

BATS EDGX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130376517-04

TO: Bats EDGX Exchange, Inc.
c/o Department of Market Regulation
Financial Industry Regulatory Authority ("FINRA")

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

Pursuant to Rule 8.3 of the Rules of Bats EDGX Exchange, Inc. ("EDGX"), Instinet, LLC (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, EDGX 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 EDGX, or to which EDGX 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 EDGX:

BACKGROUND

The firm has been a member of EDGX since May 14, 2010 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, including EDGX, 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, of which Review/STAR Number 20140437882 thereunder is relevant to this action.¹

¹ The above self-regulatory organizations for which the reviews were undertaken, included, in addition to EDGX and FINRA, Bats BZX Exchange, Inc. ("BZX"), Bats BYX Exchange, Inc. ("BYX"), Bats EDGA Exchange, Inc. ("EDGA"), New York Stock Exchange LLC ("NYSE") and NYSE Arca, Inc. ("NYSE Arca") (collectively, the

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 EDGX, EDGA, FINRA, NYSE Arca and the NYSE.

As further detailed below, the firm violated Rule 611(c) of Regulation NMS and EDGX Rules 11.5(d)(1), 5.1 and 3.1.

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 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, including to EDGX, 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.
3. 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 3Q2014 Review Period. The conduct described in this paragraph constitutes violations of Rule 611(c) of Regulation NMS and EDGX Rules 11.5(d)(1) and 3.1.
4. During the 3Q2014 Review Period, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 611(c) of Regulation NMS. 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

"SROs"). Related disciplinary actions on behalf of each of the above SROs in addition to EDGX concurrently are being taken against the firm in conjunction with this matter.

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 EDGX Rules 5.1 and 3.1.

- B. The firm 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 \$16,500 shall be paid to EDGX in connection with Review No. 20140437882; and,
 3. an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraph I.A.4 above. Within 30 business days of notice of acceptance of this AWC by the Chief Regulatory Officer ("CRO") of EDGX, 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, 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.4; and, (3) the date the revised procedures were implemented. Upon written request showing good cause, FINRA staff, on behalf of EDGX, may extend any of the procedural dates set forth herein.

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 EDGX.

II.

WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under EDGX 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 EDGX'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 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 EDGX 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 EDGX 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 EDGX or any other regulator against the firm;
 - 2. this AWC will be published on a website maintained by EDGX in accordance with EDGX 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 EDGX, or to which EDGX 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 EDGX 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 EDGX, nor does it reflect the views of EDGX 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

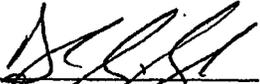
Respondent
Instinet, LLC

By: Faron Webb/KAC

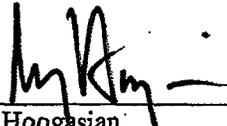
Name: FARON Webb

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

6/21/2017
Date


Greg Hoogsian
Senior Vice President
& Chief Regulatory Officer
Bats EDGX 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

5/19/17
Date

By: Faron Webb
Name: Faron Webb
Title: Executive Managing Director