

SEC Charges New York-Based Brokerage Firm for Ignoring Red Flags in Soft Dollar Scheme

Washington D.C., Dec. 26, 2013 —

The Securities and Exchange Commission today announced sanctions against a New York-based brokerage firm for ignoring red flags and paying more than \$400,000 in soft dollars for expenses that an investment adviser **had not properly disclosed** to clients.

Soft dollars are credits or rebates from a brokerage firm on commissions that clients pay for trades executed in an investment adviser's client accounts. If appropriately disclosed, an investment adviser may use the soft dollar credits to pay for such expenses as brokerage and research services that benefit clients.

An SEC investigation found that Instinet LLC approved soft dollar payments to San Diego-based investment advisory firm J.S. Oliver Capital Management despite **clear signs that the payments were improper**. The SEC's Enforcement Division has [separately charged J.S. Oliver and its president Ian Mausner](#) for their alleged wrongdoing.

Instinet agreed to pay more than \$800,000 to settle the SEC's charges.

"Instinet repeatedly approved soft dollar payments despite clear warning signs that J.S. Oliver and Mausner were improperly using client funds for their benefit," said Marshall S. Sprung, co-chief of the SEC Enforcement Division's Asset Management Unit. "Brokers perform a crucial gatekeeper function in approving soft dollar payments, and they cannot turn a blind eye to red flags that investment advisers may be breaching their fiduciary duty to clients."

According to the SEC's order instituting settled administrative proceedings, among the red flags that Instinet ignored while approving soft dollar payments to J.S. Oliver from January 2009 to July 2010:

- J.S. Oliver provided Instinet with inconsistent reasons for a payment of more than \$329,000 to Mausner's ex-wife under the guise of employee compensation. **The payment was actually related to the Mausners' divorce.** Instinet approved the payment despite a purported employment agreement provided by J.S. Oliver that, while significantly altered, still failed to indicate that Mausner's ex-wife had performed any work for J.S. Oliver after 2006.
- After J.S. Oliver had submitted invoices to Instinet indicating a monthly rent of \$10,000 for all of 2009, the firm requested soft dollars in July 2009 for a 50 percent increase in rent to \$15,000 per month. However, J.S. Oliver rented offices in Mausner's home, and Instinet knew that Mausner owned the company to which the rent was paid. **The increased rent payments were inflated for Mausner's personal benefit and not properly disclosed to J.S. Oliver clients.** Nevertheless, Instinet approved \$65,000 in soft dollar payments for the rent increase over a period of 13 months.

- J.S. Oliver again provided Instinet with inconsistent reasons for two requested soft dollar payments purportedly for Mausner's travel expenses related to evaluating "potential investment opportunities." However, the expenses actually were for maintenance, taxes, and fees on Mausner's personal timeshare in New York City. Despite copies of timeshare bills that were clearly in Mausner's name indicating the payments would be for his own financial benefit, Instinet approved the soft dollar payments totaling more than \$40,000.

The SEC's order finds that Instinet willfully aided, abetted, and caused J.S. Oliver's violations of Sections 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8. Instinet agreed to pay a penalty of \$375,000, disgorgement of \$378,673.76, and prejudgment interest of \$59,607.66. The firm also must engage an independent compliance consultant to review its policies, procedures, and practices related to soft dollar payments. Without admitting or denying the SEC's findings, Instinet also consented to a censure and a cease-and-desist order.

The SEC's investigation was conducted by Ronnie B. Lasky and C. Dabney O'Riordan of the Enforcement Division's Asset Management Unit in the Los Angeles Regional Office.