

BATS BZX EXCHANGE, INC.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20130376517-01

TO: Bats BZX 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 BZX Exchange, Inc. ("BZX"), 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, BZX 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 BZX, or to which BZX 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 BZX:

BACKGROUND

The firm has been a member of BZX since August 18, 2008 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 BZX, 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 20150446981 thereunder is relevant to this action.¹

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

Review No. 20150446981 resulted from certain regulatory trading alerts associated with the firm's handling of ISOs subject to disciplinary action by BZX, BYX, FINRA and NYSE Arca that the firm generally attributed to certain systems issues during the period of September 17, 2012 through March 17, 2013. The following resulting BZX action concerns a subset of the above ISO activity identified as having been entered on BZX since October 1, 2012 through the remaining duration of the systems issue until March 17, 2013 (the "Bats Review Period").

As further described below, the firm violated Rule 611(c) of Regulation NMS and BZX Rules 11.9(d)(1), 5.1 and 3.1 during the Bats Review Period.

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 period of September 17, 2012 through March 17, 2013, two systems issues associated with the firm's transition to using a NYSE data feed caused the firm not to capture protected quotations, as defined by Rule 600 of Regulation NMS, for certain NYSE-listed symbols, for purposes of complying with Rule 600(b)(30). As a consequence, in some instances, the firm failed to simultaneously send ISOs to execute against the full displayed size of certain protected quotations of a subset of NYSE-listed symbols during that time when routing ISOs to other markets, including BZX, which led to certain trade throughs of such protected quotations and resulting disciplinary matters in this matter by BZX, BYX, FINRA and NYSE Arca. Bats technology retrieval identified more than 2,300 instances of potential trade throughs arising from ISOs the firm entered onto BZX systems from Oct. 1, 2012 to March 2, 2013 that the firm generally attributed to the above systems issues.
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 Bats Review Period. The conduct described in this paragraph constitutes violations of Rule 611(c) of Regulation NMS and BZX Rules 11.9(d)(1) and 3.1.

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

4. In addition, the firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to Rule 611(c) of Regulation NMS during the Bats Review Period. 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 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 BZX 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 \$20,625 shall be paid to BZX in connection with Review No. 20150446981; 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 BZX, 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 BZX, 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 BZX.

II.

WAIVER OF PROCEDURAL RIGHTS

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

Instinet, LLC
Respondent

By: Faron Webb
Name: Faron Webb

Title: Executive Managing Director

Reviewed by:

[Signature]
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

[Signature]
Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Bats BZX 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; or
- Wire transfer.

Respectfully submitted,

5/19/17

Date

Respondent

Instinet, LLC

By: Faron Webb

Name: Faron Webb

Title: Executive Managing Director