



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

January 2, 2014

Mr. Jonathan S. Pressman
Wilmer Cutler Pickering Hale and Dorr LLP
7 World Trade Center
250 Greenwich Street
New York, New York 10007

Re: In the Matter of Instinet, LLC (LA-3910)
**Nomura Holdings Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of
the Securities Act**

Dear Mr. Pressman:

This is in response to your letter dated December 26, 2013, written on behalf of Nomura Holdings Inc. (Company) and constituting an application for relief from the Company being considered an “ineligible issuer” under Rule 405(1)(vi) of the Securities Act of 1933 (Securities Act). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on December 26, 2013, of a Commission Order (Order) pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) naming Instinet, LLC, a subsidiary of the Company, as a respondent. The Order requires that, among other things, Instinet 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.

Based on the facts and representations in your letter, and assuming the Company and Instinet comply with the Order, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) of the Securities Act and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted, and the effectiveness of such relief is as of the date of the entry of the Order. Any different facts from those represented or non-compliance with the Order might require us to reach a different conclusion.

Sincerely,

/s/

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance

December 26, 2013

Jonathan S. Pressman

BY E-MAIL AND FEDERAL EXPRESS

+1 212 230 8846 (t)
+1 212 230 8888 (f)
jonathan.pressman@wilmerhale.com

Mary J. Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: In the Matter of Instinet, LLC, File No. 3-15663 (Dec. 26, 2013)

Dear Ms. Kosterlitz:

This letter is submitted on behalf of our client, Nomura Holdings Inc. (“Nomura”), in connection with the anticipated settlement of the above-captioned administrative proceeding by the Securities and Exchange Commission (the “Commission”) of Instinet, LLC (“Instinet”), a broker-dealer subsidiary of Nomura. The settlement would result in the entry of a cease-and-desist order against Instinet (the “Order”), which is described below.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the “Securities Act”), Nomura hereby requests that the Commission determine that for good cause shown it is not necessary under the circumstances that Nomura be considered an “ineligible issuer” under Rule 405. Nomura requests that this determination be effective upon the entry of the Order. The staff of the Division of Enforcement has informed us that it does not object to the grant of the requested waiver.

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).

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The Order, which was issued on December 26, 2013, resolved the Complaint'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 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 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, and 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

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.¹ As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the "well-known seasoned issuer," and a new category of offering communication, the "free writing prospectus." A well-known seasoned issuer is eligible for important reforms that have changed the way corporate finance transactions for larger issuers are planned and structured. These reforms include the ability to "file-and-go" (i.e., eligibility for automatically effective shelf registration statements) and "pay-as-you-go" (i.e., the ability to pay filing fees as the issuer sells securities off the shelf). These reforms have removed the risk of regulatory delay in connection with capital formation. In addition, well-known seasoned issuers are provided with the most flexibility in terms of communications, including the ability to use free writing prospectuses in advance of filing a registration statement.

The Commission also created another category of issuer under Rule 405, the "ineligible issuer." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances.² As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use most free writing prospectuses.

¹See Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,722, 44,790 (Aug. 3, 2005).

²See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

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Securities Act Rule 405 authorizes the Commission to determine, “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.”³ The Commission has delegated the function of granting or denying such applications to the Director of the Division of Corporation Finance.⁴

Nomura understands that the entry of the Order would make Nomura an ineligible issuer under Rule 405. If Nomura is an ineligible issuer as a result of the Order, it, in the future, would not be able to qualify as a well-known seasoned issuer, and, therefore, would not have access to file-and-go and other reforms available to well-known seasoned issuers, and would not be able to be eligible to take advantage of all of the free writing prospectus reforms of Rules 164 and 433.

Nomura respectfully requests that the Commission determine that it is not necessary for Nomura to be considered an ineligible issuer as a result of the Order. Applying the ineligibility provisions to Nomura would be disproportionately and unduly severe, for the following reason:

The conduct addressed in the Complaint does not pertain to activities undertaken by Nomura or its subsidiaries in connection with their role as issuers of securities (or any disclosure related thereto) or any of their filings with the Commission.

In light of these considerations, we believe there is good cause to determine that Nomura should not be considered an ineligible issuer under Rule 405 as a result of the Final Judgment. We respectfully request the Commission to make that determination.

Please contact me at the above listed telephone number if you should have any questions regarding this request.

Sincerely,



Jonathan S. Pressman

³ Securities Act Rule 405, 17 C.F.R. § 230.405.

⁴ 17 C.F.R. § 200.30-1(a)(10).