

**THE NASDAQ OPTIONS MARKET LLC  
NOTICE OF ACCEPTANCE OF AWC**

**Certified, Return Receipt Requested**

**TO: Instinet, LLC  
Mr. Faron Webb  
General Counsel  
Worldwide Plaza  
309 West 49th Street  
New York, NY 10019**

**FROM: The NASDAQ Options Market LLC ("Nasdaq")  
c/o Financial Industry Regulatory Authority ("FINRA")  
Department of Enforcement  
9509 Key West Avenue  
Rockville, MD 20850**

**DATE: April 11, 2018**

**RE: Notice of Acceptance of Letter of Acceptance, Waiver and Consent No. 20130368360-04**

**Please be advised** that your above-referenced Letter of Acceptance, Waiver and Consent ("AWC") has been accepted on **April 11, 2018** by the Nasdaq Review Council's Review Subcommittee, or by the Office of Disciplinary Affairs on behalf of the Nasdaq Review Council, pursuant to Nasdaq Rule 9216. A copy of the AWC is enclosed herewith.

You are again reminded of your obligation, if currently registered, immediately to update your Uniform Application for Broker-Dealer Registration ("Form BD") to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA (or Nasdaq if you are not a member of FINRA) in writing of any change of address or other changes required to be made to your Form BD.

You are reminded that Section I of the attached Letter of Acceptance, Waiver, and Consent includes an undertaking. In accordance with the terms of the AWC, a registered principal of the firm is required to notify the Compliance Assistant, Department of Enforcement, 9509 Key West Avenue, Rockville, MD 20850, of completion of the undertaking.

You will be notified by the Registration and Disclosure Department regarding sanctions, and Nasdaq's Finance Department will send you an invoice regarding the payment of any fine.

Instinet, LLC  
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If you have any questions concerning this matter, please contact Michael W. Bautz, Senior Counsel,  
at (646) 430-7032.



Robert A. Marchman  
Executive Vice President  
Department of Enforcement, FINRA

Signed on behalf of Nasdaq

Enclosure

FINRA District 10 – New York  
Michael Solomon  
Senior Vice President and Regional Director  
(Via email)

David S. Sieradzki, Esq.  
Counsel for Respondent  
Schulte Roth & Zabel LLP  
1152 Fifteenth Street, NW  
Suite 850  
Washington, DC 20005

**THE NASDAQ OPTIONS MARKET LLC  
LETTER OF ACCEPTANCE, WAIVER AND CONSENT  
NO. 2013036836004**

TO: The NASDAQ Options Market LLC  
c/o Department of Enforcement  
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9216 of The NASDAQ Stock Market LLC (“Nasdaq”)<sup>1</sup> Code of Procedure, Instinet, LLC (“INCA” or 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, Nasdaq 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 Nasdaq, or to which Nasdaq 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 Nasdaq:

**BACKGROUND**

The Firm has been a broker-dealer registered with the Securities and Exchange Commission (the “Commission”) since April 25, 1979, and registered with The NASDAQ Options Market LLC (“NOM” or the “Exchange”) since November 16, 2009. Its registrations remain in effect. The Firm, among other things, provides market access and execution services to institutional market participants (“Market Access Clients”) for a wide variety of products. In or about February 2007, the Firm was acquired by Nomura Holdings, Inc., which shifted the majority of its global equities execution business to INCA in December 2012.

The Firm does not have a relevant disciplinary history.

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<sup>1</sup> All NASDAQ Options Market LLC disciplinary matters are governed by the Nasdaq Code of Procedure.

## SUMMARY

1. In Matter No. 20130382620, the Options Regulation Section of FINRA's Department of Market Regulation ("Market Regulation") reviewed messaging activity on NOM in January 2014 and the Firm's compliance with Rule 15c3-5 of the Securities Exchange Act of 1934 ("SEA") (the "Market Access Rule").<sup>2</sup>
2. This matter was part of investigations conducted by Market Regulation on behalf of the Exchange and other self-regulatory organizations, including The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Investors Exchange LLC; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Equities LLC; NYSE American Options LLC; BOX Options Exchange LLC; and FINRA (collectively, the "SROs"), to review the Firm's compliance with the Market Access Rule and the supervisory rules of the SROs, including NOM Rule Ch. III, Sec. 2 during the period of August 2012 through at least November 2017 (the "Review Period").
3. As a result of Market Regulation's investigations, it was determined that, during the Review Period, the Firm failed to establish, document, and maintain a system of risk management controls and supervisory procedures, including written supervisory procedures ("WSPs") and an adequate system of follow-up and review, reasonably designed to manage the financial, regulatory, and other risks of its market access business.
4. Specifically, during the Review Period, the Firm failed to have adequate risk management controls to detect and prevent erroneous or duplicative orders and messaging resulting from malfunctioning software or trading systems in violation of SEA Rules 15c3-5(b) and (c)(1)(ii), and NOM Rule Ch. III, Sec. 2.

## FACTS AND VIOLATIVE CONDUCT

### Applicable Rules

5. During the Review Period, SEA Rules 15c3-5(b) and (c) required broker-dealers that provide market access to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of their market access business.<sup>3</sup>

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<sup>2</sup> The SEC adopted Rule 15c3-5 effective January 14, 2011. See 17 C.F.R. § 240.15c3-5, *Risk Management Controls for Brokers or Dealers with Market Access*, 75 Fed. Reg. 69792 (Nov. 15, 2010) (Final Rule Release).

<sup>3</sup> Rule 15c3-5 requires that, as gatekeepers to the financial markets, broker-dealers providing market access must "appropriately control the risks associated with market access so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system." 75 Fed. Reg. at 69792.

6. During the Review Period, SEA Rule 15c3-5(c)(1)(ii) specifically required market access broker-dealers to have financial risk management controls and supervisory procedures reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders.
7. During the Review Period, NOM Rule Ch. III, Sec. 2 required, among other things, that each Options Participant ensure compliance with the Options Participant's and associated persons' obligations under the Rules of the Exchange, the Rules of the Clearing Corporation and any other relevant laws, rules, interpretations and obligations.

**Inadequate Pre-Trade Controls for Erroneous Messaging Activity**

8. In January 2014, INCA, on 18 occasions, submitted 16,200 or more orders during a 30-minute time period on NOM. Additionally, and throughout January 2014, INCA entered 128,922,660 orders with only 515,470 executions (a 0.4% execution rate).
  9. One INCA Market Access Client was responsible for this activity, which entered the messages via INCA's Latency Sensitive Electronic Trading ("LSET") desk. The messages were the result of a programming malfunction with a certain Market Access Client's trading application, which caused rejected orders to be repeatedly sent to the Exchange.
  10. During the Review Period, INCA failed to have reasonably designed risk management controls, including message rate controls, to detect or prevent, among other things, high levels of erroneous message traffic on the SROs that resulted from malfunctioning algorithms, software programs or trading systems used by its Market Access Clients.
  11. Moreover, the order throttling control implemented for the Market Access Client was set at a level that was too high to prevent the entry of a high volume of unintended orders or messages.
  12. As a result, the messaging activity in January 2014 was not detected or prevented.
  13. Finally, INCA did not document how it arrived at a hard block amount for this Market Access Client.
  14. The acts, practices, and conduct described above in paragraphs 8 through 13 constituted violations of SEA Rules 15c3-5(b) and (c)(1)(ii), NOM Rule Ch. III, Sec. 2.
- B. The Firm also consents to the imposition of the following sanctions:
1. A censure;

2. A fine in the amount of \$1,575,000 of which \$7,300 is payable to NOM;<sup>4</sup> and
3. An undertaking requiring the Firm to address the Market Access Rule deficiencies described in this AWC and to ensure that it has implemented controls and procedures that are reasonably designed to achieve compliance with the rules and regulations cited herein.
  - a. Within 90 days of the date of the issuance of this AWC, the Firm shall submit to the COMPLIANCE ASSISTANT, DEPARTMENT OF ENFORCEMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850, a written report, certified by a senior management Firm executive, to [MarketRegulationComp@finra.org](mailto:MarketRegulationComp@finra.org) that provides the following information:
    - (i) a reference to this matter;
    - (ii) a representation that the Firm has addressed the deficiencies described above; and
    - (iii) the date this was completed.
  - b. Between 90 and 120 days after the submission of the written report, the Firm shall submit a supplemental written report to FINRA to provide an update on the effectiveness of the enhancements and changes made by the Firm to its risk management controls and procedures as describe above.
  - c. The Department of Enforcement may, upon a showing of good cause and in its sole discretion, extend the time for compliance with these provisions.
4. Acceptance of this AWC is conditioned upon acceptance of similar settlement agreements in related matters between the Firm and each of the following self-regulatory organizations: The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; Investors Exchange LLC; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Equities LLC; NYSE American Options LLC; BOX Options Exchange LLC; and FINRA.

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

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 FINRA staff.

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<sup>4</sup> The balance of the sanction will be paid to the self-regulatory organizations listed in Paragraph B.4.

## II.

### WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under Nasdaq'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 Nasdaq Review Council 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 Chief Regulatory Officer, the Nasdaq Review Council, or any member of the Nasdaq 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.

The Firm 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

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 FINRA's Department of Enforcement and the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs ("ODA"), pursuant to Nasdaq 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 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 Nasdaq or any other regulator against the Firm;
2. Nasdaq may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with Nasdaq Rule 8310 and IM-8310-3; 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 Nasdaq, or to which Nasdaq is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects the Firm's right to take legal or factual positions in litigation or other legal proceedings in which Nasdaq 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 Nasdaq, nor does it reflect the views of Nasdaq 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.

2/11/18  
Date

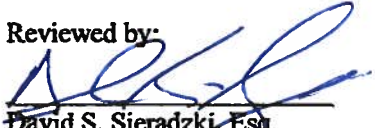
Respondent  
Instinet, LLC

By: Faron Webb

Name: Faron Webb

Title: General Counsel

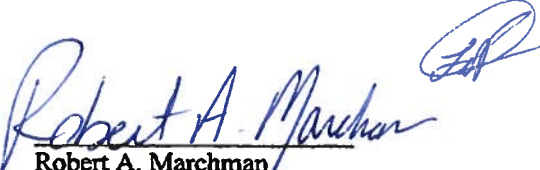
Reviewed by:

  
David S. Sieradzki, Esq.  
Schulte Roth & Zabel LLP  
1152 Fifteenth Street, NW Suite 850  
Washington, DC 20005

2/11/18  
Date

Accepted by Nasdaq:

4/11/2018  
Date

  
Robert A. Marchman  
Executive Vice President  
Department of Enforcement

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

**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

2/1/18  
Date

By: Faron Webb

Name: Faron Webb

Title: General Counsel

**Billing and Payment Contact**

Please enter the billing contact information below. Nasdaq MarketWatch will contact you with billing options and payment instructions. ***Please DO NOT submit payment until Nasdaq has sent you an invoice.***

Billing Contact Name: \_\_\_\_\_

Billing Contact Address: \_\_\_\_\_

Billing Contact Email: \_\_\_\_\_

Billing Contact Phone Number: \_\_\_\_\_