



**DISCIPLINARY DECISION**  
**Cboe BZX Exchange, Inc.**  
**File No. USRI-8156-03**  
**Star No. 20180598392<sup>1</sup>**  
**Instinet, LLC**

Pursuant to Exchange Rule 8.3, attached to and incorporated as part of this Decision is a Letter of Consent.

**Applicable Rules**

- Cboe BZX Exchange, Inc. Rules 5.1 – Written Procedures, 18.1 – Adherence to Law, 18.2 – Conduct and Compliance with the Rules, 20.7 – Audit Trail, and 24.1 – Maintenance, Retention and Furnishing of Books, Records and Other Information.
- Section 17 of the Exchange Act and Exchange Act Rule 17a-3 – Records to be Made by Certain Exchange Members, Brokers, and Dealers thereunder.

**Sanction**

- A censure, and
- Monetary fine in the amount of \$22,500<sup>2</sup>.

**Effective Date**

October 15, 2021

/s/ Greg Hoogasian

Greg Hoogasian, CRO, SVP

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<sup>1</sup> Star No. 20180598392 includes merged matter 20200672012.

<sup>2</sup> This settlement relates to another settlement the Firm reached with EDGX.

**Cboe BZX Exchange, Inc.**  
**LETTER OF CONSENT**  
**STAR No. 20180598392<sup>1</sup> / File No. USRI-8156-03**

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In the Matter of:

Instinet, LLC  
Worldwide Plaza  
309 West 49<sup>th</sup> Street  
New York, NY 10019

Subject

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Pursuant to the provisions of Cboe BZX Exchange, Inc. (“BZX” or the “Exchange”) Rule 8.3 — Expedited Proceeding, Instinet, LLC (“Instinet” or the “Firm”) submits this Letter of Consent for the purpose of proposing a settlement of the alleged rule violations described below.

The Firm neither admits nor denies that violations of Exchange Rules or the Securities Exchange Act of 1934, as amended (“Exchange Act”) rules have been committed, and the stipulation of facts and findings described herein do not constitute such an admission.

**BACKGROUND**

1. During all relevant periods herein, Instinet was acting as a registered Broker-Dealer and was an Exchange Member registered to conduct a floor brokerage business on the Exchange. The Firm’s registrations remain in effect.
2. This matter originated from a referral from BZX and Cboe EDGX Exchange, Inc. to FINRA’s Department of Market Regulation regarding potential mismarking of origin codes by Instinet.

**VIOLATIVE CONDUCT**

**Applicable Rules**

3. During all relevant periods herein, the following laws and rules were in full force and effect: Section 17 of the Exchange Act and Exchange Act Rule 17a-3 — Records to Be Made by Certain Exchange Members, Brokers and Dealers thereunder, and BZX Rules 5.1 — Written Procedures, 18.1 — Adherence to Law, 18.2 — Conduct and Compliance with the Rules, 20.7 — Audit Trail, and 24.1 — Maintenance, Retention and Furnishing of Books, Records and Other Information.

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<sup>1</sup> STAR No. 20180598392 includes merged matter 20200672012.

4. During all relevant periods herein, Section 17(a)(1) of the Exchange Act provided that every member of an exchange shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Securities and Exchange Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.
5. During all relevant periods herein, Rule 17a-3(a)(6) of the Exchange Act provided that each member shall make and keep a memorandum of each brokerage order, whether executed or unexecuted, that is given or received for the purchase or sale of a security, including any other instruction.
6. During all relevant periods herein, BZX Rule 5.1 provided that each Member shall establish, maintain, and enforce written procedures which will enable it to supervise properly the activities of associated persons of the Member and to assure their compliance with applicable securities laws, rules, regulations, and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with BZX rules.
7. During all relevant periods herein, BZX Rule 18.1 provided that no Options Member shall engage in conduct in violation of the Exchange Act or Rules thereunder, BZX Rules or the Rules of the Options Clearing Corporation (“OCC”) insofar as they relate to the reporting or clearance of any BZX transaction, or any written interpretation thereof, and that every Options Member shall supervise persons associated with the member to assure compliance therewith.
8. During all relevant periods herein, BZX Rule 18.2(a)(6) provided, among other things, that in accordance with the rules and in connection with business conducted on BZX, each Options Member shall ensure that accurate information is input into the automated trading system used by BZX for the trading of options contracts, including, but not limited to, the Options Member’s capacity.
9. During all relevant periods herein, BZX Rule 20.7(a) provided that when entering orders on BZX, each Options Member shall submit order information in such form as may be prescribed by the Exchange in order to allow BZX to properly prioritize and match orders and report resulting transactions to the OCC. BZX Rule 20.7(b) provided that each options order must contain, among other things, the User Capacity (origin code)<sup>2</sup>.
10. During all relevant periods herein, BZX Rule 24.1(a) provided that each Options Member shall make, keep current and preserve such books and records as the Exchange may prescribe pursuant to Exchange Rules and as may be prescribed by the Exchange Act and the rules and regulations thereunder.

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<sup>2</sup> On September 3, 2019, BZX Rule 20.7(b)(6) was modified from “Options Member’s capacity” to “User Capacity”. BZX Rule 16.1 defines a User as “[A]ny Options Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3 (Access).”

### **Improper Marking and Execution of Orders**

11. From in or about July 2014 through May 2019, Instinet marked and submitted 7,239,788 orders on BZX with an incorrect origin code of “M” for Market Maker, instead of “N” for Away Market Maker or “F” for non-Market Maker<sup>3</sup>. These orders resulted in the execution of approximately 231,557 orders for 3,276,255 options contracts on BZX.
12. Instinet did not receive any priority advantage by mismarking these orders as “M” instead of “N” or “F”. In addition, because all of these orders were submitted for clearance in the market maker range, the mismarking did not affect the clearance of the Firm’s trades at the OCC.
13. The acts, practices, and conduct in paragraph 11 constitute violations of Section 17(a)(1) of the Exchange Act and Rule 17a-3(a)(6) thereunder, and BZX Rules 20.7(a), 24.1(a), 18.1, and 18.2(a)(6), in that the Firm mismarked the origin code of certain options orders and failed to maintain accurate books and records.

### **Written Supervisory Procedures**

14. From in or about July 2014 through May 2019, the Firm failed to establish, maintain, and enforce Written Supervisory Procedures (“WSPs”) that would enable it to supervise properly, prevent and detect violations of applicable securities laws and regulations, and applicable Exchange rules and otherwise assure compliance with those rules. In particular, the Firm’s WSPs related to its Order Capacity/Origin Codes review required its broker-dealer or institutional customers to identify the appropriate origin code designation for their accounts during the onboarding process. A Firm supervisor was required to conduct a weekly review of newly opened accounts to check for the accuracy of origin codes assigned to newly opened accounts and accounts that have changed origin codes. However, the Firm’s WSPs did not require any review subsequent to the onboarding process, including any review of origin code designations applied to subaccounts by the middle office.
15. The acts, practices and conduct described in Paragraph 14 constitute violations of Exchange Rule 5.1, in that the Firm’s WSPs were not reasonably designed to identify the accuracy of origin codes.

### **DISCIPLINARY HISTORY**

16. On February 5, 2018, the Firm consented to a censure and total fine of \$125,000, payable to Cboe Exchange, Inc. (“Cboe”) and BZX (of which \$5,700 was payable to BZX). Between January 2015 and May 2016, the Firm marked and executed 6,836 orders (402 on BZX), totaling approximately 169,397 contracts (7,731

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<sup>3</sup> The Away Market Maker origin code was introduced on BZX on June 1, 2015, with an effective date for compliance of August 3, 2015. Prior to the effective date, the origin code “F” was available for non-Market Maker orders.

contracts on BZX), as “Customer” on Cboe and BZX when the orders should have been marked and executed as “Professional Customer”. The Firm also failed to implement, maintain, and enforce WSPs reasonably designed to assure compliance with Section 17(a) of the Exchange Act and Rule 17a-3 thereunder, and Cboe and BZX Rules as they relate to order origin codes.

### **SANCTIONS**

17. In light of the alleged rule violations described above and the prior relevant disciplinary history, the Firm consents to the imposition of the following sanctions:
  - a. A censure; and
  - b. A monetary fine in the amount of \$22,500.<sup>4</sup>

If this Letter of Consent is accepted, the Firm acknowledges that it shall be bound by all terms, conditions, representations and acknowledgements of this Letter of Consent, and, in accordance with the provisions of Exchange Rule 8.3 waives the right to review or to defend against any of these allegations in a disciplinary hearing before a Hearing Panel. The Firm further waives the right to appeal any such decision to the Board of Directors, the U.S. Securities and Exchange Commission, a U.S. Federal District Court, or a U.S. Court of Appeals.

The Firm 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 Letter of Consent, or other consideration of this Letter of Consent, including acceptance or rejection of this Letter of Consent. The Firm further waives any claim that a person violated the ex parte prohibitions of Exchange Rule 8.16, in connection with such person’s participation in discussions regarding the terms and conditions of this Letter of Consent, or other consideration of this Letter of Consent, including its acceptance or rejection.

The Firm agrees to pay the monetary sanction upon notice that this Letter of Consent has been accepted and that such payment is due and payable. 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 imposed in this matter.

The Firm understands that submission of this Letter of Consent is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the CRO, pursuant to Exchange Rule 8.3. If the Letter of Consent is not accepted, it will not be used as evidence to prove any of the allegations against the Firm.

The Firm understands and acknowledges that acceptance of this Letter of Consent will become part of its disciplinary record and may be considered in any future actions brought by Cboe or any other regulator against the Firm. The Letter of Consent will be published on a website maintained by the Exchange in accordance with Exchange Rule 8.18.

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<sup>4</sup> This settlement relates to another settlement the Firm reached with Cboe EDGX Exchange, Inc.

The Firm understands that it may not deny the charges or make any statement that is inconsistent with the Letter of Consent. The Firm may attach a Corrective Action Statement to this Letter of Consent that is a statement of demonstrable corrective steps taken to prevent future misconduct. Any such statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of the Exchange 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 Letter of Consent and has been given a full opportunity to ask questions about it; that it has agreed to the Letter of Consent's provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the Firm to submit it.**

**Date:** October 7, 2021

**Instinet, LLC**

**By:** David Sieradzki

**Name:** David Sieradzki

**Title:** Associate General Counsel