

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9504 / December 26, 2013

Administrative Proceeding
File No. 3-15663

In the Matter of

INSTINET, LLC,

Respondent.

ORDER UNDER RULE 602(e) OF THE
SECURITIES ACT OF 1933 GRANTING A
WAIVER OF THE RULE 602(c)(3)
DISQUALIFICATION PROVISION

I.

Instinet, LLC (“Instinet”) has submitted a letter, dated December 11, 2013, requesting a waiver for itself and affiliates of the Rule 602(c)(3) disqualification from relying on the exemption from registration under Regulation E arising from Instinet’s settlement of administrative and cease-and-desist proceedings instituted by the Commission.

II.

On December 26, 2013, pursuant to Instinet’s Offer of Settlement, the Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”). Under the Order, the Commission found that Instinet willfully aided and abetted and caused violations by J.S. Oliver Capital Management, L.P. (“JS Oliver”) of Sections 206(2) and 206(4) of the Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder by engaging in the following conduct: From January 2009 through July 2010, Instinet paid approximately \$430,000 in client commission credits called “soft dollars” as requested by its customer, JS Oliver, a San Diego-based investment adviser, for expenses that JS Oliver had not properly disclosed to its clients. The improper payments included \$329,365 to the ex-wife of JS Oliver’s president, Ian O. Mausner; thirteen months of increased rent payments totaling \$65,000 for JS Oliver’s offices at Mausner’s home; and two payments totaling \$40,094.54 for upkeep on Mausner’s New York City timeshare. Instinet made the payments pursuant to JS Oliver’s requests even though the information JS Oliver had provided Instinet presented significant red flags and clear suggestions of irregular conduct that each payment was improper. The Order required 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, censured Instinet, required that Instinet pay disgorgement of \$378,673.76, prejudgment interest of \$59,607.66, and a civil money penalty of \$375,000. Instinet also was ordered to comply with certain undertakings enumerated in the Order.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if any investment adviser or any underwriter of the securities to be offered is subject to an order of the Commission pursuant to Section 15(b) of the Securities Exchange Act of 1934. 17 C.F.R. § 230.602(c)(3). The Order is such an order. Rule 602(e) of the Securities Act of 1933 (“Securities Act”) provides, however, that the disqualification “shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied.” 17 C.F.R. § 230.602(e).

IV.

Based upon the representations set forth in Instinet’s request, the Commission has determined that pursuant to Rule 602(e) under the Securities Act a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the entry of the Order.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provision of Rule 602(c)(3) under the Securities Act resulting from the entry of the Order is hereby granted.

By the Commission.

Elizabeth M. Murphy
Secretary