



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

December 26, 2013

Jonathan S. Pressman, Esq.  
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7 World Trade Center  
250 Greenwich Street  
New York, New York 10007

**Re: In the Matter of Instinet, LLC**  
**Waiver Requests under Regulation A and Rules 505 and 506 of Regulation D**  
**Securities Exchange Act Release No. 34-71191, December 26, 2013**  
**Administrative Proceeding File No. 3-15663**

Dear Mr. Pressman:

This responds to your letter dated today, written on behalf of Instinet, LLC ("Instinet") and constituting an application for waivers of disqualification under Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506 of Regulation D under the Securities Act of 1933 ("Securities Act"). You requested such waivers of disqualification as a result of the order entered December 26, 2013 by the Securities and Exchange Commission in In the Matter of Instinet, LLC Release No. 34-71191 (the "Order").

The Order was entered against Instinet under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(k) of the Investment Advisers Act of 1940 ("Advisers Act"). For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Order. We also have assumed that Instinet will comply with the Order.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rules 505 and 506 of Regulation D that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rules 505 and 506 of Regulation D by reason of entry of the Order. Accordingly, pursuant to delegated authority, on behalf of the Division of Corporation Finance, I hereby grant relief from any disqualifications from exemptions otherwise available under Regulation A and Rules 505 and 506 of Regulation D that may have arisen as a result of entry of the Order, subject to the condition that Instinet will provide written disclosure to investors describing the nature of the Order in any offering for which it claims these exemptions for five years following entry of the Order.

Very truly yours,

Mauri L. Osheroff  
Associate Director (Regulatory Policy)  
Division of Corporation Finance

December 26, 2013

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**BY ELECTRONIC DELIVERY AND FEDERAL EXPRESS**

Sebastian Gomez Abero, Esq.  
Chief, Office of Small Business Policy  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

Re: *In the Matter of Instinet, LLC*; File No. 3-15663

Dear Mr. Gomez Abero:

This letter is submitted on behalf of our client, Instinet, LLC (“Instinet”), the settling respondent in the above-captioned administrative proceeding brought by the Securities and Exchange Commission (the “Commission”). Instinet hereby requests, pursuant to Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506 of Regulation D of the Commission promulgated under the Securities Act of 1933 (the “Securities Act”), waivers of any disqualifications from relying on exemptions under Regulation A and Rules 505 and 506 of Regulation D that may be applicable as a result of the entry of the cease-and-desist order against Instinet (the “Order”) on December 26, 2013, which is described below.<sup>1</sup>

**BACKGROUND**

The staff of the Division of Enforcement has engaged in settlement discussions with Instinet in connection with the above-captioned administrative proceeding, which will be brought alleging willful aiding and abetting and causing violations of Section 206(2) and Section 206(4) of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder. As a result of these discussions, Instinet submitted an Offer of Settlement (the “Offer”) that was presented to the Commission and which the Commission has determined to accept.

In the Offer, solely for the purpose of settling these proceedings, Instinet agreed to consent to the issuance of the Order without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission over it and the subject matter solely for purposes of that action).

The Order, which was issued on December 26, 2013, resolved the Order’s allegations that Instinet willfully aided and abetted and caused violations of Section 206(2) and Section 206(4) of the Advisers Act and Rule 206(4)-8 thereunder arising out of payments in client

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<sup>1</sup> *In the Matter of Instinet, LLC*, File No. 3-15663 (Dec. 26, 2013).

commission credits called “soft dollars.” The Offer alleges that the case is about payments as requested by Instinet’s customer J.S. Oliver Capital Management, L.P. (“JS Oliver”) for expenses that the customer had not properly disclosed to its clients. The Offer further alleges that Instinet made the payments pursuant to JS Oliver’s requests even though the information JS Oliver had provided to Instinet when requesting approval of the payments presented significant red flags and clear suggestions of irregular conduct that each payment was improper. The Order requires Instinet to cease and desist from committing or causing any violations and any future violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder, requires that Instinet pay disgorgement in the amount of \$378,673.76, prejudgment interest in the amount of \$59,607.66, and a civil monetary penalty of \$375,000. Instinet is also ordered to comply with certain undertakings.

### DISCUSSION

Instinet understands that the entry of the Order may disqualify it, affiliated entities, and other issuers from relying on certain exemptions under Regulation A and Rules 505 and 506 of Regulation D promulgated under the Securities Act. Instinet is concerned that, should it or any of its affiliated entities be deemed to be an issuer, predecessor of the issuer, affiliated issuer, general partner or managing member of issuer, promoter, underwriter of securities or in any other capacity described in Securities Act Rules 262, 505, and 506 for the purposes of Securities Act Rule 262(b)(3), Rule 505(b)(2)(iii), and Rule 506(d)(1)(iv), Instinet, its issuer affiliates, and other issuers with which it is associated in one of those listed capacities and which rely upon or may rely upon these offering exemptions when issuing securities would be prohibited from doing so. The Commission has the authority to waive the Regulation A and D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. *See* 17 C.F.R. §§ 230.262, 230.505(b)(2)(iii)(C), and 230.506.

Instinet requests that the Commission waive any disqualifying effects that the Order may have under Regulation A and Rules 505 and 506 of Regulation D as a result of its entry as to Instinet on the following grounds:

1. Instinet’s conduct addressed in the Order does not pertain to offerings under Regulation A or D. Rather, the conduct alleged in the Offer relates to payments in “soft dollars” by Instinet. Furthermore, the alleged violations in the Offer, as described above, and covered by the Final Order relate to payments made more than three years ago.

2. Instinet has taken steps to address the conduct alleged in the Offer. Prior to the issuance of the Order, Instinet revised and enhanced its written policies and procedures to address the soft dollar practices at issue. The Order would require Instinet to comply with certain undertakings relating to, among other things: (a) retain an independent consultant to conduct a comprehensive review of Instinet’s policies, procedures, and practices related to its payment of soft dollars as part of its client commission services (collectively, “Policies and Procedures”); (b) the independent consultant to make recommendations for changes in or improvements to the Policies and Procedures to prevent Instinet from aiding and abetting and

causing an investment adviser's violations of Sections 206(2) and 206(4) of the Advisers Act and Rule 206(4)-8 thereunder with respect to soft dollars; (c) provide to the Commission staff a copy of an engagement letter detailing the independent consultant's responsibilities; (d) arrange for the independent consultant to issue its report describing the review performed and the conclusions reached and shall include any recommendations deemed necessary to make the Policies and Procedures adequate and address the findings set forth in the Order; (e) adopt all recommendations contained in the report and remedy any deficiencies in its Policies and Procedures; (f) cooperate fully with the independent consultant and provide the independent consultant with access to its files, books, records and personnel as reasonably requested for the independent consultant's review; and (g) certify, in writing, compliance with the undertaking(s).

3. The disqualification of Instinet and any of its affiliates from relying on the exemptions under Regulation A and Rules 505 and 506 of Regulation D would, we believe, have an adverse impact on third parties that have retained, or may retain, Instinet and its affiliates in connection with transactions that rely on these exemptions.

4. For a period of five years from the date of the Order, Instinet will furnish (or cause to be furnished) to each purchaser in a Rule 262 of Regulation A, Rule 505, and Rule 506 offering that would otherwise be subject to the disqualification under Rule 262 of Regulation A, Rule 505, or Rule 506(d)(1) as a result of the Order, a description in writing of the Order a reasonable time prior to sale.

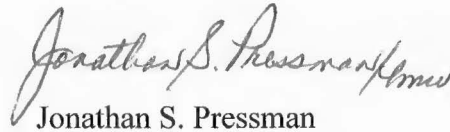
In light of the grounds for relief discussed above, we believe that disqualification is not necessary under the circumstances and that Instinet has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 262 of Regulation A and Rules 505(b)(2)(iii)(C) and 506 of Regulation D, to waive the disqualification provisions in Regulation A and Rules 505 and 506 of Regulation D to the extent they may be applicable as a result of the entry of the Order as to Instinet.<sup>2</sup>

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<sup>2</sup> We note in support of this request that the Commission has granted relief under Rule 262 of Regulation A, Rule 505 of Regulation D, and Rule 506 of Regulation D for similar reasons or in similar circumstances. *See, e.g.*, RBS Securities Inc., S.E.C. No-Action Letter (pub. avail. Nov. 25, 2013); A.R. Schmeidler & Co., S.E.C. No-Action Letter (pub. avail. July 31, 2013); Oppenheimer Asset Management Inc. and Oppenheimer Alternative Investment, LLC, S.E.C. No-Action Letter (pub. avail. Mar. 11, 2013); J.P. Morgan Securities LLC, et al., S.E.C. No-Action Letter (pub. avail. Jan. 8, 2013); J.P. Turner & Company, LLC and William L. Melo, S.E.C. No-Action Letter (pub. avail. Sept. 10, 2012); Mizuho Securities USA Inc., S.E.C. No-Action Letter (pub. avail. July 26, 2012); Harbert Management Corporation, et al., S.E.C. No-Action Letter (pub. avail. July 3, 2012); H & R Block, S.E.C. No-Action Letter (pub. avail. May 2, 2012); GE Funding Capital Market Services, Inc., S.E.C. No-Action Letter (pub. avail. Jan. 23, 2012); Wachovia Bank, N.A. now known as Wells Fargo Bank, N.A., S.E.C. No-Action Letter (pub. avail. Dec. 9, 2011); J.P. Morgan Securities LLC, S.E.C. No-Action Letter (pub. avail. July 8, 2011); J.P. Morgan Securities LLC, S.E.C. No-Action Letter (pub. avail. June 29, 2011); UBS Financial Securities Inc., S.E.C. No-Action Letter (pub. avail. May 9, 2011); Charles Schwab & Co., Inc., S.E.C. No-Action Letter (pub. avail. Jan. 11, 2011); Goldman Sachs & Co., S.E.C. No-Action Letter (pub. avail. Jul. 20, 2010); In the Matter of Banc of America Investment Services, Inc. and Virginia

Please do not hesitate to call me at the number listed above if you have any questions.

Sincerely,



Jonathan S. Pressman

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Holliday, S.E.C. No-Action Letter (pub. avail. Oct. 23, 2009); General Electric Co., S.E.C. No-Action Letter (pub. avail. Aug. 11, 2009); Investools Inc., S.E.C. No-Action Letter (pub. avail. Dec. 16, 2009); A.G. Edwards & Sons, S.E.C. No-Action Letter (pub. avail. May 31, 2006) (waiver after Securities Act Section 17(a)(2) violation); Bear, Stearns & Co., S.E.C. No-Action Letter (pub. avail. May 31, 2006) (same); Goldman, Sachs & Co., S.E.C. No-Action Letter (pub. avail. May 31, 2006) (same).