

NASDAQ PHLX LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2019.10.0065

TO: Nasdaq PHLX LLC
Phlx Enforcement Department

RE: Instinet, LLC
Member Firm
CRD No. 7897

Pursuant to Rule 9216 of the Nasdaq PHLX LLC (“Phlx”) Code of Procedure, Instinet, LLC (the “Firm,” “Instinet,” or “Respondent”) 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, Phlx will not bring any future actions against the Respondent 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 Phlx, or to which Phlx 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 Phlx:

BACKGROUND AND RELEVANT DISCIPLINARY HISTORY

The Firm became a member of Phlx on April 25, 1979, and its registration remains in effect. The Firm has no relevant disciplinary history.

SUMMARY

During the period of July 1, 2019 through December 31, 2019, March 19, 2021, and April 1, 2021 (collectively, the “Review Period”), the Firm violated Phlx Rules 1087(b)(1)(K), 707, and 748(h) for conduct occurring prior to February 3, 2020, and Phlx Options 3, Section 13(b)(1)(K), General 9, Section 1(c), and General 9, Section 20(h) for conduct occurring on or after February 3, 2020, as set forth below.

FACTS AND VIOLATIVE CONDUCT

PIXL Auction Violations

1. Price Improvement XL (PIXL) is the Phlx electronic price improvement mechanism whereby an initiating member submits a two-sided order into an auction process soliciting price improvement. It permits a Phlx member to electronically submit for execution an order it represents as agent on behalf of a Public Customer, broker-dealer, or any other entity against principal interest or against certain other orders it represents as agent provided it submits the PIXL Order for electronic execution into the PIXL Auction (“Auction”) pursuant to Rule 1087.
2. Phlx Rule 1087(b)(1)(K) permitted multiple PIXL Auction Notification (“PAN”)

responses from the same member submitted during the Auction; however, multiple orders at a particular price point submitted by a member in response to a PAN may not exceed, in the aggregate, the size of the PIXL order.¹

3. Phlx Rule 707 prohibited a member firm from engaging in conduct inconsistent with just and equitable principles of trade.²
4. A violation of Phlx Rule 1087(b)(1)(K) is deemed conduct inconsistent with just and equitable principles of trade and considered a violation of Rule 707.³
5. During the Review Period, the Firm, in 1,065 Auctions, inadvertently submitted more than one order in response to a PAN at a particular price point that exceeded, in the aggregate, the size of the PIXL Order. As a result, the Firm entered orders for 8,952 more contracts than it should have, resulting in 1,834 executions.
6. The conduct described in paragraph five constitutes a violation of Phlx Rules 1087(b)(1)(K) and 707 for conduct occurring prior to February 3, 2020, and Phlx Options 3, Section 13(b)(1)(K) and General 9, Section 1(c) for conduct occurring on or after February 3, 2020.

Supervision

7. Phlx Rule 748(h) required member organizations to establish, maintain and enforce written supervisory procedures (“WSPs”), and a system of supervision for applying such procedures, that are reasonably designed to supervise the types of businesses and activities in which they and their associated persons engage in order to achieve compliance with, and to prevent and detect violations of, applicable securities laws and regulations, including the By-Laws and Rules of Phlx.⁴
8. During the Review Period, while the Firm had WSPs in place that addressed the requirements of Phlx Rule 1087, the WSPs were not reasonably designed to supervise the type of businesses and activities in which the Firm and its associated persons were engaged. Specifically, the Firm’s WSPs were not tailored to review responder participation in the Auction process.
9. During the Review Period, the Firm did not establish, maintain and enforce any system of supervision to detect and prevent the submission of multiple PAN responses at the same price that in the aggregate exceeded the size of the PIXL order.

¹ As of February 3, 2020, Phlx Rule 1087(b)(1)(K) was renumbered and relocated to Options 3, Section 13(b)(1)(K) in the Phlx rulebook. See Securities Exchange Act Release No. 88213 (Feb. 14, 2020), 85 FR 9859 (Feb. 20, 2020) (SR-Phlx-2020-03).

² As of February 3, 2020, Phlx Rule 707 was renumbered and relocated to General 9, Section 1(c) in the Phlx rulebook. See Securities Exchange Act Release No. 88213 (Feb. 14, 2020), 85 FR 9859 (Feb. 20, 2020) (SR-Phlx-2020-03); Securities Exchange Act Release No. 91058 (Feb. 4, 2021), 86 FR 8966 (Feb. 10, 2021) (SR-Phlx-2021-04).

³ See Phlx Options 3, Section 13(d).

⁴ As of February 3, 2020, Phlx Rule 748(h) was renumbered and relocated to General 9, Section 20(h) in the Phlx rulebook. See Securities Exchange Act Release No. 88213 (Feb. 14, 2020), 85 FR 9859 (Feb. 20, 2020) (SR-Phlx-2020-03).

10. The conduct described in paragraphs eight and nine constitutes a violation of Phlx Rules 748(h) and 707 for conduct occurring prior to February 3, 2020, and General 9, Section 20(h) and General 9, Section 1(c) for conduct occurring on or after February 3, 2020.

11. Phlx acknowledges that the Firm has taken corrective actions to address the matter set forth herein.

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

1. A censure and a fine in the amount of \$14,000.

Respondent agrees to pay the monetary sanction(s) in accordance with its executed Election of Payment Form.

Respondent 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 Phlx Enforcement Department staff.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under Phlx's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint 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 Phlx Review Council and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudice of the Chief Regulatory Officer, the Phlx Review Council, or any member of the Phlx Review Council, 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 acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, 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

Respondent 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 Phlx Enforcement Department and the Phlx Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs (“ODA”), pursuant to Phlx Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondent; and
- C. If accepted:
 - 1. This AWC will become part of the Respondent’s permanent disciplinary record and may be considered in any future actions brought by Phlx or any other regulator against the Respondent;
 - 2. Phlx may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Phlx Rule 8310 and IM-8310-3; and
 - 3. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of Phlx, or to which Phlx is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Respondent’s right to take legal or factual positions in litigation or other legal proceedings in which Phlx is not a party.
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 Phlx, nor does it reflect the views of Phlx 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 the Firm 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.

Instinet, LLC
Respondent

By: David Sieradzki

Print Name: David Sieradzki

Title: Associate General Counsel

August 9, 2021

Date

Accepted by Phlx:

August 9, 2021

Date

Signed on behalf of the
Director of ODA, by delegated authority

Odeniyide

Muyiwa Odeniyide
Enforcement Counsel
Phlx Enforcement Department