
STATEMENT OF DISCIPLINARY ACTION

The Disciplinary Action

1. The Securities and Futures Commission (**SFC**) has publicly reprimanded Instinet Pacific Limited (**Instinet**) and fined it HK\$8 million pursuant to section 194 of the Securities and Futures Ordinance (**SFO**) for failing to comply with, and implement and maintain measures appropriate to ensuring compliance with Rule 526 of the Rules of the Exchange in relation to the reporting of direct business transactions (i.e. cross trades) to The Stock Exchange of Hong Kong Limited (**SEHK**) between December 2012 and March 2018 (**Relevant Period**), in breach of General Principle (**GP**) 2, GP 7 and paragraph 12.1 of the Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission (**Code of Conduct**).
2. Instinet is licensed under the SFO to carry on business in Type 1 (dealing in securities), Type 4 (advising on securities), and Type 7 (providing automated trading services) regulated activities. Instinet is also an Exchange Participant registered with the SEHK.

Relevant regulatory requirements

3. The Code of Conduct provides that a licensed corporation should:
 - (a) act with due skill, care and diligence, in the best interests of its clients and the integrity of the market in conducting its business activities (GP 2);
 - (b) comply with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of clients and the integrity of the market (GP 7); and
 - (c) comply with, and implement and maintain measures appropriate to ensuring compliance with the laws, rules, regulations and codes administered or issued by the SFC, the rules of any exchange or clearing house of which it is a member or participant, and the requirements of any regulatory authority which apply to the licensed corporation (paragraph 12.1).
4. As an Exchange Participant, Instinet is also required to input details of cross trades it had conducted in the Orion Trading Platform¹ or report such transactions to the SEHK within the prescribed time limits in accordance with Rule 526 of the Rules of the Exchange.

Summary of facts

5. During the Relevant Period, Instinet provided facilitation services to its clients through its affiliated companies, where Instinet would act as agency and execution broker for its clients and as execution broker for its affiliated company. After its affiliated company had (partially or fully) filled the client orders over the counter, Instinet would issue trade confirmations to the clients. However, Instinet never reported these relevant cross trades to the SEHK as required.
6. The SFC's investigation found that during the Relevant Period, Instinet had failed

¹ Formerly, the Automatic Order Matching and Execution System before 5 February 2018. As installed and operated by the SEHK.

to report 8,817 pairs of cross trades involving transactions worth around HK\$25.9 billion between its client and affiliated company (**Unreported Cross Trades**) to the SEHK. The evidence shows that Instinet did not have any policies and procedures requiring, governing, or monitoring the reporting of cross trades to the SEHK, and it did not conduct any review on its trade reporting process during the Relevant Period.

7. Instinet's failure to comply with Rule 526 of the Rules of the Exchange in respect of the reporting of the Unreported Cross Trades had breached GP 2, GP 7 and paragraph 12.1 of the Code of Conduct. Such reporting failure is particularly serious as it lasted for almost five and a half years and affected a large number of transactions.

Conclusion

8. Having considered all the circumstances, the SFC is of the view that Instinet is guilty of misconduct for the purpose of sections 194(1)(a) and (2)(a) of the SFO.
9. In deciding the disciplinary sanction set out in paragraph 1 above, the SFC has taken into account all relevant considerations, including the duration of Instinet's failure, the number of unreported cross trades and the sum involved, and Instinet's initiative to cease the relevant trade flows and cooperation with the SFC in resolving the SFC's concerns.