

Cboe BZX Exchange, Inc.
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
STAR NO. 20160499339-02

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

RE: Instinet, LLC; Respondent
CRD # 7897

Pursuant to Rule 8.3 of the Rules of Cboe BZX Exchange, Inc. ("BZX" or the "Exchange"), Instinet, LLC (the "Firm" or "Instinet") 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

During all relevant time periods described herein, the Firm was acting as a registered Broker-Dealer and became approved as a member of BZX on or about 8/18/2008. The Firm's registrations remain in effect.

RELEVANT PRIOR DISCIPLINARY HISTORY

Instinet does not have any prior disciplinary history specifically relating to incorrect origin code usage and/or improper origin code marking concerning the Professional Customer origin code. The Firm does, however, have three prior disciplinary matters that involved capacity code marking and execution.

Specifically, in August 2007, the Firm was fined \$5,000 for failing to report to the trade reporting facility the correct symbol indicating whether the Firm executed transactions in reportable securities in a principal or agency capacity. The Firm was found to have violated NASD Rule 6130(D). (Star No. 20060068243-01).

In March 2013, Instinet was censured and fined \$7,500 for failing to identify the correct capacity code on transactions that were reported to the FINRA/NASDAQ trade reporting facility (FNTRF). The Firm also failed to identify the correct contra party on numerous transactions

reported to the FNTRF and failed to identify the correct buy/sell code on transactions reported to the FNTRF. The Firm was found to have violated FINRA Rule 7230A and NASD Rule 6130. (Star No. 2011026220301).

Finally, in April 2016, Instinet was censured and fined \$115,000 for alleged violations of FINRA and SEC Rules resulting from inaccurate capacity disclosures for certain trades related to errors (representing less than 0.1% of the Firm's ATS volume) and corresponding supervisory violations. (Star No. 2013038371401).

SUMMARY

1. In this matter, FINRA Options Regulation staff ("Staff") received a referral from FINRA's Trading and Financial Compliance Examinations group (TFCE) based on its 2015 Cycle Exam regarding Instinet's potential mismarking of Professional Customer orders with a Customer origin code on BZX and other exchanges.
2. Staff determined that the Firm failed to properly mark orders as Professional Customer for three client accounts, resulting in the mismarking and execution of approximately 6,836 orders for approximately 169,397 contracts as Customer instead of Professional Customer. Approximately 402 of these orders for approximately 7,731 contracts were mismarked and executed on BZX during the time period of on or about January 1, 2015 through on or about May 3, 2016 ("Review Period").
3. During the Review Period, Instinet failed to institute, maintain, and enforce adequate written supervisory procedures as they relate to order origin codes, including the Professional Customer requirements, so as to detect and prevent violations of BZX Rules and of the Securities Exchange Act of 1934, as amended ("the Exchange Act").

VIOLATIVE CONDUCT

Applicable Rules

4. During the Review Period, BZX Rules 5.1 and 5.2 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 ensure compliance with applicable securities laws and regulations, Exchange Act Rules, and BZX Rules.
5. During the Review Period, BZX 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.
6. During the Review Period, BZX Rule 3.2 provided that no member firm shall engage in violation of the Exchange Act, the rules or regulations thereunder, the By-Laws, Exchange Rules or any policy or written interpretation of the By-Laws or Exchange Rules by the Board or an appropriate Exchange committee and shall so supervise persons associated with the member firm to assure compliance with those requirements.
7. During the Review Period, BZX Rules 20.7(b)(17) and 24.1(a); and Section 17(a)(1) of

the Exchange Act and Rule 17a-3 thereunder required, among other things, the maintenance of accurate order records and an accurate audit trail.

8. During the Review Period, BZX Rule 18.2(a)(6) required that member firms ensure accurate information is input into Trading Systems, including, but not limited to, the member firm's capacity.
9. During the Review Period, BZX Rule 18.1 provided that no member firm shall engage in violation of the Exchange Act, the Rules thereunder, the Exchange Rules or the Rules of the Clearing Corporation insofar as they relate to the reporting or clearance of any Exchange transaction, or any written interpretation thereof and shall supervise persons associated with the member firm to assure compliance therewith.

Improper Marking and Execution of Orders as Professional Customer

10. The term "Professional Customer" means a person or entity that (1) is not a broker or dealer in securities, but (2) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). To comply with exchange requirements, exchange members are required to review their customers' activity on at least a quarterly basis to determine whether orders that are not for the account of a broker or dealer should be represented as Professional Customer orders. Orders for any customer that had an average of more than 390 orders per day during any month of a calendar quarter must be represented as Professional Customer orders for the next calendar quarter. Members are required to conduct a quarterly review and make any appropriate changes to the way in which they are representing orders within five days after the end of each calendar quarter.
11. A Terminal ID ("Terminal") is a unique identifier at the Firm, which is assigned to a particular client. A client may be assigned more than one Terminal for a variety of reasons, such as the client wanting to delineate a particular business line or trading desk with its own unique identifier. Each of the three Instinet client accounts at issue had multiple Terminals associated with the accounts.
12. During the Review Period, for the first of its client accounts ("Account 1"), the Firm failed to recode all of Account 1's Terminals as a Professional Customer, resulting in the mismarking and execution of orders as Customer and inaccurate order records.
13. During the Review Period, for the second of its client accounts ("Account 2"), due to an administrative error, the Firm failed to recode all of Account 2's Terminals as a Professional Customer, resulting in the mismarking and execution of orders as Customer and inaccurate order records.
14. During the Review Period, for the third of its client accounts ("Account 3"), after the onboarding stage, the Firm marked Account 3's Terminal as a Customer, resulting in the improper marking and execution of orders as Customer instead of Professional Customer and inaccurate order records.
15. During the Review Period, Instinet mismarked and executed approximately 402 orders

totaling approximately 7,731 contracts as a Customer on BZX when the orders should have been marked and executed as a Professional Customer on BZX.

16. The acts, practices, and conduct described above in Paragraphs 12 through 15 constitute violations of BZX Rules 3.1, 18.1, 18.2(a)(6), 20.7(b)(17) and 24.1(a) and Section 17(a)(1) of the Exchange Act and Rule 17a-3 thereunder.

Inadequate Supervisory Procedures

17. The Firm provided the Staff with its Written Supervisory Procedures (“WSPs”) related to Professional Customers as well as updates to those WSPs dated May 2016 and March 2017. The WSPs defined when an account should be marked as a Professional Customer and that the Firm must complete its quarterly reviews at the beginning of the following calendar quarter.
18. While the Firm had WSPs in place during the Review Period, Instinet failed to implement, maintain and enforce a written procedure and/or process for recoding accounts and accounting for all relevant Terminals associated with a particular account.
19. The acts, practices, and conduct described above in Paragraph 18 constitute violations of BZX Rules 3.1, 3.2, 5.1 and 5.2.

OTHER FACTORS

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

1. A censure; and
2. A fine in the amount of \$125,000, of which \$5,700 shall be paid to BZX.¹

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;

¹ The remainder of the fine total shall be paid to the Cboe Exchange, Inc., where the majority of the violative option contracts were executed.

- 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 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 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.

1/8/18
Date

Instinet, LLC
Respondent

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

Reviewed by:
[Signature]
David Sieradzki
Schulte Roth & Zabel
1152 Fifteenth Street, NW, Suite 850
Washington, DC 20005
202-729-7473

1/24/2018
Date

[Signature]
Greg Hoogasian
Senior Vice President & Chief Regulatory Officer
Cboe 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,

1/8/18

Date

Instinet, LLC

By: Faron Webb

Name: Faron Webb

Title: General Counsel