NYSE ARCA, INC.
LETTER OF ACCEPTANCE, WAIVER, AND CONSENT
NO. 2020065465802

TO: NYSE Arca, Inc.

RE: Instinet, LLC, Respondent
CRD No. 7897

During the period from August 1, 2019 through September 28, 2020 (the "Relevant Period"), Instinet, LLC violated Rule 611(c) of Regulation National Market System ("NMS") of the Securities Exchange Act of 1934 ("Exchange Act") and NYSE Arca Rule 7.31-E(e)(3) by failing to take reasonable steps to establish that the intermarket sweep orders ("ISOs") it routed to certain market centers met the requirements set forth in Exchange Act Rule 600(b)(31).[1] In addition, Instinet, LLC violated NYSE Arca Rules 11.18(b) and (c) by failing to establish and maintain a supervisory system, including written supervisory procedures ("WSPs"), reasonably designed to achieve compliance with Exchange Act Rule 611(c) and NYSE Arca Rule 7.31-E(e)(3). Consent to a censure and a $51,379.36 fine (resolved simultaneously with similar matters for a total fine of $450,000).[2]

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Pursuant to Rule 10.9216 of the NYSE Arca, Inc. ("NYSE Arca" 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, NYSE Arca will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I. ACCEPTANCE AND CONSENT

A. INCA 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 Arca, or to which NYSE Arca 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 Arca:

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[1] In June 2021, after the conduct at issue, Rule 600(b)(31) was renumbered to Rule 600(b)(38). Because Rule 600(b)(31) was the rule in effect during the Relevant Period, that rule applies to the subject conduct.

[2] Those matters were brought by Cboe BYX Exchange, Inc. (BYX); Cboe BZX Exchange, Inc. (BZX); Cboe EDGA Exchange, Inc. (EDGA); Cboe EDGX Exchange, Inc. (EDGX); Investors Exchange, LLC (IEX); The New York Stock Exchange LLC (NYSE); NYSE American LLC (NYSE American); NYSE National, Inc. (NSX), NYSE Chicago, Inc. (CHX) (collectively, the "Exchanges"), and FINRA.

BACKGROUND AND JURISDICTION

1. INCA became registered as an Equities Trading Permit ("ETP") holder and a Options Trading Permit ("OTP") holder with NYSE Arca on June 17, 1981.

VIOLATIONS

2. During the Relevant Period, Exchange Act Rule 600(b)(31) defined an ISO as a limit order for an NMS stock that: (i) is identified as an ISO when routed to a trading center; and (ii) simultaneously with the routing of the limit order identified as an ISO, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an ISO. These additional routed orders must be marked as ISOs.

3. Rule 611(c) of Regulation NMS required a trading center, broker, or dealer responsible for routing an ISO to take reasonable steps to establish that the ISO met the requirements set forth in Rule 600(b)(31).

4. Similarly, NYSE Rule 7.31(e)(3) defines an ISO as "[a] Limit Order that does not route and meets the requirements of [Rule 600(b)(31)] of Regulation NMS," and provides, in relevant part, "[a]n ISO may trade through a protected bid or offer . . . provided that it meets the following requirements: (i) [i]t is identified as an ISO in the manner prescribed by the Exchange; and (ii) [s]imultaneously with the routing of an ISO to the Exchange, the member organization routes one or more additional Limit Orders, as necessary, to trade against the full displayed size of any protected bids (for sell orders) or protected offers (for buy orders) on Away Markets. These additional routed orders must be identified as ISO."

INCA violated Exchange Act Rule 611 and NYSE Arca Rule 7.31-E(e)(3).

5. During the Relevant Period, INCA failed to take reasonable steps to establish that the ISOs it routed met the requirements of Exchange Act Rule 600(b)(31).

6. In certain instances, when INCA routed orders to various exchanges that it marked as ISOs during the Relevant Period, the Firm failed to capture certain protected quotation data when it took the snapshots it used for making routing decisions due to multiple programming and system errors. As a result, the Firm did not recognize, and thus did not route, additional ISOs necessary to execute against protected quotes displayed by certain market centers. INCA sent at least 53,175 ISO orders, including 6,661 orders to NYSE Arca, that were priced through other market centers' protected quotes.

7. Specifically, between November 26 and December 2, 2019, an error in INCA's coding logic in its backup data center resulted in its Smart Order Router ("SOR") failing to capture current quotation data from a direct data feed when taking snapshots for making routing decisions. Multiple times throughout that period, INCA

automatically switched to its backup datacenter when the primary datacenter did not capture up-to-date quotations from a direct market data feed due to coding errors. The Firm directed its SOR to consume market data from the backup datacenter. After switching to the backup datacenter, however, the Firm's trade through monitor began reporting potential trade-throughs and the Firm then directed the SOR to switch to the Securities Information Processor (SIP) feed. As a result of the failure to capture up-to-date quotations, INCA routed orders that potentially traded through protected quotations. A programming error in the code released to the backup datacenter on November 22, 2019, caused the potential trade-throughs. The Firm corrected this issue by implementing updated code on December 2, 2019, which was effective on December 3, 2019.

8. Additionally, on multiple dates in 2020, INCA's experienced connectivity problems with direct market data feeds, resulting in its SOR failing to capture quotation data from multiple exchanges when taking the snapshots it used for ISO-routing decisions. For example, when the Firm received more data than its server could process, its SOR disconnected from the direct market data feeds. Compounding the server capacity issue, on one relevant occasion, INCA's trade through monitor experienced an issue comparing a direct market data feed to the SIP, and as a result, the Firm failed to detect the disconnect.[3] In other instances, the trade through monitor logged repeated unsuccessful reconnection attempts that were eventually escalated for manual reconnection. In all relevant instances, while INCA took corrective action by switching to the SIP feed the same day, INCA routed orders that potentially traded through protected quotations. Regarding the connectivity issues, FINRA began its investigation in or around August 2020 on behalf of FINRA, NYSE Arca, and the Exchanges. The Firm took steps to address the connectivity issues by increasing its server capacity in September 2020 and, again, in May 2021. The Firm also developed and implemented enhanced surveillance to detect and respond to connectivity issues in November 2020.

9. Throughout the Relevant Period, INCA's system logic would treat a quote as "stale" if it did not receive an ISO execution at a protected venue and would continue to treat the quote as stale until it received a quote update from that destination. As a result, INCA's SOR would not re-route to any destination after a quote was marked stale and there was no quote update received from that destination. There was no limit to how long the Firm would wait to re-route to the original exchange. At times, INCA waited more than one second before re-routing after a quote was marked stale.[4] In at least one instance, INCA traded through a protected quotation it marked stale approximately three seconds after it did not receive an execution at that protected venue.

[3] INCA has since enhanced its system to verify that the trade through monitor is connected and logged in continuously.

[4] The Firm's SOR had been programmed in this manner since Regulation NMS was adopted on August 29, 2005.

10. INCA, therefore, did not take reasonable steps to establish that ISOs it routed met the requirements of Exchange Act Rule 600(b)(31) in violation of Exchange Act 611(c). The Firm revised its system logic to address this issue on or about October 5, 2020.

11. For these reasons, INCA violated Exchange Act Rule 611(c) and NYSE Arca Rule 7.31E(e)(3) by failing to take reasonable steps to establish that the ISOs it routed met the requirements of Exchange Act Rule 600(b)(31).

INCA's supervisory system and WSPs were not reasonably designed to comply with Exchange Act Rule 611 and NYSE Arca Rule 7.31-E(e)(3).

12. NYSE Arca Rule 11.18(b) provides that each member organization "must establish and maintain a system to supervise the activities of its associated persons and the operations of its business. Such system must be reasonably designed to ensure compliance with applicable federal securities laws and regulations and NYSE Arca Rules."

13. NYSE Arca Rule 11.18(c) provides that each member organization "must establish, maintain, and enforce written procedures to supervise the business in which it engages and to supervise the activities of its associated persons that are reasonable designed to ensure compliance with applicable federal securities laws and regulations, and with the NYSE Arca Rules."

14. During the Relevant Period, INCA's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Exchange Act Rule 611(c) and NYSE Arca Rule 7.31-E(e)(3).

15. INCA's supervisory system was unreasonable because it did not detect potential trade throughs caused by the fact that it waited more than one second before re-routing to a trading center's protected quotation after receiving a partial-fill or no-fill response to an order seeking to execute against the trading center's quotation at the same price.

16. Additionally, INCA's WSPs failed to establish processes to achieve compliance with Exchange Act Rule 611€ and NYSE Arca Rule 7.3€(e)(3) during the Relevant Period. For example, even though INCA relies on its trade through monitor to monitor for and respond to disconnections, its WSPs do not contain any information about this process.

17. INCA also ignored red flags that should have alerted the Firm of the need to address its connectivity issues to ensure that the ISOs it routed complied with Exchange Act Rule 611(c) and NYSE Arca Rule 7.31-E(e)(3). Despite experiencing data connectivity issues over multiple dates, the Firm did not completely remediate the issues until after regulatory inquiries.

18. Thus, during the Relevant Period, INCA's supervisory system, including its WSPs, was not reasonably designed to achieve compliance with Exchange Act Rule 611(c) and NYSE Arca Rule 7.31-E(e)(3). Therefore, INCA violated NYSE Arca Rules 11.18(b) and (c).

RELEVANT PRIOR DISCIPLINARY HISTORY

19. In Matter Nos. 2013037651701, 2013037651702, 2013037651703, 2013037651704, 2013037651705, 2013037651706, and 2013037651707 (June 2017),[5] without admitting or denying the findings, INCA consented to a censure, a total fine of $330,000, and an undertaking to revise the Firm's WSPs in connection with findings that it violated Rule 611(c) of Regulation NMS, relevant exchange rules, and related supervisory violations, for activity that took place between September 2012 and May 2016.

20. In Matter Nos. 2010023896601 and 2010023896602 (December 2014),[6] without admitting or denying the findings, INCA consented to a censure, a total fine of $185,000, and an undertaking to revise the Firm's WSPs in connection with findings that it violated Rule 611(c) of Regulation NMS, relevant exchange rules, and related supervisory violations, for activity that took place between January 2009 and September 2011.

SANCTIONS

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

Censure and fine in the amount of $51,379.36 (resolved simultaneously with similar matters for a total fine of $450,000).[7]

The Firm agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. The Firm has submitted a Method of 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(s) imposed in this matter.

The sanctions imposed herein 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 Code of Procedure:

A. To have a Formal Complaint issued specifying the allegations against the Firm;

[5] The matter was brought by BZX, BYX, EDGA, EDGX, NYSE Arca, NYSE, and FINRA.

[6] The matter was brought by The NASDAQ Stock Market LLC and EDGA.

[7] Those matters were brought by the Exchanges and FINRA.

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 prejudgment of the Chief Regulatory Officer of NYSE Arca; 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 Arca employee; or any Regulatory Staff as defined in Rule 10.9120 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 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 Arca pursuant to NYSE Arca Rule 10.9216;

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 Arca Rule 10.9310(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 Arca shall publish a copy of the AWC on its website in accordance with NYSE Arca Rule 10.8313;

4. NYSE Arca may make a public announcement concerning this agreement and the subject matter thereof in accordance with NYSE Arca Rule 10.8313; 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. Any such 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 or identified in a privilege log. In agreeing to the AWC, the Exchange has relied upon, among other things, the completeness of the document productions and the privilege log.

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.

June 30, 2023
Date

Instinet, LLC,
Respondent

By: David Sieradzki
David Sieradzki
General Counsel – Americas

Accepted by FINRA

7/12/2023
Date

Rebecca Carvalho
Director
FINRA, Department of Enforcement

Signed on behalf of NYSE Arca, Inc., by delegated authority from its Chief Regulatory Officer