;

c. failed to establish, maintain, and preserve an adequate written description of its risk management controls and supervisory procedures in violation of SEA Rule 15c3-5(b) and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2;

d. failed to ensure compliance with all regulatory requirements, including supervising client trading to detect and prevent potentially violative layering, spoofing, and wash trading in violation of SEA Rules 15c3-5(b), (c)(2), and (c)(2)(iii), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2; and

e. failed to establish, document, and maintain a reasonably designed system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by paragraphs (b) and (c) of SEA Rule 15c3-5, to assure the overall effectiveness of the Firm's risk management controls and supervisory procedures, in violation of SEA Rules 15c3-5(b) and (e)(1), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

FACTS AND VIOLATIVE CONDUCT

Applicable Rules

11. During the Review Period, SEA Rule 15c3-5(b) required broker-dealers that provide market access to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of their market access business.[2]

12. During the Review Period, SEA Rule 15c3-5(c)(1)(i) specifically required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of orders that exceed

[2] Rule 15c3-5 requires that, as gatekeepers to the financial markets, broker-dealers providing market access must "appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system." 75 Fed. Reg. at 69792.

appropriate pre-set credit or capital thresholds in the aggregate for each client and the broker-dealer.

13. During the Review Period, SEA Rule 15c3-5(c)(1)(ii) specifically required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.

14. During the Review Period, SEA Rule 15c3-5(c)(2) required market access broker-dealers to have regulatory risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements to, among other things, prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis and restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the market access broker-dealer.

15. During the Review Period, SEA Rule 15c3-5(c)(2)(iii) specifically required market access broker-dealers to have regulatory risk management controls and supervisory procedures reasonably designed to restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the broker or dealer.

16. During the Review Period, SEA Rule 15c3-5(e) required market access broker-dealers "to establish, document and maintain a system for regularly reviewing the effectiveness of its risk management controls . . . and for promptly addressing any issues."[3] This provision is intended to ensure that a broker-dealer "implements supervisory review mechanisms to support the effectiveness of its risk management controls and supervisory procedures on an ongoing basis."[4] Moreover, market access broker-dealers are required to adjust their controls and procedures "to help assure their continued effectiveness in light of any changes in the broker-dealer's business or weaknesses that have been revealed."[5]

17. SEA Rule 15c3-5 requires, among other things, that a broker-dealer with market access document its system of risk management controls and supervisory procedures that are designed to manage the financial, regulatory, and other risks of market access. The broker-dealer must preserve a copy of its supervisory procedures and "*a written description of its risk management controls*" as part of

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[3] 17 C.F.R. § 240.15c3-5(e).

[4] 75 Fed. Reg. at 69811.

[5] *Id.*

its books and records for the time period required by SEC Rule 17a-4(e)(7).[6] The required written description is intended, among other things, to assist Commission and SRO staff to assess the broker-dealer's compliance with the rule.[7]

18. During the Review Period, EDGA Rules 5.1, 5.2, and 5.3 required, among other things, that each member firm establish, maintain, and enforce written procedures to enable it to properly supervise the activities of associated persons to assure compliance with applicable securities laws and regulations, and EDGA Rules.

19. During the Review Period, EDGA Rule 3.1 provided that member firms, in the conduct of their business, shall observe high standards of commercial honor and just and equitable principles of trade.

20. During the Review Period, EDGA Rule 3.2 provided that no member firm shall engage in conduct in violation of the SEA, or the rules or regulations thereunder and that every member firm shall supervise persons associated with the Member as to assure compliance with those requirements.

Inadequate Supervision of Customer Trading

Access to Trading Systems

21. Pursuant to INCA's written "Know Your Customer" procedures, when opening a new account, the New Account Sales Supervisor is required to obtain certain account information, complete a New Account form and confirm, in writing, the names of persons authorized to trade the account. However, from January 2013 through December 2013, INCA failed to enforce this procedure.

22. Specifically, for the account of two of its Market Access Clients, INCA only pre-approved and authorized the principals of the client. INCA failed to pre-approve the individual traders utilizing INCA's MPID to access the market through the clients and, therefore, did not know the identity of the underlying trader.

23. In addition, because INCA did not know the identity of the underlying traders, it had no means of verifying its Market Access Client's representation that a particular trader had been truly terminated or whether a disabled trader had been given a new trader ID for the client to access U.S. markets via INCA's systems after the trader had been terminated.

24. Accordingly, the Firm failed to have risk management controls and supervisory procedures to restrict access to trading systems and technology that provide

[6] *See* 17 C.F.R. § 240.15c3-5(b) (emphasis added). Rule 17a-4(e)(7) requires a broker-dealer to maintain and preserve such description "until three years after the termination of the use of" the document. *See* 17 C.F.R. § 240.17a-4(e)(7).

[7] 75 Fed. Reg. at 69812.

market access to persons and accounts pre-approved and authorized by the broker-dealer.

25. The acts, practices, and conduct described above in paragraphs 21 through 24 constituted violations of SEA Rules 15c3-5(b) and (c)(2)(iii), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Wash Trading

26. During the Review Period, INCA had two systemic controls to detect potential wash trading by its customers: (i) a system operated by its parent company, Nomura Securities International; and (ii) its own proprietary alert system.

27. However, INCA was unable to determine if the noted exceptions were valid for the Market Access Clients noted above. Specifically, for those Market Access Clients, INCA did not know the identity of the underlying trader utilizing its MPID and, therefore, was unable to determine if the same trader was on both sides of a transaction or if one trader was using multiple trader IDs to engage in wash trading.

28. As a result, INCA relied on its Market Access Clients to determine if beneficial ownership had changed during the relevant trade and report the occurrence of wash trading. However, INCA took wholly inadequate steps to follow-up with the Market Access Clients to verify that beneficial ownership had changed when a wash trade exception was detected.

29. The acts, practices, and conduct described above in paragraphs 26 through 28 constituted violations of SEA Rules 15c3-5(b) and (c), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Equities Layering[8] and Spoofing[9]

30. During the Review Period, INCA employed a proprietary alert system to detect potential layering and spoofing by its Market Access Clients. For certain Market

[8] "Layering" is a form of market manipulation that typically includes placement of multiple limit orders on one side of the market at various price levels that are intended to create the appearance of a change in the levels of supply and demand. In some instances, layering involves placing multiple limit orders at the same or varying prices across multiple exchanges or other trading venues. An order is then executed on the opposite side of the market and most, if not all, of the multiple limit orders are immediately cancelled. The purpose of the multiple limit orders that are subsequently cancelled is to induce, or trick, other market participants to enter orders due to the appearance of interest created by the orders such that the trader is able to receive a more favorable execution on the opposite side of the market.

[9] "Spoofing" is a manipulative trading tactic designed to induce other market participants into executing trades. Spoofing is a form of market manipulation that generally involves, but is not limited to, the market manipulator placing an order or orders with the intention of cancelling the order or orders once they have triggered some type of market movement and/or response from other market participants, from which the market manipulator might benefit by trading on the opposite side of the market.

Access Clients that previously had accounts with Nomura, INCA also relied upon a third-party surveillance operated by Nomura.

31. However, INCA's proprietary alert system improperly excluded potential instances of layering or spoofing where a market participant enters and cancels a series of orders that improve the National Best Bid ("NBB") or National Best Offer ("NBO"), ignoring a significant number of non-bona fide orders entered as part of a potential layering or spoofing strategy.

32. For exceptions detected by INCA's proprietary alert system, INCA's Compliance Department reviewed a sample and, where it was determined to be necessary, forwarded the exception to the relevant business side supervisor for follow-up with the client.

33. However, there were several deficiencies with INCA's follow-up and review of exceptions flagged by its proprietary surveillance systems. INCA's WSPs failed to describe the steps to be taken in addressing an exception. Specifically, INCA's WSPs: (i) did not describe the business side supervisor's role in the review of layering exceptions; (ii) failed to document the steps requiring the suspicious alerts to be sent to the business supervisor or describe the business supervisor's responsibility when receiving the client's response; (iii) failed to provide guidance in conducting sampling; (iv) failed to outline that the business side supervisor will investigate the alerts beyond any initial determinations by Compliance; and (v) failed to state where documentation of any such review will be maintained.

34. There were no WSPs to address exceptions detected by Nomura's third-party surveillance system. In the absence of any written guidance, INCA personnel engaged in an undocumented process whereby Nomura's Compliance Department would forward layering exception reports to the Firm's Compliance Department and the relevant business-side desk supervisor to follow-up with the relevant Market Access Client. The business-side desk supervisor would review any explanation or information provided by the relevant Market Access Client with Compliance and take any further necessary action. The business-side desk supervisor and the Firm's Compliance Department failed to take adequate action to review the explanations provided by the relevant Market Access Client.

35. As a result, six Market Access Clients were allowed to engage in potential layering and spoofing unabated despite regularly appearing on INCA's and Nomura's exception reports.

36. For example, from April 2013 through December 2013,[10] a Market Access Client of INCA generated approximately 694 layering and spoofing exceptions on Nomura's third-party surveillance.

[10] INCA terminated the account on December 31, 2013.

37. Likewise, from January 2013 to on or about October 22, 2013,[11] another Market Access Client generated approximately 6,288 layering and spoofing alerts on INCA's proprietary surveillance system. During this time period, all INCA clients, in total, generated approximately 10,107 layering and spoofing alerts. Thus, the Market Access Client was responsible for approximately 60% of all INCA's layering and spoofing alerts.

38. The acts, practices, and conduct described above in paragraphs 30 through 37 constituted violations of SEA Rules 15c3-5(b) and (c)(2), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Spoofing the Open by INCA's Market Access Clients

39. During the Review Period, INCA had procedures and controls to detect potential instances of spoofing prior to the open. Beginning in January 2014, INCA had an exception report that identified any instance in which a customer placed an order and cancelled the order prior to 9:30 a.m., where the cancellation quantity exceeded 5% of the security's 30-day average daily volume ("ADV").

40. However, in certain instances when an exception was triggered, INCA failed to conduct an adequate follow up and review.

41. For example, from April 7, 2015 through June 29, 2016, a Market Access Client of INCA generated approximately 279 pre-opening spoofing exceptions. Despite the number of exceptions, INCA failed to take adequate steps to address this Market Access Client's pre-opening activity.

42. The acts, practices, and conduct described above in paragraphs 39 through 41 constituted violations of SEA Rules 15c3-5(b) and (c)(2), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Inadequate Credit Thresholds

43. During the Review Period, INCA established the following credit limit thresholds tier system for its clients.[12]

Tier	Credit Limit
A	$25,000,000,000
B	$5,000,000,000
C	$1,250,000,000
D	$500,000,000
E	$250,000,000

[11] INCA terminated the account on October 22, 2013.

[12] Tier E was added during the Review Period.

F	$75,000,000

44. In assigning appropriate credit thresholds, broker-dealers providing market access must conduct appropriate due diligence as to the Market Access Client's business, financial condition, trading patterns, and other matters, and document that decision.

45. In assigning existing clients to a credit tier, INCA's procedures required it to analyze each client's historical trading data beginning from the time when the client was on-boarded by INCA or an affiliate. The data used encompassed: (1) the number of years the client has been a Firm client; (2) the amount of capital or assets under management; (3) whether the client has traded at the upper-end of credit limits; (4) the average notional value traded by the client; (5) the type of trading/trading strategy used by the client; (6) products traded by the client; and (7) the settlement profile of the client.

46. The tiers established by the Firm, however, are unreasonable in that they are too large and have significant gaps between certain tiers.

47. Moreover, INCA failed to document and retain all of the information it relied upon when making credit limit determinations for its Market Access Clients. As a result, it was unable to evidence that the due diligence required by its procedures was conducted when it assigned the credit limits to its Market Access Clients.

48. As a result, the Firm could not confirm whether the client's business, financial condition, and trading patterns warranted the initial credit limit assigned to its Market Access Clients or any subsequent increases to such credit limit.

49. The acts, practices, and conduct described above in paragraphs 44 through 49 constituted violations of SEA Rules 15c3-5(b) and (c)(1)(i), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Inadequate Pre-Trade Controls for Erroneous Orders

50. Despite the various pre-trade controls and filters designed to prevent the entry of erroneous orders that the Firm had in place during the Review Period, as described below, the Firm failed to implement reasonable pre-trade risk management controls as applied to orders submitted by certain Market Access Clients. Further, the Firm failed to establish and implement reasonable supervisory procedures designed to prevent the entry of erroneous orders during the Review Period, as set forth below.

51. Because INCA's pre-trade controls were unreasonable, as applied to certain Market Access Clients, it failed to prevent the transmission of 64 erroneous equity orders to the SROs and to the Exchange, resulting in the filing of 11 CEE petitions.

52. INCA's pre-trade controls were unreasonable as applied to certain Market Access Clients as set forth below.

53. INCA has four independent controls to prevent the entry of erroneous or duplicative orders: (i) a single order quantity ("SOQ") control with a default 4,000,000 share maximum; (ii) a single order notional value ("SOV") control with a default $30,000,000 maximum; (iii) a duplicative order control with a default limit of 1,000 duplicative orders over the course of the trading day;[13] and (iv) a price deviation check.

54. INCA's price deviation check was as follows: (i) 75% for securities priced up to $1.99; (ii) 30% for securities priced between $2.00 and $4.99; (iii) 10% for securities priced at $5.00 and higher;[14] and (iv) 5% or more away from first execution on smart routed orders.

55. INCA's price deviation controls were too high to be effective for certain securities.

56. The SOQ and SOV control limits are customizable for each client. New clients, however, are initially set at the default parameters, with changes for pre-existing clients based on the given client's "historical trading profile." During the Review Period, 28% of INCA's clients had customized SOV control parameters of which 16% are set above the default, with parameters between $35 million and $700 million. In addition, approximately 3% of its clients had customized SOQ control parameters during the Review Period. Of these, 2.21% had an SOQ setting of less than the 4 million share default, and 1.11% had a setting of between 5 and 15 million shares.

57. INCA's SOQ and SOV controls were unreasonable in that the parameters were overbroad and did not consider the individual trading characteristics of the relevant security, as they employ a fixed parameter (*i.e.*, share quantity and hard dollar value) across all securities. In addition, the SOQ and SOV default parameters assigned by INCA were set too high to be effective.

58. For example, on September 18, 2015 at 09:37:37, an INCA Market Access Client submitted an order to sell 100 shares of ABC[15] on EDGA at $47.02, which was 21.09% higher than the prior closing price of $38.83. The order became the best bid and received an immediate execution. As a result of this execution:

    a. ABC experienced executions in prices ranging between $43.13 and $44.44 on another exchange from 09:37:40 to 09:37:46;

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[13] Duplicative checks are against each order's symbol, side, size, and price.

[14] According to INCA, these price deviations are compared to the security's last sale at the time of order receipt.

[15] A generic modifier has been used in place of the name of this security.

b. ABC went into a Limit Up Limit Down pause from 09:38:05 to 09:43:37;

c. ABC received an opening print of $39.00 on a third exchange; and

d. All trades in ABC executed at or above $40.05 from 09:37:00 through 09:38:00 were cancelled by EDGA and four other exchanges.

59. The erroneous order would not have been prevented by INCA's default SOQ or SOV, which, as noted above were unreasonable. The erroneous order should have been prevented by INCA's price deviation control, as it was more than 10% away from the prior trading day's close. However, INCA's price deviation control was not functioning properly as a result of coding change to INCA's order management system that, upon discovery of the erroneous order, was corrected.

60. The acts, practices, and conduct described above in paragraphs 50 through 59 constituted violations of SEA Rules 15c3-5(b) and (c)(1)(ii), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Inadequate Pre-Trade Controls for Erroneous Messaging Activity

61. On March 30 and 31, 2016, INCA sent a total of 53,381 order messages to EDGA, BZX, BYX, and EDGX in 19 different one-second periods. Its quoting activity accounted for an average of 99.50% of all order messages sent by all members of these four exchanges during the one-second windows noted and, on average, 28.77% of the total order messages it submitted for the entire day in the subject symbols. Nevertheless, INCA only executed four trades.

62. For example, in 5 instances on March 31, 2016, INCA entered 100 share offers priced equal to the NBO on BYX, EDGA, and EDGX that were designated as post only. The orders were immediately deleted by INCA within the same millisecond, immediately reentered for the same number of shares, canceled, and reentered for the same number of shares in a looping pattern. In each instance, INCA sent more than 1,000 messages per second, without an execution.

63. The messaging described above was the result of a programming error by its Market Access Client's third-party vendor algorithm.

64. During the Review Period, INCA failed to have reasonably designed risk management controls, including message rate controls, to detect or prevent, among other things, high levels of erroneous message traffic on the SROs that resulted from malfunctioning algorithms, software programs or trading systems used by its Market Access Clients.

65. In addition, INCA's control pertaining to duplicative orders was too narrow in that it required such orders to be entered consecutively with the same details.

66. As a result, the message activity on March 30-31, 2016, was not rejected.

67. The acts, practices, and conduct described above in paragraphs 61 through 66 constituted violations of SEA Rules 15c3-5(b) and (c)(1)(ii), and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Inadequate Periodic Reviews of the Firm's Risk Management Controls

68. During the Review Period, INCA conducted an annual review of its risk management controls in which it compared each independent financial risk management control (*Aggregate Credit, SOV, SOQ, Price Validation,* and *Duplicative Orders*) against historical trade data to determine whether established parameters for its risk management controls were appropriate.

69. In conducting its annual review, INCA failed to adequately assess the overall effectiveness of its risk management controls and supervisory procedures required by SEA Rule 15c3-5.

Aggregate Credit

70. INCA analyzed pre-set credit limit thresholds by first determining how many clients had year to date "*max notional values*" (or "Largest NV order") higher than the default credit limit ($75,000,000), and then measured how many clients had come within a given percentage of hitting the default. In doing so, INCA utilized a client's largest volume trade date in the prior year to determine whether assigned pre-set credit limits are appropriate, which could substantially overestimate a client's ordinary trading activity and render INCA's review of the appropriateness of its aggregate credit limits moot.

71. In addition, INCA only reviews client credit limits for those clients set above the Tier F default ($75,000,000). However, approximately 80% of INCA's clients have credit limits set at or below the Tier F default level. Thus, INCA only reviews the appropriateness of 20% of its clients' credit limits annually.

SOV

72. INCA did not review its clients' custom SOV parameter, despite the fact that 28% of INCA's clients had a custom SOV parameter.

73. In addition, INCA looked at the top 5,000 orders in terms of notional value from the previous calendar year, which limited its analysis, as only 187 of its clients (approximately 12%) were responsible for the 5,000 largest orders and trade in higher notional values than other clients. Analyzing its default SOV parameter against trading for a small percentage of clients is an inadequate measure as these clients trade in higher notional values than the majority of Firm clients.

74. Finally, in its 2014 review of 2013 trading activity, only 474 of the 5,000 orders reviewed (9.48%) belonged to clients whose SOV parameters were set to the default parameter, with only one order falling within 75% of the default. The review was inadequate to support INCA's default SOV parameter. Specifically, only a small percentage of large orders are being used to determine the adequacy of this default limit. Moreover, less than .22% of these orders[16] came within 75% of the default limit, demonstrating that the default parameters were too high.

SOQ

75. Approximately 96.68% of clients are set to the default SOQ parameter of 4,000,000 shares. In its 2014 review of 2013 trade data related to the adequacy of its SOQ parameter, INCA determined that the top 5,000 orders in terms of size had an average size of 169,400 shares and belonged to clients with the default parameter. INCA's review further disclosed that no orders came within 75% of the default parameter and only one order within 50% of the default.

76. The fact that only one of 5,000 orders came within 50% of the SOQ default parameter of 4,000,000 shares demonstrates that the parameter is too high to be effective. Nevertheless, INCA did not lower such parameter.

Price Validation and Duplicative Orders

77. For its 2014 review of price validation and duplicative orders, INCA only analyzed the number of price rejects within a set one-year period, as well as the number of duplicative orders within a nine-month period to determine whether these controls corresponding parameters were appropriate.

78. This review was unreasonable. Limiting the analysis to the number of rejects attributed to each control parameter does not support the overall reasonableness of such parameters. In conducting its review, INCA should have included additional data points, such as limit prices of orders received away from the market.

79. The acts, practices, and conduct described above in paragraphs 68 through 78 constituted violations of SEA Rule 15c3-5(e) and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

Failure to Maintain a Complete Record of its Risk Management Controls and Supervisory Procedures

80. Broker-dealers must maintain a complete record of its risk management controls and supervisory procedures to assist the Commission and SRO staff during examinations for SEA Rule 15c3-5 compliance.

[16] One of 474 orders belonging to clients set at the default $40,000,000 SOV (calculated as 1/474 = 0.002109 or 0.21%).

81. During the Review Period, INCA failed to maintain a complete record of its risk management controls and supervisory procedures. For example, INCA's erroneous and duplicative order controls solely reflect the default parameters and omit the fact that the control parameters are customizable. As a result, Market Regulation had to piece together INCA's supervisory procedures and risk management controls, unnecessarily complicating and delaying its review.

82. The acts, practices, and conduct described above in paragraph 81 constituted violations of SEA Rule 15c3-5(b) and EDGA Rules 5.1, 5.2, 5.3, 3.1, and 3.2.

B. The Firm also consents to the imposition of the following sanctions:

1. A censure;

2. A fine in the amount of $1,575,000 of which $124,300 is payable to the EDGA;[17] and

3. An undertaking requiring the Firm to address the Market Access Rule deficiencies described in this AWC and to ensure that it has implemented controls and procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein.

   a. Within 90 days of the date of the issuance of this AWC, INCA shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a written report, certified by a senior management Firm executive, to MarketRegulationComp@finra.org that provides the following information:

      (i) a reference to this matter;

      (ii) a representation that the Firm has addressed the deficiencies described above; and

      (iii) the date this was completed.

   b. Between 90 and 120 days after the submission of the written report, the Firm shall submit a supplemental written report to FINRA to provide an update on the effectiveness of the enhancements and changes made by the Firm to its risk management controls and procedures as describe above.

   c. The Department of Enforcement may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.

[17] The balance of the sanction will be paid to the self-regulatory organizations listed in Paragraph B.4.

4. Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; The NASDAQ Options Market LLC; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGX Exchange, Inc.; Investors Exchange LLC; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Equities LLC; NYSE American Options LLC; BOX Options Exchange LLC; and FINRA.

The Firm 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.

The Firm 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 EDGA.

II.

WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under EDGA Rules:

A. To have a Statement of Charges issued specifying the allegations against the Firm;

B. To be notified of the Statement of Charges 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 Appeals Committee of EDGA's Board of Directors and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Firm specifically and voluntarily waives any right to claim bias or prejudgment of the Chief Regulatory Officer ("CRO"), in connection with the CRO'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.

The Firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of EDGA Rule 8.16, 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

The Firm 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 CRO, pursuant to EDGA Rule 8.3;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; 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 EDGA or any other regulator against the Firm;

2. This AWC will be published on a website maintained by EDGA in accordance with EDGA Rule 8.18. In addition, this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record; and

3. The Firm 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. The Firm may not take any position in any proceeding brought by or on behalf of EDGA, or to which EDGA 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 EDGA is not a party.

D. The Firm 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 EDGA, nor does it reflect the views of EDGA 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.

2/1/18
Date

Respondent
Instinet, LLC

By: [signature]

Name: Faron Webb

Title: General Counsel

Reviewed by:

[signature]

David S. Sieradzki, Esq.
Schulte Roth & Zabel LLP
1152 Fifteenth Street, NW Suite 850
Washington, DC 20005

3/2/2018
Date

[signature]

Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe EDGA Exchange, Inc.

ELECTION OF PAYMENT FORM

The Firm intends to pay the fine proposed in the attached Letter of Acceptance, Waiver and Consent by the following method (check one):

☐ A Firm check or bank check for the full amount

☒ Wire transfer

Respectfully submitted,

Respondent

Instinet, LLC

2/1/16
Date

By: Faron Webb
Name: Faron Webb
Title: General Counsel

STAR No. 20130368360 (incl. merged STAR Nos. 20130376217, 20130382620, 20130384257, 20130386900, 20130395417, 20140399233, 20140402026, 20140416803, 20140422166, 20140430948, 20140435161, 20140436283, 20150451541, 20150463006, 20150463452, 20150481875, 20150482156, 20160502382, 20160504175, 20160509709, 20160514500, 20160521544, 20160525489, 20160526107, 20170543142, 20170545607, 20170551643, 20170554299, 20170555223, 20170561010, 20160485810, and 20160512438) (MWB)