liquidnet canada

c/o Liquidnet, Inc.
498 Seventh Avenue, 12th Floor
New York, NY 10018
T 646 674 2000 F 646 674 2003
www.liquidnet.com

By Hand

July 19, 2007

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8

James E. Twiss, Chief Policy Counsel
Market Policy and General Counsel's Office
Market Regulation Services Inc.
Suite 900
145 King Street West
Toronto, Ontario M5H 1J8

Re: Liquidnet Canada Inc. – Comment Letter on the Joint CSA/RS Proposal on Trade-Through Protection, Best Execution, Access to Marketplaces and the Consolidation of Data

Ladies and Gentlemen:

We would like to thank the Canadian Securities Association ("CSA") and Market Regulation Services, Inc. ("RS") for the issuance of the Joint CSA/RS Proposal on Trade-Through Protection, Best Execution, Access to Marketplaces and the Consolidation of Data (the "Proposal"). The Proposal raises a number of important market structure issues. As a firm that has brought innovation and cost savings to institutional trading in Canada, as well as in the U.S. and Europe, we look forward to providing input on the issues raised in the Proposal.

I. BACKGROUND ON LIQUIDNET

Liquidnet Canada Inc. operates the Liquidnet trading system for Canadian subscribers. Liquidnet Canada is a wholly-owned subsidiary of Liquidnet Holdings, Inc. Liquidnet Holdings, Inc. has other wholly-owned subsidiaries – Liquidnet, Inc., which operates the Liquidnet trading system for US subscribers; Liquidnet Europe Limited, which operates the Liquidnet trading system for European subscribers; Liquidnet Asia Limited, which is applying for regulatory approval to operate the Liquidnet trading system in various Asian jurisdictions; Liquidnet Australia Pty Ltd., which is applying for regulatory approval to operate the Liquidnet trading system in Australia; and Liquidnet Japan Inc., which has received regulatory approval to operate the Liquidnet trading system in Japan. Liquidnet Europe now makes trading available in the securities of 20 European jurisdictions. The Asian and Australian subsidiaries plan to launch operations during the second half of 2007.

Liquidnet Canada is registered as an investment dealer (or equivalent) and an alternative trading system, where applicable, with the Ontario Securities Commission, the Quebec Autorité des Marchés Financiers, the Saskatechewan Securities Commission, the British Columbia Securities Commission and the Alberta Securities Commission. Liquidnet Canada also is a member of the Investment Dealers Association of Canada. Liquidnet Canada's market activities are regulated by RS.

The Liquidnet trading system is an electronic block trading system. Liquidnet was founded in November 1999 for a specific purpose: to use technology to reduce the costs – both explicit and implicit, incurred by institutions in executing block trades.

Using Liquidnet, buy-side institutions enter into anonymous one-on-one negotiations for the purchase and sale of large blocks of equity securities. In doing so, these institutions avoid the market impact costs associated with using traditional market intermediaries (including traditional block execution brokerage firms) to execute block trades. These substantial cost savings – see Section II below – are passed on directly to the individuals who are the beneficiaries of the mutual funds, pension funds and other managed accounts on behalf of whom our institutional customers trade.

- Since Liquidnet's inception, the average execution size for Canadian equity securities traded on Liquidnet has been 63,796 shares[1] , which is approximately 71 times greater than the average execution size on the TSX.[2]

Liquidnet combines this industry-leading average execution size with significant cost savings through reduced market impact costs, lower commission rates relative to traditional block traders, and average price improvement of CDN 1.8 cents per share.[3]

We note that since inception, approximately 97.2% of Liquidnet's executions in Canadian equities have been within the spread. We note that for the 2.8% of trades executed outside the spread, in a significant majority of cases, a Liquidnet customer submitted a bid or offer during a negotiation that was within the spread at the time of the customer's bid or offer but "put offside" by an order displayed in another marketplace between the time the Liquidnet customer submitted the bid or offer and the time the contra-party in the Liquidnet negotiation accepted the first customer's bid or offer.[4]

---

1 Through July 5, 2007.

2 As per TSX trading volumes for May 2007.

3 Price improvement is for since inception.

4 Since inception we have executed 615 trades in Canadian equities, of which only 17 traded through the bid/ask spread.

We further note that two parties may wish to enter into a securities transaction outside of the spread to limit the potential timing and market impact risks of disclosing large order size to the market. For example, on November 21, 2006, two Canadian members executed two large trades on Liquidnet in the security TVA.b – one trade for 50,000 shares and another for 44,400 shares. Only the trade of 44,000 shares traded through the TSX best bid/ask by CDN 4 cents. TVA.b had an average daily volume of 1,200 shares on the TSX. The aggregate 94,400 shares that were executed on Liquidnet represented 7262% of the TSX trading volume. Therefore, if the two parties could not have traded on Liquidnet, it would have taken considerably longer to execute their orders, which would have subjected them, and their ultimate investors, to additional timing and market impact costs. Given the low occurrence of trades that occur outside of the spread, compared to the benefits of allowing the trades to occur outside of the spread, we question the need for imposing a trade-through rule.

Liquidnet's sole business is to provide agency executions through the Liquidnet system. To that end, Liquidnet does not engage in investment banking or provide its customers with shares in IPOs. Liquidnet does not conduct a research business or sell its customers' mutual funds. An institution uses Liquidnet only if it determines that Liquidnet provides efficient execution of the institution's block orders. Accordingly, Liquidnet's success to date is based entirely on its ability to execute its customers' block orders with significant cost savings.

II. How Liquidnet Reduces Institutional Trading Costs

Liquidnet provides three specific types of cost savings to its institutional customers: lower commissions, price improvement, and reduced market impact costs. These cost savings represent reductions to institutional investors' explicit costs as well as to their implicit costs.

A. Explicit Costs

Liquidnet charges a commission of CDN 2 cents per share for those shares equal to or greater than CDN $5 per share.[5] This commission rate is low relative to the commission charged by traditional block trading firms to institutional investors, which is CDN 4.1 cents per share.[6] Based on Liquidnet's trading volume in Canadian securities (since Canadian equities trading launched on Liquidnet in October 2006) of approximately 78 million shares, this CDN 2.1 cents savings per share (CDN 2.1 cents average block commission rate less Liquidnet's CDN 2 cent commission) works out to an aggregate savings of approximately CDN $1.6 million for Liquidnet's institutional customers since inception, which ultimately benefits the individual investors whom such institutions represent.

In addition to reduced commissions, as noted above, Liquidnet's customers realize an average of CDN 1.8 cents per share in price improvement on each trade executed through Liquidnet for Canadian equities.[7] This price improvement results in a net average execution cost of CDN 0.2 cents per share (Liquidnet's CDN 2 cent commission less CDN 1.8 cent average price

5 Liquidnet charges a commission of CDN 1 cent for those shares under CDN $5 per share.

6 Based on Greenwich Associates 2006.

7 Based on Liquidnet executions since inception.

improvement), which is extremely low considering Liquidnet's average execution size of more than 63,000 shares per trade. Based on Liquidnet's trading volume since inception, this price improvement works out to additional savings of approximately CDN $1.4 million for Liquidnet's customers since inception.

As many Canadian institutional investors trade US equities, we note that Liquidnet offers similar cost savings with respect to the trading of US equities on Liquidnet. For US equities, Liquidnet charges US 2 cents per share for those shares equal to or greater than USD 5 per share.[8] This commission rate is low relative to the commission charged by traditional block trading firms to institutional investors, which one authority has estimated as US 4.1 cents per share for listed and USD 4 cents per share for OTC.[9] Based on Liquidnet's 2006 trading volume in U.S. securities of approximately 11.9 billion shares, this US 1.57 cents savings per share for listed and US 1.50 cents per share for OTC works out to an aggregate savings of approximately USD 184 million for Liquidnet's customers during 2006.[10]

In addition to reduced commissions, as noted above, Liquidnet's customers realize an average of US 1.1 cents per share in price improvement on each trade executed through Liquidnet for US equities.[11] This price improvement results in a net average execution cost of US 0.9 cents per share (Liquidnet's US 2 cent commission less US 1.1 cent average price improvement), which is extremely low considering Liquidnet's average execution size of more than 44,000 shares per trade. Based on Liquidnet's 2006 trading volume, this price improvement works out to additional savings of approximately USD 151 million for Liquidnet's customers during 2006.

We anticipate that the total amount of explicit savings that Liquidnet provides for investors will increase year-to-year as Liquidnet's trading volume continues to grow.

B. Implicit Costs

Commissions, net of price improvement, account for the explicit cost of institutional trading. However, institutional trading also has an implicit cost in the form of price impact. The US Securities and Exchange Commission has stated in the re-proposing release for Regulation NMS that, "the primary component of trading costs for large orders is price impact, the change in stock price caused by the difficulty of executing large orders to buy (with rising prices) or to sell (with declining prices)."[12]

Traditional public markets, including the TSX, LSE, NYSE, Nasdaq and ECNs, are efficient in handling small and medium-sized orders but are not well adapted to handle institutional block-sized orders. If an institutional investor were to transmit an order for 250,000 shares directly to a

---

8 Liquidnet charges a commission of US 1 cent for those shares under USD 5 per share.

9 Based on Greenwich Associates 2006.

10 Based on 2006 data by the Plexus Group.

11 Based on Liquidnet executions during 2006.

12 Securities Exchange Act Release No. 50870, Regulation NMS (December 16, 2004), 69 FR 77424) at 77425.

traditional public market, the order would significantly increase demand for the security and move the price of the security against the institution that placed the order.

Institutions know that the simple knowledge of who they are or the size of their orders will trigger market intermediaries and other market participants to take advantage of and profit from that information at the expense of the institution. As a result, institutions hold their order information very closely and generally do not expose it to the public markets. Liquidnet uses technology to provide institutions with a quantity discovery mechanism while safeguarding institutions' order information from the market participants who would use that information to profit at the expense of the institutions' returns to their individual investors.

While implicit costs vary by portfolio, we believe the savings enjoyed by Liquidnet's customers are largest in this area, and thus reduction of the implicit costs are a key contributor to the rapid adoption of Liquidnet by institutional investors worldwide.

III. LIQUIDNET'S COMMENTS ON THE PROPOSAL

Liquidnet appreciates the opportunity to comment on the Proposal. In this section we will provide our views on trade-through, best execution and fair access in general and as applied to the Liquidnet system and respond to specific questions presented in the Proposal.

A. Trade-through rule

As indicated above, we operate the Liquidnet system in multiple jurisdictions. For trading in UK securities, we are subject to the London Stock Exchange's trade-through rule (see more detailed discussion below). In the U.S., we are subject to a trade-through rule. We participated in the public debate on trade-through in the US.

We have considered the arguments for and against the trade-through rule. We understand the arguments in favor of the trade-through rule, specifically that a trade-through rule, by protecting limit orders, encourages the placement of limit orders, resulting in greater liquidity within the Canadian equities market. We also understand the arguments against the trade-through rule, specifically that it might be appropriate in certain circumstances for an investor to trade outside the spread. Such circumstances occur more often in less liquid markets, where the public book interest and quote may from time to time be wanting of meaningful investor interest, representing only the "best guess" of as few as one person (the TSX's agent or the registered trader). Prohibiting trading at a price agreed to by a true buyer and seller, without their hiring a broker to adjust a quote up or down to reflect the price agreed, is inefficient, and such quote manipulation would seem to be contrary to the ideal of improving the perception of fairness of the market.

Further, and specifically with respect to limit order placers' concerns with trades reported outside the spread, we would note the precedent of TSX's "Specialty Price Cross" feature which has generated scores of trades outside the spread daily in the 4 years since introduction.[13] There has been little public concern voiced by limit order placers, nor any apparent withholding of orders in reaction.

---

13 In many data displays, Specialty Price Crosses have no special flags.

It would seem that de minimis trades outside the spread do not have a negative effect, and may allow for more efficient trading. On the whole, we believe that a trade-through rule is not necessary, particularly for institutional orders. That being said, if a trade-through rule is adopted by the Canadian regulators, we are fully-prepared to comply with such a rule.

If a trade-through rule were adopted, we would propose the following application in the case of a one-to-one negotiation system, like Liquidnet. In our system, a customer can submit a bid or offer to another customer during a negotiation that is within the spread at the time of the bid or offer but could be "put offside" by an order subsequently booked in another marketplace in the seconds it takes for the bid or offer by the first Liquidnet customer to be accepted by the second Liquidnet customer. We are concerned that the trade-through rule applied in this situation would unnecessarily and detrimentally frustrate institutional traders from achieving the best execution for their investors. Accordingly, we believe that, for a one-to-one negotiation system, the system should only need to prohibit any bid or offer outside the spread at the time the bid or offer is submitted, but be permitted to execute the trade if the bid or offer moves outside the spread at the time the bid or offer is accepted by the counter-party, which for the Liquidnet system, is only 30 seconds later. We note that in this situation, the institution's intention at the time of order submission is clearly to trade within the spread.

The London Stock Exchange has recently approved this type of proposal with respect to the LSE's trade-through restrictions. In an interpretive letter issued to Liquidnet, the LSE wrote:

> "The point of execution (and in turn the trade reporting time) is when the Liquidnet price has been accepted by both parties. Given that the execution can only be at most [30] seconds later than when the price was originally prepared in accordance with the aforementioned rules, we are satisfied that this would not be considered a breach."[14]

B. Trading in inter-listed securities

Question 1 presented by the Proposal is whether, for trading by Canadian investors in inter-listed securities outside Canada, it is sufficient to comply with the trade-through rule of the jurisdiction where the securities are being traded (the "foreign jurisdiction"); or whether there must also be consideration given to the best bid and offer in the Canadian markets. If it were also a requirement to look to the best bid and offer in the Canadian markets, this would in effect apply a second trade-through restriction on a single order. We strongly oppose the application of a second trade-through restriction in this situation.[15]

Liquidnet currently trades in the securities of 21 jurisdictions (excluding Canada), and none of these jurisdictions has any requirement that would mandate trading to occur within the best bid

14 Please note that the UK Financial Services Authority has not adopted a trade-through rule. Accordingly, the applicable trade through rule for the UK is the LSE's trade-through rule.

15 In this context, we are, however, supportive of a requirement that the foreign market be properly open, with a properly-established and reasonable bid-ask quote, if the CSA determines such a requirement would be helpful in preventing abuses.

and offer of the investor's jurisdiction when the investor trades in another jurisdiction. In fact, we are not aware of any jurisdiction with this type of rule.

We can consider an example where a Canadian subscriber to Liquidnet determines that it wants to trade an inter-listed security in US dollars. In this situation, the Canadian subscriber would be subject to the US trade-through restriction. We believe there is little advantage in also requiring the trade to be within the Canadian current best bid and offer ("CBBO") as the US and Canadian markets will in almost all cases be very close in price. This is because of arbitrageurs who will quickly seek to take advantage of any arbitrage between the Canadian and US prices of the same issuer's securities.

While there is minimal advantage in applying a second trade-through test for this order, there are significant reasons not to do so:

- First, specifically with respect to our system, if a Canadian investor is negotiating a trade with a foreign investor, we are concerned that if an execution does not occur because of a trade-through restriction that is unrelated to the jurisdiction where the security is traded, this will cause unnecessary frustration and confusion to the foreign investor.
- Second, if we consider an inter-listed security where the significant majority of the liquidity is traded in the US markets, such a rule could effectively prevent Canadian institutions from accessing the US-market liquidity in those securities if, as is likely, the US market does not implement a process to validate for the CBBO in Canada. This would be to the detriment of pensioners and other accounts on whose behalf Canadian institutions trade.
- Third, there would be points in time when certain inter-listed stocks could not be traded in the foreign market because the foreign and Canadian markets are crossed.
- Fourth, mandating a second validation for trade-through between the time a price is agreed to by the trading parties and the time of execution requires additional computer processing, potentially resulting in delayed executions, failed executions and regulatory concerns for the market where the security is traded (referred to as the "foreign market"). If a market performs the validation for the foreign market before performing the validation (including a currency conversion computation) for the Canadian market, the first trade-through validation is now further in time from the time of execution. Because there must be some time lag between the time of a trade-through validation and time of execution (the two steps cannot be simultaneous), no market can guarantee it will execute within the CBBO determined at the exact time of execution. However, the market must reduce the number of computations required between the time of trade-through validation and execution, so at to minimize the percentage of trades that are executed outside the CBBO of the foreign market. Adding a requirement for a second trade-through validation could be a concern for the regulators in the foreign market because, if the CBBO for the foreign market is validated first, it is now more likely that the execution price will be outside the CBBO at the actual time of execution. Alternatively, a market could perform the validation for the foreign market second, but this would make the validation for the foreign market further in time from the time the price was agreed to by the parties, resulting in an increased percentage of failed executions.
- Fifth, from the stand-point of RS, there could be significant costs in monitoring activity that occurs on markets worldwide, particularly in relation to the limited potential benefits in applying such a restriction.

- Sixth, there would be the added complication of choosing the appropriate foreign exchange rate with respect to such additional trade-through calculation.

C. Cost-benefit Analysis; Consolidated quote

Question 2 of the Proposal asks what factors should be considered in developing the cost-benefit analysis for the trade through proposal and Question 5 of the Proposal asks what the impact would be of the absence of an information processor to provide centralized order and trade information. Assuming that a trade-through rule is adopted, operational considerations must be taken into account. Specifically, we do not believe that a trade-through rule would be feasible until a consolidated quote were generally available. At present, equity trading in Canada is almost exclusively on the Toronto Stock Exchange, with the following exceptions: Perimeter Financial has been operating BlockBook for some time and has recently announced plans to launch a visible continuous marketplace as well (Omega) and TriAct Canada Marketplace has commenced a POSIT-like alternative (Match Now). In addition, several ATS's are currently in development including: CNQ has announced plans to competitively-quote TSX-listed securities (PureTrading); a dealer led consortium has announced plans to launch an ATS similar to the TSX (Alpha); and Instinet has announced plans to launch a visible continuous auction market (ICX). As these marketplaces launch in the next few months and other marketplaces are being planned, there will be significant changes to Canadian market structure.

If there is no consolidated quote, every venue would need to subscribe to market data from every other venue and create its own consolidated quote, which would not necessarily be uniform. We do not believe that this is an efficient solution. We believe that a trade-through rule would only be appropriate where a consolidated quote – either provided by the regulators or a private market data provider – were available.

In the U.S., given the complexity of the trade-through rule, implementation of the rule suffered significant delays. The US Securities and Exchange Commission implemented a phased implementation schedule due to the enormous changes in market centers since the adoption of the order protection rule and to make sure that markets have time to understand those changes and how markets will interact. Further, the implementation dates had to be postponed several times. The exchanges needed significant time periods to write the requirements and for technologists to come up with code. Another cause for the delays was the age of the trading systems at the exchanges, which needed to be upgraded prior to implementation. In an effort to implement the trade-through rule in a way that was systematic, cost effective and with no market disruption, the US market centers experienced significant timing issues. There was a lot of detailed work involved with both the markets coming up with rules and the brokerage firms having to program their systems to meet those rules. Brokerages also sought delays in implementing the US trade-through rule, so that they could properly reconfigure their trading and surveillance systems. Given the complexity of the trade-through rule, the US Securities and Exchange Commission published a 40 page set of Frequently Asked Questions regarding the rule, which can be found at the following link:
http://www.sec.gov/divisions/marketreg/nmsfaq060807.htm.

D. Best Execution

The Proposal proposes that factors, including price, speed of execution, certainty of execution and overall cost of the transaction, should be considered when determining whether a dealer or a participant of an ATS has satisfied its best execution obligations. Question 15 of the Proposal asks what other considerations would be relevant to best execution. We believe that the certainty of the execution should include preference for the ability to execute all or the majority of the transaction in a block, while the market retains the prices it held at the time of the investor's decision. This might relate to speed of execution as block trading is faster than algorithmic trading, e.g. in the 20 seconds it might take to trade one block of 80,000 shares using Liquidnet, an investor would need to perform two hundred separate 100-millisecond trades of 400 shares each, which is an unlikely scenario.

With respect to the "overall cost" factor discussed in the Proposal, we believe that overall cost should include not only commission costs, but also information leakage costs, and the systems costs (including post-trade reconsolidation costs) of having to split a trade up into multiple transactions and then have them reconstituted.

We agree with the underlying premise of the rule and that multiple factors should be considered when attempting to achieve best execution. However, different trading venues have different value propositions and serve different constituents; to compare relative volume amongst various alternative trading systems is not an apples-to-apples comparison. We believe that each trade should be evaluated with the factors mentioned in the paper but also evaluated on the ability to execute all or the majority of the transaction in one (or more) blocks.

E. Fair Access

Question 7 of the Proposal asks whether there should be a threshold that would require an ATS to permit access to all groups of marketplace participants (the "Proposed Fair Access Rule"). Fair access is a very difficult concept to define and we don't believe a fair access rule is necessary. As an analogy, the fair access rule in the U.S. is very ambiguous and its meaning is unclear (Rule 301(b)(5) of Regulation ATS). For example, it is unclear whether exchanges are complying with the US fair access rule since only broker-dealers can be members. Moreover, in a system like Liquidnet, institutional traders do not want to expose their orders for fear of information leakage and market impact; they want a choice of who to expose their orders to.

However, if the Proposed Fair Access Rule is adopted, since Liquidnet operates like a traditional block trading desk, Liquidnet should not be subject to any such rule. The only significant difference between Liquidnet, which would be subject to the Proposed Fair Access Rule, and a traditional block trading desk, which would not be, is that Liquidnet allows its institutional customers to interact with each other directly through the use of its electronic trading system, rather than interposing itself in the negotiations between its customers through the use of the telephone or other means.

Block trading desks facilitate block trades for the broker-dealer's institutional customers. Traditional block trading desks execute block trades through various means, all of which require the direct involvement of the desk. For example, the block trading desk might cross a block order internally by soliciting other customers of the desk, or by posting indications of interest through electronic bulletin board services that advertise block trading interests. Alternatively, the block trading desk might route all or part of a block order to an exchange, market maker, or ECN for execution. In other cases, the desk might act as principal and fill all or part of the block order out of the firm's proprietary holdings.

Liquidnet believes that it should not be subject to the Proposed Fair Access Rule when block trading desks, which perform essentially the same function, would not be subject to the Fair Access Rule. Liquidnet provides its institutional customers with a more efficient version of the service that a block trading desk provides when it crosses two customer orders. Instead of facilitating the block trade, Liquidnet enables its institutional customers to negotiate with each other directly. As such, Liquidnet does not raise the same types of access concerns as an ECN or exchange that brings together and displays the orders of multiple buyers and sellers. As evidence, Liquidnet notes that its average execution size is approximately 71 times greater than the average execution size on the TSX; Liquidnet's average execution size was 63,796 shares for Canadian equities.[16]

The regulatory disparity resulting from the inconsistent application of the Proposed Fair Access Rule would put Liquidnet's use of technology to make the block-trading process more efficient at an unfair competitive disadvantage. If Liquidnet were to put a human trader in the middle of its trading process, thereby making the process less efficient and more costly for the institutional customer, Liquidnet would not be an ATS and therefore would not be subject to the Proposed Fair Access Rule.

Moreover, the Commission should consider Liquidnet's trading volume relative to the block trading desks. In the most recent Plexus rankings, Liquidnet is ranked as the 7th largest institutional broker for Nasdaq securities and the 9th largest institutional broker for NYSE securities.[17] In the absence of a carve-out from the Proposed Fair Access Rule for systems like Liquidnet, the effect of the Proposed Fair Access Rule would be to impose a fair access requirement on Liquidnet without imposing such a requirement on between 6 and 8 broker-dealers performing the same function with larger trading volumes than Liquidnet.

If Liquidnet were required to adjust its membership requirements to comply with the Proposed Fair Access Rule, it might be required to admit customers that had no intention to engage in block trading or in fact were unable to trade blocks. Of even more concern to Liquidnet and its customers is that it could be required to admit customers that did not want to trade through Liquidnet at all, but only wanted to use their Liquidnet membership to obtain information about institutional orders to benefit their own trading in other markets. These factors could lead Liquidnet's institutional customers to stop using Liquidnet in favor of another venue, such as a block trading desk, that provides the same functions and that is not subject to the Proposed Fair Access Rule.

Liquidnet's success in reducing institutional trading costs comes from the ability to attract long-term buy-side investors, usually mutual funds or pension funds, that are seeking to trade large volumes with other similarly-minded investors. These institutions have seen their ability to trade

---

16 See footnote 4.

17 Plexus Group BrokerEdge Monitor Report for calendar year 2006 (published April 2006).

efficiently and cost-effectively impeded when confidential information about the size of their potential trades is leaked into the market. Moreover, these long-term investors are comfortable with Liquidnet because they know their information will be kept confidential, and they will encounter other institutions in Liquidnet that have similar positions and similar confidentiality requirements. We have designed our subscriber standards to meet these requirements. Requiring Liquidnet to open its system to those who do not have the ability to execute block-sized orders or to those whose purpose in joining Liquidnet would be to use information about the potential size of institutional transactions solely to gain an advantage in their own trading, would compromise Liquidnet's current users and significantly reduce the substantial benefits that Liquidnet currently provides.

We believe that Liquidnet's customers would become frustrated if there were such a large number of securities that they could not trade in Liquidnet because of triggering of the Proposed Fair Access Rule threshold. In addition, such an inability to trade would decrease the benefits and efficiencies that Liquidnet provides, and, as noted above, could lead Liquidnet's institutional customers to stop using Liquidnet in favor of another venue, such as a block trading desk, that provides the same functions and that would not be subject to the Proposed Fair Access Rule.

Liquidnet does not display quotes. Rather, Liquidnet customers engage in direct one-to-one negotiations. Moreover, the price and quantity of a customer's bids or offers are not displayed to anyone other than the negotiating contra party. We note that the CSA and RS would not require block trading desks that negotiate an order between two institutional customers to publicly display the institutions' bids and offers for everyone to see, or to allow other investors to access those bids or offers. The same treatment should apply to Liquidnet.

As noted above, by limiting its membership to institutional investors that seek to engage in true block trading, Liquidnet provides significant cost savings to its institutional customers. A carve-out from the Proposed Fair Access Rule would enable Liquidnet to continue to provide those cost savings to its institutional customers, which in turn would be consistent with the public interest by providing lower costs, and better returns, to the individual investors whom the institutions represent.

In addition, Liquidnet functions essentially in the same manner as block trading desks, which would be permitted to serve investors without being subject to the Proposed Fair Access Rule. As a result, carving out Liquidnet from the Proposed Fair Access Rule would be consistent with the protection of investors. Moreover, Liquidnet's membership structure and its members' ability to effect block trades in a wide spectrum of equity securities provides an efficient method for institutions to execute block trades within the market structure. As a result, carving out Liquidnet from the Proposed Fair Access Rule would be consistent with the removal of impediments to, and perfection of the mechanisms of, an efficient market structure.

IV. CONCLUSION

We would like to thank the CSA and RS for the opportunity to comment on the Proposal. As discussed above, the Liquidnet system has provided significant cost savings in the U.S., Canada and Europe to institutions and the beneficiaries of the accounts on whose behalf they trade.

In adopting and implementing regulations, we are confident that the CSA and RS will focus on what is ultimately in the best interests of all investors - retail investors as well as pension fund beneficiaries and other individuals on whose behalf institutional investors trade and tailor the regulations to fit with the different requirements of institutional and retail investors within a common market structure. We believe it is important for regulators to adopt regulations that promote competition, innovation and the introduction of new technologies, as we believe these types of regulations accrue to the benefit of all investors.

Very truly yours,

Robert Young, President