

**NYSE AMERICAN LLC
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NOS. 2023-06-14-00039 & 2019063047814¹**

TO: NYSE AMERICAN LLC

RE: Instinet, LLC, Respondent
CRD No. 7897

From at least January 2019 through the present (the “Relevant Period”), Instinet, LLC violated (i) Securities Exchange Act of 1934 Rule 15c3-5(b), 15c3-5(c)(1)(i) and 15c3-5(c)(1)(ii) (“Rule 15c3-5” or the “Market Access Rule”) by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial risks of its business activities, including related to credit limits and erroneous order controls, and (ii) NYSE American Rule 3110(a) and (b) by failing to establish and maintain a supervisory system, including written supervisory procedures (“WSPs”), reasonably designed to ensure compliance with the Market Access Rule.

In addition, during the Relevant Period, Instinet, LLC violated NYSE American Rule 3110(a) and (b) by failing to establish, maintain, and enforce a supervisory system, including WSPs, reasonably designed to detect and investigate potentially manipulative trading by its clients.

Consent to a censure and a \$62,730 fine (resolved simultaneously with similar matters for a total fine of \$1,200,000).²

* * *

Pursuant to Rule 9216 of the NYSE American LLC (“NYSE American” or the “Exchange”)³ Code of Procedure, Instinet, LLC (“Instinet” 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, the NYSE will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

¹ Matter No. 2019063047814 was investigated by FINRA on behalf of NYSE American LLC.

² Those matters were brought by the New York Stock Exchange (“NYSE”), NYSE Arca, Inc. (“NYSE Arca”), NYSE National, Inc. (“NYSE National”), NYSE Texas, Inc. (“NYSE Texas”), FINRA, Cboe BZX U.S. Equities Exchange (“BZX”), Cboe BYX U.S. Equities Exchange (“BYX”), Cboe EDGA U.S. Equities Exchange (“EDGA”), Cboe EDGX U.S. Equities Exchange (“EDGX”), Investors’ Exchange LLC (“IEX”), MEMX LLC (“MEMX”), MIAX PEARL Equities, LLC (“MIAX Pearl”), Nasdaq Stock Market (“Nasdaq”), Nasdaq BX Equities (“BX”), Nasdaq PSX Equities (“PSX”), and Long-Term Stock Exchange, Inc. (“LTSE”).

I. ACCEPTANCE AND CONSENT

- A. Instinet 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 NYSE American, or to which NYSE American 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 NYSE American:

BACKGROUND AND JURISDICTION

1. Instinet has been a member of NYSE American since 1996, and its registration remains in effect. The Firm is headquartered in New York, NY, and employs over 140 registered representatives across nine branch offices. Instinet provides market access, trading support, and execution services to domestic and foreign institutional customers and broker-dealers.

VIOLATIONS

Applicable Rules

2. Rule 15c3-5(b) requires broker-dealers with market access, or that provide a customer with 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 this business activity.”
3. Rule 15c3-5(c)(1)(i) requires that a broker-dealer’s risk management controls and supervisory procedures be “reasonably designed to systematically limit the financial exposure of the broker or dealer that could arise as a result of market access,” including being reasonably designed to “prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker or dealer . . . by rejecting orders if such orders would exceed the applicable credit or capital thresholds.” The Market Access Rule’s Adopting Release states that these thresholds shall be determined “based on appropriate due diligence as to the customer’s business, financial condition, trading patterns, and other matters” and that a broker-dealer must “document that decision.” The Adopting Release also states that the broker-dealer shall “monitor on an ongoing basis whether the credit thresholds remain appropriate, and promptly make adjustments to them, and its controls and procedures, as warranted.” *Risk Management Controls for Brokers or Dealers with Market Access*, Exchange Act Release No. 34-63241, 75 Fed. Reg. 69791, at 39 (Nov. 3, 2010).
4. Rule 15c3-5(c)(1)(ii) further requires that a broker-dealer’s risk management controls and supervisory procedures be 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.”

5. NYSE American Rule 3110(a) requires each member organization to “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 Exchange rules.”
6. NYSE American Rule 3110(b) requires each member organization to “establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.”

Client Credit Limits

7. During the Relevant Period, the Firm failed to establish, document, and maintain a system of risk management controls and supervisory procedures, including WSPs, that were reasonably designed to ensure compliance with the Market Access Rule’s requirements concerning client credit limits.
8. Prior to August 2020, the Firm set initial credit limits on a client-by-client basis, based on factors including the client’s creditworthiness and nature of its trading activity. The Firm reviewed and adjusted customer credit limits every six months, considering, among other factors, the clients’ trading activity in the previous period and assets under management. However, the Firm did not document its contemporaneous rationale for why it did not adjust these credit limits.
9. From August 2020 through the present, the Firm generally set customer credit limits at 120% of each customer’s maximum usage from the prior six-month period (or at 120% of anticipated usage for new customers). However, the Firm unreasonably failed to document the basis or rationale for this approach, including in the Firm’s WSPs. Moreover, while the WSPs provided for a review of departures from the 120% usage methodology, they did not provide guidance concerning when exceptions should be granted or what thresholds should be applied in those circumstances.
10. Accordingly, the Firm violated Rule 15c3-5(b), Rule 15c3-5(c)(1)(i), and NYSE American Rule 3110(a) and (b).

Erroneous Order Controls

11. During the Relevant Period, the Firm failed to establish, document, and maintain a system of risk management controls and supervisory procedures, including WSPs, that were reasonably designed to ensure compliance with the Market Access Rule’s requirements concerning erroneous order controls.
12. The Firm’s average daily volume (“ADV”) control was unreasonably designed for the following reasons:
 - a. The ADV control was set on a customer-specific, rather than a security-

specific, basis, and thus failed to take into consideration the characteristics of individual securities.

- b. Moreover, the thresholds for the ADV control were set unreasonably high in certain instances. For instance, prior to June 2023, the ADV thresholds, which for each customer applied to their trading in all securities, were set as high as 5,000% of that customer's maximum average daily volume in any one security during the prior six months. Subsequent to June 2023, ADV thresholds were generally set to 120% of each customer's prior maximum usage in the prior six months.
 - c. In addition, the ADV control unreasonably only applied to orders with notional values greater than \$1,000,000.
 - d. The Firm failed to provide documentation or analysis for any of the ADV thresholds.
13. The Firm maintained single order notional and single order quantity controls, as well as two price deviation controls. However, the Firm unreasonably failed to document the basis or rationale for the thresholds it determined for these controls.
14. The Firm also maintained certain "short period of time" controls, including two duplicative order controls, two cancel rate controls, and an excessive messaging control. The thresholds for these controls were set on a client-specific basis. However, the Firm unreasonably failed to document the basis or rationale for the applicable thresholds and, in some cases, the thresholds were set at unreasonably high levels.
15. For orders submitted to the Firm's "smart order router," erroneous order controls were applied to parent orders. However, for orders submitted to the Firm's algorithm suite or its high-touch desk, these erroneous order controls, using the same thresholds, were applied to child orders. By applying controls with the same thresholds to much smaller child orders, the controls were not reasonably designed to be effective.
16. Accordingly, the Firm violated Rule 15c3-5(b), Rule 15c3-5(c)(1)(ii), and NYSE American Rule 3110(a) and (b).

Post-Trade Supervision of Client Trading Activity (Matter No. 2019063047813)

17. During the Relevant Period, Instinet failed to reasonably supervise for potentially manipulative trading.

Instinet did not reasonably surveil for certain forms of manipulation.

18. During the Relevant Period, Instinet's surveillance systems were not reasonably designed to supervise for potential manipulative trading.

19. First, from January 2019 through July 2025, Instinet failed to reasonably surveil for potentially manipulative trading during pre-market hours.
- e. Instinet surveilled for spoofing activity by only two clients, excluding from review the pre-market activity of its other clients.
 - f. Instinet also failed to surveil for any other types of potentially manipulative pre-market activity.
20. Second, Instinet implemented marking the close surveillances that included unreasonable parameters at various times during the review period. For example, the Firm's marking the close surveillances failed to reasonably account for scenarios where a trader or client entered a single order with the intent to affect the security's closing price. Although the Firm had a similar control that tried to identify such orders, it was limited to orders entered only in the final second before market close, which was unreasonable because marking the close can occur before the final second, particularly in less liquid securities.
21. Third, Instinet implemented ramping⁴ surveillance patterns that were set at unreasonably high thresholds. Prior to February 2020, the Firm's surveillance for ramping for over-the-counter securities required, in part, that a client execute at least 30 trades in a symbol within 60 seconds to trigger an alert.
22. Fourth, Instinet's surveillances for potential wash trading were unreasonable as, prior to January 12, 2021, certain of Instinet's surveillance parameters only identified potential wash sales if both the buy and sell orders associated with a potential wash trade were routed to the same market destination. This surveillance pattern was unreasonable because it focused on order routing rather than execution, and therefore it was not designed to detect scenarios where an order is rerouted by one market center to another, which could result in wash trades executed at the same market center.
23. Fifth, until October 2019, one of the Firm's systems was not reasonably designed to detect potentially coordinated manipulative trading by different traders at the same client. Instinet did not configure its system to capture client activity across multiple client connections to Instinet, thus potentially failing to capture coordinated manipulative trading activity among different traders at the same client.
24. Sixth, Instinet's surveillances for potential layering and spoofing were unreasonable as, until February 2020, the surveillance pattern did not consider potential non-bona fide orders that joined or improved the national best bid and offer. Beginning in February and March 2020, other parameters were set at unreasonable thresholds, for

⁴ Ramping involves trading practices designed to artificially increase or decrease the price of a security, by creating a false impression of trading interest.

which the Firm produced no justification or analysis.

Instinet failed to reasonably review surveillance alerts.

25. Instinet's review of its surveillance alerts was unreasonable. From at least January 2019 through July 2023, first-level reviewers, who worked for a Firm affiliate, closed substantially all of the pre-market spoofing alerts with a disposition of no further action without conducting a substantive review of the alerts. As a result, the Firm failed to review 98 percent of its approximately 3,800 pre-market spoofing alerts during this period.
26. Additionally, during the Relevant Period, Instinet failed to timely perform second-level reviews of thousands of alerts due to insufficient staffing. For example, the resolution of certain second-level reviews regarding potentially manipulative activity was delayed more than 60 business days. During the Relevant Period, the Firm also failed to establish and maintain a reasonable system for reviewing potentially manipulative aggregate activity by a client in the aggregate.

Instinet failed to reasonably supervise clients placed on heightened surveillance.

27. During the Relevant Period, Instinet failed to reasonably supervise clients placed on "heightened surveillance."
 - g. Although Instinet recognized that four clients presented heightened risk, it only placed two on "heightened surveillance."
 - h. The Firm's WSPs did not explain the criteria or process the Firm used for assigning a risk rating or for placing a client on heightened surveillance and Instinet failed to maintain any documentation of its analyses for why these clients presented heightened risk.
 - i. The Firm's WSPs did not describe how the "heightened surveillance" designation should be considered when conducting surveillance reviews of the client. For instance, Instinet did not inform its first-level reviewers that the two clients had been placed on heightened surveillance, which would have been important for the reviewers to consider when reviewing the clients' trading activity.

Instinet failed to establish, maintain, and enforce a reasonable supervisory system, including WSPs, related to potentially manipulative trading.

28. During the Relevant Period, the Firm's WSPs for manipulative trading were unreasonable.

29. Instinet's WSPs relating to surveillance for manipulation were, in certain instances, inaccurate or incomplete. For example, Instinet incorrectly documented the parameters for one of the Firm's surveillance systems and for certain alerts.
30. Through at least October 2023, Instinet's WSPs failed to provide guidance about what constituted a timely review of surveillance alerts.
31. Instinet's process of tracking clients' authorized traders that had been terminated by Instinet for engaging in potentially manipulative or suspicious trading activity was not reasonable because Instinet did not have a reasonable process for confirming such authorized traders' access to Instinet had been terminated. Additionally, through at least May 2022, the Firm did not consider the alerts generated by each of its clients in the aggregate to evaluate the client's overall trading activity.
32. Instinet requested that two clients restrict their trading activity generally to securities meeting designated criteria as both clients had generated a high volume of alerts for potentially manipulative trading activity. While both clients agreed to this restriction, Instinet relied on the two clients to implement those restrictions and did not take reasonable steps to ensure that the restrictions were properly implemented.
33. For these reasons, Instinet violated NYSE American Rules 3110(a) and (b).

RELEVANT PRIOR DISCIPLINARY HISTORY

34. In Matter No. 20130368360 (April 2018),⁵ Instinet consented to a censure, a total fine of \$1,575,000, and an undertaking for violations of Rule 15c3-5 of the Securities Exchange Act of 1934, and for exchange supervisory violations concerning both Rule 15c3-5 and failures to conduct reasonable post-trade reviews for potentially manipulative trading.

SANCTIONS

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

Censure and fine in the amount of \$62,730 (resolved simultaneously with similar matters for a total fine of \$1,200,000).⁶

The Firm agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. The Firm has submitted a Method of

⁵ This matter was brought by FINRA, Nasdaq, BX, The Nasdaq Options Market LLC, PHLX, BZX, BYX, EDGA, EDGX, IEX, NYSE Arca Options, Inc., NYSE, NYSE Arca, NYSE American, NYSE American Options LLC, and BOX Options Exchange LLC.

⁶ Those matters were brought by NYSE, NYSE Arca, NYSE National, NYSE Texas, FINRA, BZX, BYX, EDGA, EDGX, IEX, MEMX, MIAX Pearl, Nasdaq, BX, PSX, and LTSE.

Payment Confirmation form showing the method by which it will 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 imposed in this matter.

The sanctions herein are imposed pursuant to NYSE American Rule 8310 and shall be effective on a date set by NYSE Regulation staff.

II. WAIVER OF PROCEDURAL RIGHTS

The Firm specifically and voluntarily waives the following rights granted under the NYSE American 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 Exchange'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 prejudice of the Chief Regulatory Officer of NYSE American; the Exchange's Board of Directors, Disciplinary Action Committee ("DAC"), and Committee for Review ("CFR"); any Director, DAC member, or CFR member; Counsel to the Exchange Board of Directors or CFR; any other NYSE American employee; or any Regulatory Staff as defined in Rule 9120 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* communication 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 by NYSE Regulation, and accepted by the Chief Regulatory Officer of NYSE American pursuant to NYSE American 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. The AWC shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to NYSE American Rule 9310(a)(1)(B);
 2. This AWC will become part of the Firm's permanent disciplinary record and may be considered in any future actions brought by the Exchange, or any other regulator against the Firm;
 3. NYSE American shall publish a copy of the AWC on its website in accordance with NYSE American Rule 8313;
 4. NYSE American may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE American Rule 8313; and
 5. 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 the Exchange, or to which the Exchange 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 the Exchange is not a party.
- D. A signed copy of this AWC and the accompanying Method of Payment Confirmation form delivered by email, facsimile or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy.
- E. 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. A Corrective Action Statement does not constitute factual or legal findings by the Exchange, nor does it reflect the views of NYSE Regulation or its staff.

The Firm certifies that, in connection with each of the Exchange's requests for information in connection with this matter, the Firm made a diligent inquiry of all persons and systems that reasonably had possession of responsive documents and that all responsive documents have been

produced. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions.


The undersigned, on behalf of the Firm, certifies that a person duly authorized to act on the Firm's 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 this AWC.

1/23/26
Date

Instinet, LLC
Respondent


By: 
David Sieradzki
General Counsel - Americas

Reviewed by:


William J. Barbera, Esq.
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212-756-2521
Counsel for Respondent

Accepted by NYSE Regulation

1/23/2026
Date


Daniel C. Montgomery
Danielle A. Kantor
NYSE Regulation

Signed on behalf of NYSE American LLC
by delegated authority from its Chief
Regulatory Officer