



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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**IN THE MATTER OF THE SECURITIES ACT, R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the ACT)**

AND

IN THE MATTER OF LIQUIDNET CANADA INC.

ORDER

(Section 21.0.1)

WHEREAS Liquidnet Canada Inc. operates an alternative trading system (ATS) as defined in the Act;

AND WHEREAS section 21.0.1 of the Act states that the Commission may, if it considers it in the public interest, make any decision with respect to,

- (a) the manner in which an alternative trading system carries on business in Ontario;
- (b) the trading of securities or derivatives on or through the facilities of the alternative trading system;
or
- (c) any by-law, rule, regulation, policy, procedure, interpretation or practice of the alternative trading system;

AND WHEREAS the information contained in Form 21-101F2 *Initial Operation Report Alternative Trading System* (Form 21-101F2), as amended from time to time, and its exhibits, describes the manner in which an alternative trading system operates, describes the trading of securities or derivatives on or through the facilities of the ATS and contains the ATS's by-laws, rules, regulations, policies, procedures, interpretations and practices;

IT IS HEREBY ORDERED by the Commission pursuant to section 21.01.1 of the Act that Liquidnet Canada Inc. will follow the process for review and approval of changes to the information in Form 21-101F2, and its exhibits, described in Appendix A, as amended from time to time.

DATED this 22nd day of June, 2012, and effective as of July 1, 2012.

"P.L. Kennedy"

Commissioner

"Margot C. Howard"

Commissioner

APPENDIX A

Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto

1. Purpose

This Protocol sets out the procedures an alternative trading system (ATS) must follow for any Change as defined in section 2 below, and describes the procedures for its review by Commission Staff (Staff) and approval by the Commission or the Director.

2. Definitions

- (a) *Change* means a Fee Change, a Housekeeping Change or a Significant Change.
- (b) *Fee Change* means any new fee or fee model of the ATS and any amendment to a fee or fee model.
- (c) *Housekeeping Change* means an amendment to the information in Form 21-101F2 that
 - (i) does not have an impact on the ATS's market structure, subscribers, investors or the capital markets, or
 - (ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.
- (d) *Significant Change* means an amendment to the information in Form 21-101F2 other than
 - (i) a Housekeeping Change, or
 - (ii) a Fee Change,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101 CP.

- (e) *Significant Change subject to Public Comment* means a Significant Change that
 - (i) is listed in paragraphs 6.1(4)(a), (b), (c) or (d) of Companion Policy 21-101 CP, or
 - (ii) in Staff's view, has an impact on the ATS's market structure or subscribers, or on investors or the capital markets or otherwise raises public interest concerns, and should be subject to public comment.

3. Scope

- (a) The ATS and Staff will follow the process for review and approval set out in this Protocol for all Changes.

4. Waiving or Varying the Protocol

- (a) The ATS may file a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.
- (b) Staff will use their best efforts to provide to the ATS within five business days of receipt of its request either:
 - (i) written notice that Staff object to granting the waiver or variation; or
 - (ii) written notice that the waiver or variation has been granted by Staff.

5. Materials to be Filed and Timelines

- (a) Prior to the implementation of a Fee Change or Significant Change, the ATS will file with Staff the following materials:
 - (i) a cover letter that, together with the notice for publication filed under paragraph 5(a)(ii), if applicable, fully describes:

- (A) the proposed Fee Change or Significant Change;
 - (B) the expected date of implementation of the proposed Fee Change or Significant Change;
 - (C) the rationale for the proposal and any relevant supporting analysis;
 - (D) the expected impact of the proposed Fee Change or Significant Change on the market structure, subscribers and, if applicable, on investors and the capital markets;
 - (E) whether a proposed Significant Change would increase or decrease systemic risk in the Canadian financial system and how any increase would be mitigated, if applicable;
 - (F) a discussion of the expected impact of the Fee Change or Significant Change on the ATS's compliance with Ontario securities law and in particular on requirements for fair access and maintenance of fair and orderly markets;
 - (G) details of any consultations undertaken in formulating the Fee Change or Significant Change, including the internal governance process followed to approve the Change;
 - (H) if the Significant Change will require subscribers and service vendors to modify their own systems after implementation of the Change, a reasonable estimate of the amount of time needed to perform the necessary work, or an explanation as to why a reasonable estimate was not provided;
 - (I) a discussion of any alternatives considered;
 - (J) if applicable, whether the proposed Fee Change or Significant Change would introduce a fee model or feature that currently exists in other markets or jurisdictions; and
 - (K) blacklined and clean copies of Form 21-101F2 showing the proposed Change.
- (ii) for a proposed Significant Change subject to Public Comment, a notice for publication that includes the information required under paragraph 5(a)(i) above, except that the following may be excluded from the notice:
- (A) supporting analysis required under subparagraph 5(a)(i)(C) above that, if included in the notice would result in the public disclosure of intimate financial, commercial or technical information;
 - (B) the information on systemic risk required under subparagraph 5(a)(i)(E) above;
 - (C) the information on the internal governance processes followed required under subparagraph 5(a)(i)(G) above;
 - (D) the reasonable estimate of time needed for subscribers and service vendors to modify their own systems, or the explanation as to why a reasonable estimate was not provided, required under subparagraph 5(a)(i)(H), so long as the notice for publication contains a statement that the ATS did not or could not make a reasonable estimate; and
 - (E) the discussion of alternatives required under subparagraph 5(a)(i)(I) above.
- (b) The ATS will file the materials set out in subsection 5(a)
- (i) at least 45 days prior to the expected implementation date of a proposed Significant Change; and
 - (ii) at least seven business days prior to the expected implementation date of a proposed Fee Change.
- (c) For a Housekeeping Change, the ATS will file with Staff the following materials:
- (i) a cover letter that indicates fully describes the Change and indicates that it was classified as a Housekeeping Change and provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and
 - (ii) blacklined and clean copies of Form 21-101F2 showing the Change.
- (d) The ATS will file the materials set out in subsection 5(c) by the earlier of
- (i) the ATS's close of business on the 10th calendar day after the end of the month in which the Housekeeping Change was implemented; and

- (ii) the date on which the ATS publicly announces a Housekeeping Change, if applicable.

6. Review by Staff of notice and materials to be published for comment

- (a) Within 5 business days of the receipt of the notice and materials filed by the ATS relating to a Public Interest Rule or Significant Change subject to Public Comment in accordance with paragraph 5(a)(ii), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis and discussion to elicit meaningful public comment, and will promptly notify the ATS of any deficiency requiring a refiling of the notice and materials.
- (b) Where the notice and materials are considered by Staff to be deficient, the ATS will amend and resubmit the notice and materials accordingly, and the date of resubmission will serve as the filing date for the purposes of this Protocol.
- (c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 7.

7. Publication of a Significant Change Subject to Public Comment

- (a) As soon as practicable after the receipt of the notice and materials filed by the ATS relating to a Significant Change subject to Public Comment in accordance with subsection 5(a)(ii), Staff will publish in the OSC Bulletin and on the OSC website the notice prepared by the ATS, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the ATS within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.
- (b) If public comments are received
 - (i) the ATS will forward copies of the comments promptly to Staff; and
 - (ii) the ATS will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

8. Review and Approval Process for Proposed Fee Changes and Significant Changes

- (a) Staff will use their best efforts to complete their review of a proposed Fee Change or Significant Change within
 - (i) 45 days from the date of filing of a proposed Significant Change; and
 - (ii) seven business days from the date of filing of a proposed Fee Change.
- (b) Staff will notify the ATS if they anticipate that their review of the proposed Fee Change or Significant Change will exceed the timelines in subsection 8(a).
- (c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change or Significant Change, Staff will use best efforts to provide the ATS with a comment letter promptly by the end of the public comment period for a Significant Change subject to Public Comment, and promptly after the receipt of the materials filed under section 5 for all other Changes.
- (d) The ATS will respond to any comments received from Staff in writing.
- (e) Unless Staff agree to an extension of time, if the ATS fails to respond to comments from Staff within 120 days after the receipt of Staff's comment letter, the ATS will be deemed to have withdrawn the proposed Fee Change or Significant Change. If the ATS wishes to proceed with the Fee Change or Significant Change after it has been deemed withdrawn, the ATS will have to be re-submit it for review and approval, in accordance with this Protocol.
- (f) Upon completion of Staff's review of a Fee Change or Significant Change, Staff will submit the Change to the Director or, in the circumstances described in subsection 8(g), to the Commission, for a decision within the following timelines:

- (i) for a Significant Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the ATS;
 - (ii) for any other Significant Change, the later of 45 days from the date of filing of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the ATS; or
 - (iii) for a Fee Change, the later of seven business days from the date of filing of the change and the date that Staff's comments and any concerns identified have been adequately addressed by the ATS.
- (g) A Fee Change or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection 8(f),
- (i) if the proposed Fee Change or Significant Change is complex or introduces a novel feature to the ATS or the capital markets;
 - (ii) if comments received through the public comment process raise significant public interest concerns; or
 - (iii) in any other situation where, in Staff's view, Commission approval is appropriate.
- (h) Staff will promptly notify the ATS of the decision.
- (i) If a Significant Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and on the OSC website promptly after the approval:
- (i) a notice indicating that the proposed Change is approved;
 - (ii) the summary of public comments and responses prepared by the ATS, if applicable; and
 - (iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the ATS and a blacklined copy of the revised Change highlighting the revisions made.

9. Review Criteria for a Fee Change and Significant Change

- (a) Staff will review a proposed Fee Change or Significant Change in order to assess whether it is in the public interest for the Director or the Commission to approve the Change. In making this determination, Staff will have regard to the mandate of the Commission as set out section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:
- (i) the Change would impact the ATS's compliance with Ontario securities law;
 - (ii) the ATS followed its established internal governance practices in approving the proposed Change;
 - (iii) the ATS followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose and effect of the Change; and
 - (iv) the ATS adequately addressed any comments received.

10. Effective Date of a Fee Change or Significant Change

- (a) A Fee Change or Significant Change will be effective on the later of:
- (i) the date that the ATS is notified that the Change is approved;
 - (ii) if applicable, the date of publication of the notice of approval on the OSC website; and
 - (iii) the date designated by the ATS.

11. Significant Revisions and Republication

- (a) If, subsequent to its publication for comment, the ATS revises a Significant Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Change, Staff will, in consultation with the ATS, determine whether or not the revised Change should be published for an additional 30-day comment period.
- (b) If a Significant Change subject to Public Comment is republished under subsection 11(a), the request for comments will include a blacklined version marked to the originally published version,

a summary of comments and responses prepared by the ATS, and an explanation of the revisions and the supporting rationale for the revisions.

12. Withdrawal of a Fee Change or Significant Change

- (a) If the ATS withdraws a Fee Change or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.
- (b) If the notice of withdrawal relates to a Significant Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and OSC website as soon as practicable.
- (c) If a Significant Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 8(e), Staff will prepare and publish a notice informing market participants that the ATS did not proceed with the Change.

13. Effective Date of a Housekeeping Change

- (a) Subject to subsections 13(b) and 13(c), a Housekeeping Change will be effective on the date designated by the ATS.
- (b) Staff will review the materials filed by the ATS for a Housekeeping Change to assess the appropriateness of the categorization of the Change as housekeeping within five business days from the date that the ATS filed the documents in accordance with subsections 5(c) and 5(d). The ATS will be notified in writing if there is disagreement with respect to the categorization of the Change as housekeeping.
- (c) If Staff disagree with the categorization of the Change as housekeeping, the ATS will immediately repeal the Change, file the proposed Change as a Significant Change, and follow the review and approval process described in this Protocol as applying to a Significant Change, including those processes applicable to a Significant Change subject to Public Comment if applicable.

14. Immediate Implementation of a Significant Change

- (a) The ATS may need to make a Significant Change effective immediately where the ATS determines that there is an urgent need to implement the Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the ATS, its subscribers, other market participants or investors.
- (b) When the ATS determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible but in any event at least five business days prior to the proposed implementation of the Significant Change. The written notice will include the expected effective date of the Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must also be included as part of the written notice.
- (c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the ATS, in writing, of the disagreement no later than the end of the third business day following filing of the notice under subsection 14(b). If the disagreement is not resolved, the ATS will file the Significant Change in accordance with the timelines in section 5.

15. Review of a Significant Change Implemented Immediately

- (a) A Significant Change that has been implemented immediately in accordance with section 14 will be published, if applicable, and reviewed and approved by the Director or by the Commission in accordance with the procedures set out in section 8, with necessary modifications. If the Director or the Commission does not approve the Significant Change, the ATS will immediately repeal the Change and inform its subscribers of the decision.

16. Application of Section 21 of the *Securities Act* (Ontario)

- (a) The Commission's powers under section 21.0.1 of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Change having been approved under this Protocol.