

**INVESTORS EXCHANGE 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: Investors Exchange LLC (“IEX”)
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. 20130368360-16

Please be advised that your above-referenced Letter of Acceptance, Waiver and Consent (“AWC”) has been accepted on **April 11, 2018** by the Office of Disciplinary Affairs, on behalf of the IEX Board, pursuant to IEX Rule 9.216. A copy of the AWC is enclosed herewith.

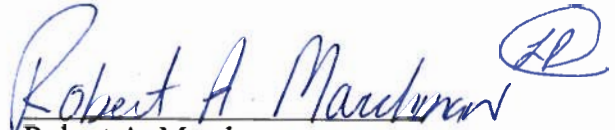
You are again reminded of your obligation, if currently registered, immediately to update your Form BD (Uniform Application for Broker-Dealer Registration) to reflect the conclusion of this disciplinary action. Additionally, you must also notify FINRA in writing of any change of address or other changes 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 if a suspension has been imposed and by the IEX’s Finance Department regarding the payment of any fine if a fine has been imposed.

Instinet, LLC
Page 2

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

A handwritten signature in blue ink that reads "Robert A. Marchman". To the right of the signature is a circled initial "RM".

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

Signed on behalf of IEX

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

**INVESTORS EXCHANGE LLC
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2013036836016**

TO: Investors Exchange LLC
c/o Department of Enforcement
Financial Industry Regulatory Authority (“FINRA”)

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

Pursuant to Rule 9.216 of the Investors Exchange LLC (“IEX” or the “Exchange”) 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, IEX will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 IEX, or to which IEX 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 IEX:

BACKGROUND

The Firm has been a broker-dealer registered with the Securities and Exchange Commission (the “Commission”) since April 25, 1979 and registered with IEX since August 5, 2016. 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, INCA 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 relevant disciplinary history.

SUMMARY

1. In Matter No. 20160521544, the Exchange-Traded Product Surveillance and Investigations Group (“ETP”) of FINRA’s Department of Market Regulation (“Market Regulation”) reviewed potential manipulative activity by the Firm’s Market Access clients on November 21, 2016, and the Firm’s compliance with

STAR No. 20130368360 (incl. merged STAR Nos. 20130376217, 20130382620, 20130384257, 20130386900, 20130395417, 20140399233, 20140402026, 20140416803, 20140422166, 20140430948, 20140435161, 20140436283, 20150451541, 20150463006, 20150463452, 20150481875, 20150482156, 20160502382, 20160504175, 20160509709, 20160514500, 20160521544, 20160525489, 20160526107, 20170543142, 20170545607, 20170551643, 20170554299, 20170555223, 20170561010, 20160485810, and 20160512438)
(MWB)

Rule 15c3-5 of the Securities Exchange Act of 1934 (“SEA”) (“Market Access Rule”).¹

2. In Matter No. 20160514500, the Market Manipulation Investigations Group (“MMI”) of Market Regulation reviewed potential manipulative activity by the Firm’s Market Access Clients on September 23, 2016.
3. In Matter No. 20170545607, the Trading Analysis Section (“Trading Analysis”) of Market Regulation reviewed potential manipulative activity by the Firm’s Market Access Clients from September 2, 2016 through June 19, 2017.
4. In Matter No. 20170533659, MMI reviewed potential manipulative activity by the Firm’s Market Access Clients on February 23, 2017.
5. In Matter No. 20170551643, Trading Analysis reviewed potential manipulative activity by the Firm’s Market Access Clients on August 1, 2017.
6. In Matter No. 20170554299, Trading Analysis reviewed potential manipulative activity by the Firm’s Market Access Clients from August 24, 2017 through November 9, 2017
7. In Matter No. 20170555223, Trading Analysis reviewed potential manipulative activity by the Firm’s Market Access Clients from September 2, 2017 through September 22, 2017.
8. In Matter No. 20170561010, Trading Analysis reviewed potential manipulative activity by the Firm’s Market Access Clients from October 19, 2017 through October 23, 2017.
9. The above matters were 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.; The NASDAQ Options Market LLC; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Options LLC; NYSE American Equities 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 IEX including IEX Rules 5.110, and 3.110 during the period of August 2012 through at least November 2017 (the “Review Period”).
10. As a result of Market Regulation’s investigations, it was determined that, during the Review Period, INCA failed to establish, document, and maintain a system of risk management controls and supervisory procedures, including written supervisory procedures and an adequate system of follow-up and review,

¹ The SEC adopted Rule 15c3-5 effective July 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).

reasonably designed to manage the financial, regulatory, and other risks of its market access business.

11. Specifically, during the Review Period, the Firm failed to ensure compliance with all regulatory requirements, including supervising client trading to detect and prevent manipulative trading in violation of SEA Rules 15c3-5(b), (c)(2), and IEX Rules 5.110 and 3.110.

FACTS AND VIOLATIVE CONDUCT

Applicable Rules

12. During the Review Period, SEA Rule 15c3-5(b) 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.²
13. During the Review Period, SEA Rule 15c3-5(c)(2) required market access broker-dealers to have regulatory risk management controls and supervisory procedures reasonably designed to ensure compliance with all regulatory requirements to, among other things, prevent the entry of orders unless there has been compliance with all regulatory requirements that must be satisfied on a pre-order entry basis and restrict access to trading systems and technology that provide market access to persons and accounts pre-approved and authorized by the market access broker-dealer.
14. IEX Rule 5.110 requires, among other things, that each member firm shall establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable IEX Rules.
15. IEX Rule 3.110 provides that a member firm, in the conduct of its business, shall observe high standards of commercial honor and just and equitable principles of trade.

Inadequate Supervision of Customer Trading

16. From September 2016 through November 2017, a Market Access Client of the Firm engaged in potentially manipulative conduct on IEX in approximately 300 instances.
17. Specifically, the Market Access Client employed a strategy of entering small quantity immediate-or-cancel (“IOC”) buy (sell) orders (“pings”) priced to

² 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.

execute at the midpoint of the National Best Bid and Offer (“NBBO”) on IEX throughout the day to identify large, non-displayed sell (buy) orders (“Resting Orders”) priced in reference to the NBBO.

18. After receiving execution of its pings on IEX, the Market Access Client proceeded to enter aggressively priced sell (buy) limit orders (on the same side as the Resting Orders) with limit prices at or lower (higher) the NBO (NBB). These orders were generally entered with time-in-force instructions of “day” (“day orders”).
19. As the client’s sell (buy) limit day orders received execution, they exhausted resting liquidity at the inside markets, attracted new participants entering on the sell-side (buy-side) and drove down (up) the NBBO and market price of the security. The Market Access Client then placed limit orders to buy (sell) on the opposite side of the market. These orders received executions against the Resting Order, the price of which had moved with the NBBO.
20. The trading activity resulted in inferior execution prices for the Resting Order entered on IEX and generated short term profits for the Market Access Client.
21. During the Review Period, INCA did not have an adequate system of post-trade surveillance designed to ensure compliance with certain regulatory requirements. Specifically, the Firm failed to have adequate surveillance reports to detect and monitor for the improper activity described above.
22. The acts, practices, and conduct described above in paragraphs 16 through 21 constituted violations of SEA Rules 15c3-5(b) and (c)(2), and IEX Rules 5.110, and 3.110.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$1,575,000 of which \$75,000 is payable to IEX;³ 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, INCA 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 that provides the following information:

³ The balance of the sanction will be paid to the self-regulatory organizations listed in Paragraph B.4.

- (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 INCA and each of the following self-regulatory organizations: The NASDAQ Stock Market LLC; NASDAQ BX, Inc.; The NASDAQ Options Market LLC; Nasdaq PHLX LLC; Cboe BZX Exchange, Inc.; Cboe BYX Exchange, Inc.; Cboe EDGA Exchange, Inc.; Cboe EDGX Exchange, Inc.; NYSE Arca Options, Inc.; NYSE Arca Equities, Inc.; the New York Stock Exchange LLC; NYSE American Options LLC; NYSE American Equities LLC; BOX Options Exchange LLC; and FINRA.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

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.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under IEX'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 IEX Appeals Committee 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 prejudgment of the General Counsel, Chief Regulatory Officer, the IEX Appeals Committee, or any member of the IEX Appeals Committee, 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 9.143 or the separation of functions prohibitions of Rule 9.144, 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 FINRA's Department of Enforcement and the Office of Disciplinary Affairs ("ODA"), pursuant to IEX Rule 9.216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; 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 IEX or any other regulator against the Firm;
 - 2. IEX may release this AWC or make a public announcement concerning this agreement and the subject matter thereof in accordance with IEX Rule 8.340; 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 IEX, or to which IEX 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 IEX 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. The Firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. Any such Statement does not constitute factual or legal findings by IEX, nor does it reflect the views of IEX 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.

3/6/18
Date

Respondent
Instinet, LLC

By: Faron Webb

Name: Faron Webb

Title: Executive Managing Director
and General Counsel

Reviewed by:

David S. Sieradzki

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

Accepted by IEX:

4/11/2018
Date

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

Signed on behalf of IEX, 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

3/6/18
Date

By: Faron Webb

Name: Faron Webb

Title: Executive Managing Director
and General Counsel

STAR No. 20130368360 (incl. merged STAR Nos. 20130376217, 20130382620, 20130384257, 20130386900, 20130395417, 20140399233, 20140402026, 20140416803, 20140422166, 20140430948, 20140435161, 20140436283, 20150451541, 20150463006, 20150463452, 20150481875, 20150482156, 20160502382, 20160504175, 20160509709, 20160514500, 20160521544, 20160525489, 20160526107, 20170543142, 20170545607, 20170551643, 20170554299, 20170555223, 20170561010, 20160485810, and 20160512438) (MWB)