liquidnet

Liquidnet Canada Inc.
c/o Liquidnet, Inc.
498 Seventh Avenue, 15th Floor
New York, NY 10018
T 646 674 2000 F 646 674 2003
www.liquidnet.com

By Email

January 30, 2009

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Registrar of Securities, Department of Justice, Northwest Territories
Registrar of Securities, Government of Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Nunavut
Registrar of Securities, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1903, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

and

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des Marchés Financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montreal, Québec H4Z 1G3
Email: consultation-en-cours@lautorite.qc.ca

Member IIROC and Member CIPF

liquidnet

James E. Twiss
Vice President, Market Regulation Policy
Investment Industry Regulatory Organization of Canda
Suite 900, 145 King Street West
Toronto, Ontario. M5H 1J8
Email: jtwiss@iiroc.ca

Susan Greenglass
Manager, Market Regulation
Ontario Securities Commission
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario. M5H 3S8
Email: marketregulation@osc.gov.on.ca

Re: Liquidnet Canada Inc. – Comment Letter on (i) the Notice of Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules and (ii) the Rule Notice Request for Comments entitled "Provisions Respecting Implementation of Trade-Through Protection"

Ladies and Gentlemen:

Liquidnet Canada Inc. appreciates the opportunity to comment on:

- the Notice of Proposed Amendments to NI 21-101 Marketplace Operation and NI 23-101 Trading Rules (the CSA paper), issued by the Canadian Securities Administrators (CSA) on October 17, 2008, and
- the Rule Notice Request for Comments entitled "Provisions Respecting Implementation of Trade-Through Protection" (the IIROC paper) issued by the Investment Industry Regulatory Organization of Canada (IIROC) on October 27, 2008.

Because the issues in the CSA and IIROC papers are closely related, we would like to comment on both papers in this comment letter.

We are concerned about the scope of the changes being proposed. We understand there is disparate treatment in the current regulatory environment because the best price rule currently only applies to dealers. We recommend that this disparate treatment be addressed, but in a manner that will minimize business disruption and cost to industry participants and provide appropriate flexibility to enable continuing innovation in the provision of trading services.

Liquidnet currently trades in 29 jurisdictions on 5 continents. Our success to date globally has resulted from our ability to reduce trading costs for institutional investors by reducing or eliminating the market impact costs incurred by institutions when they expose their block orders to traditional market intermediaries. The cost savings provided by Liquidnet are directly passed on to the hundreds of millions of individual beneficiaries of the funds and accounts managed by our institutional customers globally. We believe that regulations should be implemented with appropriate flexibility to enable continuing innovation by Liquidnet and other trading systems that ultimately lead to reduced trading costs for investors.

In our comment letter we first address specifically the issues that are of most concern to Liquidnet. We then respond to the specific questions set forth in the CSA and IIROC papers. Lastly, we discuss specific sections of the proposed rule changes.

Trade-through

The CSA paper sets forth three options for addressing the disparate treatment of dealers and other market participants as they relate to the best price rule. In our view, option two, removal of the UMIR best price rule on dealers, is the most advisable way to address this disparate treatment. When trade-through was proposed in the US, we did not express a view either for or against the proposal. However, the implementation of trade-through required far greater time and cost to implement than we and other industry participants, including ATSs, dealers and exchanges, had anticipated. The trade-through rule in the US was adopted in April 2005 with an initial planned implementation date of June 2006. The actual implementation period for trade-through was completed on October 8, 2007.[1] We further believe that a trade-through requirement is not necessary in light of advances in direct market access technology, smart order routing technology, improved transaction cost analysis products and other technology developments in the market.

While we ultimately disagreed with the adoption of Regulation NMS, we note that after the adoption of trade-through and prior to its final implementation, the SEC was helpful to the industry in providing guidance and showing appropriate flexibility in response to the

[1] In the US, given the complexity of the trade-through rule, implementation of the rule suffered significant delays. The SEC 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 the markets had time to understand the changes. 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 extensive 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 they could properly reconfigure their trading and surveillance systems.

unanticipated complexities of the trade-through rule. We believe this was helpful in minimizing any adverse impact resulting from the implementation of Regulation NMS, and we suggest that the CSA adopt a similarly flexible approach.

Trade-through as applied to agency crosses

After trade-through was implemented in the US, we soon realized that it created a significant problem for our negotiation system. Institutions negotiating with other institutions through our system would submit bids and offers to each other within the spread, but the execution would sometimes fall outside the spread because of price movements in the market during the negotiation session. We had to cancel trades in these situations, causing significant frustration among our institutional customers. Fortunately for Liquidnet, other brokers involved in block agency crossing (manual and electronic) were having similar frustrations, and the SEC had worked out a solution with these brokers to permit the execution of block agency crosses as long as the execution price was within the national best bid and offer (NBBO) in the market at any time during the 20-second period prior to the execution. This guidance was subsequently documented in a response to frequently asked question published by the SEC on April 4, 2008[2] (see Annex A). This guidance only applies to block orders, which are orders of 10,000 shares or more, and reflects an appropriate balance between protection of posted retail-sized orders and protection of confidentiality of institutional block order information. The guidance also only applies if the execution price is within the spread at any time during the 20-second period prior to execution, reflecting the good faith intention of the institutions involved in the negotiation to trade within the spread.

In responding to the FAQ, the SEC explained:

> "In this context, the broker-dealer is acting as agent to arrange large transactions at prices that generally will be favorable for each party (*i.e.*, at or within the best protected quotations). The broker-dealer thereby is performing a useful service in enabling its customers to find contra-side liquidity in large sizes. Given the desire of some block customers to negotiate prices individually, either of the alternative policies and procedures is a reasonable way for the broker-dealer to address the practical difficulties of individually negotiating a price that is intended to be at or within the best protected quotations and capturing the transaction terms in an automated system."

We believe the SEC's interpretation on this issue reflects an appropriate balance between the need to protect retail-size orders displayed on public order books and the need for institutions to preserve the confidentiality of their block orders. We believe the interests of both constituencies must be balanced appropriately. It is important to note that institutions trade on

---

[2] Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, Question 3.23. http://www.sec.gov/divisions/marketreg.

behalf of pension fund and other individual beneficiaries so, in fact, regulators must find an appropriate balancing of interests between retail investors who trade directly in the market and other retail investors (including retirees) who invest through pension funds, mutual funds and other accounts managed on their behalf by institutions.

In implementing the trade-through rule, we believe the CSA should implement the same guidance as provided by the SEC because it reflects an appropriate balancing of interests of all parties in the market as it is limited to negotiated block trades where the negotiating parties seek to trade within the spread.

Applicability of trade-through to trading outside Canada

We agree with the nearly unanimous view of the other parties submitting comment letters that it would not be feasible to apply trade-through restrictions to trades by Canadians customers executed in non-Canadian markets, as proposed in the IIROC paper. We believe such restrictions would cause significant frustration for customers, involve significant cost to industry participants, and adversely affect speed and performance or marketplace systems. We support the proposal in the CSA paper to prohibit trades in non-Canadian currencies where the intent of the participant is to circumvent the trade-through restrictions. Our experience is that our non-Canadian customers sometimes execute trades in inter-listed securities in Canadian markets for settlement in Canada, and our Canadian customers sometimes execute trades in inter-listed securities in US currency for settlement in the US, but they do not do so to avoid trade-through restrictions.

Scope and prescriptive nature of proposed trade-through changes

The trade-through mandate as proposed by the CSA and IIROC goes beyond the trade-through requirement implemented in the US. While the trade-through rule adopted in the US only requires protection of top-of-book quotes, the trade-through rule as proposed in Canada would require protection of all better-priced quotes. While the trade-through rule in the US only applies during regular trading hours, 9:30 am to 4 pm, the trade-through rule as proposed by the CSA would apply any time that two marketplaces publish protected quotes. We are not suggesting that the Canadian regulators need to, or should, follow the US model. But we believe that in the current market environment it makes sense to implement the proposed trade-through restrictions in the least intrusive manner, at least initially, and then evaluate their impact on the market, either positive or negative, before proceeding with more extensive regulations. As an example, if the trade-through requirement were implemented, we believe it should apply only during regular trading hours of the TSX, to provide clarity to market participants as to when the rule is applicable. Otherwise, marketplaces would have to check multiple venues to determine the hours that compliance is required, as marketplaces are free to change their hours of operation.

Proposed reporting requirements

liquidnet

The CSA paper proposes new requirements relating to the reporting of order execution information by marketplaces and the reporting of order routing information by dealers. These proposed rules correspond roughly to Rules 605 and 606 of Regulation NMS in the US. The adoption of Rules 605 and 606 in the US preceded the adoption of Regulation NMS by approximately five years.[3] Subsequent to the adoption of Rules 605 and 606, the SEC has issued a series of FAQs to assist broker-dealers in complying with the reporting requirements. If the reporting requirements are going to be implemented, we believe it makes sense to implement the proposed trade-through and reporting rules on a sequential basis so that firms are not over-burdened with multiple simultaneous new regulatory mandates. Our experience is that the work required to analyze, code, test and implement systems changes to comply with new regulatory mandates always takes more time and resources than anticipated. Trade-through compliance is particularly complex to implement because of the need for coordination among regulators, exchanges, ATSs, dealers, network providers, trading system providers, customers, information providers and other parties. In the current economic environment, where securities dealers globally are pressed for resources, we recommend first addressing the issue of greatest concern to the CSA – trade-through -- and then implementing subsequent regulatory mandates after confirming that the industry has successfully implemented the trade-through mandate.

We also believe the potential operational issues involved in the preparation and monitoring of these reports should be considered. In particular, the Rule 605 report can be complex to run because of the need to store and run computations against significant amounts of market data. There also are questions relating to the scope of these reports and how they would apply to different types of marketplaces. For example, the Rule 605 report is designed primarily to facilitate comparison of execution quality across exchanges and displayed order book systems that handle publicly-displayed not held orders. Rule 605 does not contemplate one-to-one negotiation systems like Liquidnet. Accordingly, the SEC has advised us that our negotiated trades are not subject to Rule 605 reporting. We note in Part 13.1 of the Companion Policy 21-101CP (the Companion Policy) to National Instrument 21-101, Marketplace Operation, that pre-arranged trades and intentional or internal crosses would not be subject to reporting, which appears consistent with the guidance provided to us by the SEC. We would like to confirm whether the guidance provided in the Companion Policy means that Liquidnet's negotiated trades would be exempt from this reporting requirement.

Information vendor issues

We believe successful implementation of the trade-through rule is dependent on the selection of the information vendor and confirmation that the process for collecting and disseminating consolidated public quote information is in place and running smoothly. If there is no

---

[3] These rules were originally adopted as Rules 11Ac1-5 and 11Ac1-6 under the Securities Exchange Act of 1934. These and other regulations were subsequently incorporated into Regulation NMS when it was adopted.

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 this would be an efficient solution.

Because of the increase in network quote traffic that will result from implementation of the marketplace trade-through rule, we recommend that the trade-through obligation initially be implemented to protect top-of-book quotes only. Once this is running smoothly, the obligation could be expanded.

In overseeing the information vendor process, the CSA should consider how to appropriately allocate costs among the marketplaces that need to subscribe to market data to comply with the trade-through requirement. Since the subscription by marketplaces to market data would be mandated by regulation, there should be protection for the marketplaces from unfair pricing. We appreciate that Part 16 of the Companion Policy requires that access to the information processor's data be on "fair and reasonable terms". Going forward, we would be interested in understanding in greater detail how the CSA would ensure compliance with the prohibition on unfair pricing.

On the other side of the equation, are marketplaces with protected quotes required to provide their quotes to the information vendor at no cost, or will they be compensated for providing these quotes? If marketplaces will be compensated for their quotes, how will this be done? How does this affect the ability of marketplaces to charge for their own quotes? Should the marketplaces be paid for the market data when the data is created in the first instance by the participants who submit the trade information to the marketplaces?

At present in all markets with which we are familiar, the information vendor receives market data from the marketplaces and consolidates that data for redistribution. As an alternative, the information vendor could act as a conduit for routed orders so that all orders are routed to marketplaces through the information vendor. Under this alternative system, market participants could subscribe to data directly from the information vendor, and the market participants would not need to compensate the marketplaces, thereby avoiding a potential issue of contention.

We believe there are several issues relating to market data that should be addressed in more detail prior to the implementation of the trade-through rule. We also believe, based on the complexity of these issues, that it would make sense, in the first instance, if the trade-through rule were adopted, to implement trade-through on a top-of-book basis only.

Questions posed in the CSA paper

We now respond to the specific questions posed in the CSA paper.

Question 1: Should marketplaces be permitted to pass on the trade-through protection obligation to their marketplace participants? If so, in what circumstances? Please provide comment on the practical implications if this were permitted?

We understand the decision to impose the obligation for trade through compliance on marketplaces. In some cases, a dealer might want to take on the trade-through obligation itself, and we believe there should be appropriate flexibility to permit this. For example, a dealer might execute against a customer order outside the spread and then need to take out better priced protected quotes in the market to comply with the trade-through requirement. The dealer might decide that it could more efficiently sweep the market itself, rather than relying on a marketplace to do this on the dealer's behalf. We believe the dealer should preserve this option. This would involve the dealer itself sending inter-market sweep orders (ISOs) to each marketplace rather than relying on a marketplace to do so on the dealer's behalf.

Question 2: What length of time should be considered an "immediate" response by a marketplace to a received order?

We agree with many of the previous commenters that the concept of "immediate" will be determined by market practice. Marketplaces should provide the same speed of execution for ISOs as they do for other orders. This will insure prompt response to ISOs because exchange and ECN-type marketplaces compete based on speed of order execution.

Question 3: Are any additional exceptions necessary?

If a trade-through rule as described in the proposal 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 20 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 20 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. When negotiating a large block, 20 seconds would show that the parties are in good faith attempting to execute within the spread. Having a negotiation fail because of a change in quote after one second would frustrate the negotiation process. If this exemption were applied only for block trades, it would not affect the integrity of trade-through for retail orders. Without this exemption, clients would lose

confidence in our system if we had to reject trades that were outside the market for less than those 20 seconds. See also Annex A.

More generally, we recommend that the CSA implement trade-through on a flexible basis to ensure that the CSA and IIROC have appropriate flexibility to issue exceptions where appropriate. During the implementation period for trade-through in the US, the SEC did an admirable job of addressing and resolving issues and concerns raised by market participants. The SEC's guidance on many of these issues is documented in the Regulation NMS FAQ document[4]. The CSA and IIROC may or may not agree with each of the SEC's interpretations, but we recommend that the CSA and IIROC take a flexible approach, similar to the one adopted by the SEC, to minimize any negative impact of a trade-through mandate.

Question 4: Please comment on the various alternatives available to a marketplace to route orders to another marketplace.

Please see our discussion above under "Information Vendor".

Question 5: Should the CSA set an upper limit on fees that can be charged to access an order for trade-through purposes? If so, is it appropriate to reference the minimum price increment described in IIROC Universal Market Integrity Rule 6.1 as this limit?

We agree with many of the previous commenters that this issue will be addressed by market competition. Marketplaces should not be permitted to charge a higher fee for execution of ISOs than they do for other orders absent a valid reason. This will protect against unreasonable execution fees because exchange and ECN-type marketplaces compete based on execution fees.

Question 6: Should there be a prohibition against intentionally creating a "locked market"?

No comment.

Question 7: Should the marketplace statistics focus on units of securities traded instead of orders and number of trades?

Question 8: Should the marketplace statistics require separate reporting on specific order types that would include market orders, intentional crosses and pre-arranged trades?

Question 9: Should the focus of the liquidity measures be the number of orders or the cumulative number of shares?

Question 10: Would it be useful to have information about partially or fully hidden liquidity that is available on certain marketplaces? If so, what measures of that liquidity would be most informative?

---

[4] Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS, http://www.sec.gov/divisions/marketreg.

Question 11: Would it be useful to include reporting similar to the near-the-quote orders required by the SEC in the United States? What price increment away from the quote would be appropriate to use for the Canadian market?

Question 12: Are statistics regarding average realized and effective spreads useful without a consolidated best bid and offer?

Question 13: Are the time frames used to assess speed and certainty of execution on a marketplace in section 11.1.1 of NI 21-101 appropriate? If not, what time frames should be used?

Question 14: In addition to the proposed reporting requirements for marketplaces, would other information, such as the following, be useful to dealers or advisors to assess best execution: (a) a breakdown of the information by order size (i.e., 100-499 shares, 500-1999 shares, 2000-4999 shares, 5000 or more); (b) the proportion of time that a marketplace had orders that were at the biest bid or the best ask; (c) the proportion of trades (in number of shares or number of trades basaed on our decision) executed inside the best bid and ask price?

With regard to Questions 7 through 14, please see our discussion above under "Proposed reporting requirements".

Question 15: Do you agree that an information processor should disseminate consolidated trade information along with a feed that contains the best bid and best offer and all orders at all price levels (along with the marketplace identifier/marker)? For practical reasons, should the price levels be limited? If so, to how many levels?

Please see our discussion above under "Information Vendor". We do not believe it is feasible to implement top-of-book trade-through protection without a consolidated best bid and offer provided by an information vendor. Similarly, we do not believe it is feasible to implement depth-of-book trade-through protection without a consolidated depth-of-book product provided by an information vendor.

Questions posed in the IIROC paper

Question 1: Should specific provisions be added to UMIR to protect better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market (as contemplated by the Concept Proposal set out in Appendix "B")?

As discussed above, we believe this proposed requirement would cause significant frustration for customers, involve significant cost to industry participants, and adversely affect speed and performance of marketplace systems. Please see our comments above for more detail.

Question 2: If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to

UMIR, should such requirement be limited to the handling of: intentional crosses; pre-arranged trades; block orders with a market value of $100,000 or more?

We believe that the types of trades enumerated in question 2 are the trades for which a trade-through requirement is least appropriate. We understand arguments for why an institution seeking to buy 100 shares of a stock should not bypass a sell limit order for 100 shares posted in the market. But if the institution wants to buy 500,000 shares of that stock, we do not believe it is appropriate to impede the institution from buying the stock in a privately negotiated transaction (which may be at a price outside the spread notwithstanding the institution's intent to trade within the spread), where the institution can avoid the market impact costs that result from exposing the institution's order to traditional market intermediaries.

Question 3: If a requirement to consider better-priced orders on marketplaces before permitting trading at an inferior price on a foreign organized regulated market is added to UMIR, are there any exemptions or other limitations on the requirement that would be appropriate?

If such a requirement were implemented, we believe an exception should apply for block trades. Institutions generally are very happy to trade blocks inside the spread without market impact cost. However, they object when we need to cancel negotiated trades executed at prices outside the spread as a result of fast market movement when their intent during the negotiation was to execute within the spread.

Question 4: Should a Participant that trades as principal with a non-Canadian account in a trade that is not executed on a marketplace or a foreign organized regulated market (in accordance with the exemption for "off-marketplace" trades provided in clause (e) of Rule 6.4 of UMIR) be required to consider better-priced orders on a marketplace that are on the same side of the transaction as the Participant?

We do not support the proposal in Question 1 so we do not believe the exemption in Question 4 would be necessary.

Comments on other specific changes being proposed

We also would like to comment on some of the other specific changes being proposed.

System reviews (National Instrument 21-101, Marketplace Operation, Part 12)

We believe it should be sufficient to conduct an independent systems review every two years. In the current economic environment, regulators should take into account the cost of this proposed mandate and balance the cost against the incremental benefit of requiring the independent review to be conducted every year as opposed to every two years.

liquidnet

Availability of technology requirements and testing facilities (National Instrument 21-101, Marketplace Operation, Part 12)

We believe the requirements in this section are overly prescriptive. For example, technology requirements for accessing our system depend on various factors, including the type of order management system or execution management system used by the customer, and the vendors of these systems could object to the disclosure of this information. We believe this section should be limited to apply only to public disclosure of information required to access a system for trade-through compliance purposes and should not apply to marketplaces like Liquidnet that will not have protected quotes.

* * * * *

We would like to thank the CSA and IIROC for providing us the opportunity to comment on the CSA and IIROC papers. Liquidnet welcomes the opportunity to discuss further any matters relating to the CSA and IIROC proposals.

Very truly yours,

Ken Hight, President of Liquidnet Canada Inc.

Annex A

Excerpt from SEC Division of Market Regulation: Responses to Frequently Asked Questions Concerning Rule 611 and Rule 610 of Regulation NMS (April 4, 2008)

Question 3.23: Agency Block Transactions with Non-Trade-Through Prices that are Individually Negotiated

A broker-dealer acts as agent in arranging block transactions between two or more parties at prices that are individually negotiated either through communications with personnel of the broker-dealer or through direct communications between the parties to the transactions. The negotiations may occur through a conversation (e.g., by telephone) or through automated messages (e.g., e-mail, instant messaging, or other electronic communications system). The parties agree to a price that is at or within the best protected quotations at some point during the negotiations. After the parties agree to this price, the transaction information is captured in an automated system of the broker-dealer in a reasonable time. In some transactions, particularly for securities with volatile quoted prices, the individually negotiated price may not be at or within the best protected quotations at the time the transaction terms are captured in the automated system. To address this problem, the broker-dealer implements a policy and procedure pursuant to which the broker-dealer's personnel affirm that the transaction price was at or within the best protected quotations at some point during the 20-second period up to and including the time the transaction terms are captured in the automated system. Alternatively, the broker-dealer implements a policy and procedure pursuant to which the broker-dealer's automated system checks to affirm that the transaction price was at or within the best protected quotations at some point during the 20-second period up to and including the time the transaction terms are captured in the automated system. If the transaction is affirmed pursuant to one of the alternative policies and procedures, the broker-dealer considers the transaction as a non-trade-through transaction for purposes of Rule 611. Do these alternative policies and procedures for handling agency block transactions with individually negotiated prices comply with Rule 611(a)?

Answer: Yes, either of the alternative policies and procedures for affirming that the individually negotiated price of an agency block transaction was at or within the best protected quotations at some point during the 20-second period up to and including the time the transaction terms are captured in an automated system of the broker-dealer would be a reasonable policy and procedure to prevent trade-throughs under Rule 611(a). In this context, the broker-dealer is acting as agent to arrange large transactions at prices that generally will be favorable for each party (*i.e.*, at or within the best protected quotations). The broker-dealer thereby is performing a useful service in enabling its customers to find contra-side liquidity in large sizes. Given the desire of some block customers to negotiate prices individually, either of the alternative policies and procedures is a reasonable way for the broker-dealer to address the practical difficulties of individually negotiating a price that is intended to be at or within the best protected quotations and capturing the transaction terms in an automated system.

A transaction would qualify as an individually negotiated agency block transaction for purposes of this FAQ if: (1) the broker-dealer arranging the transaction does not participate in such

liquidnet

transaction as principal, except as riskless principal in compliance with the relevant SRO rule on riskless principal reporting;[35] (2) at least one of the parties individually negotiating the price of the transaction is a "customer," as defined in Rule 600(b)(16) of Regulation NMS;[36] and (3) the transaction is of block size, as defined in Rule 600(b)(9) of Regulation NMS. To meet the regular surveillance requirement of Rule 611(a)(2), the broker-dealer should periodically check to assure that its personnel are accurately affirming prices within the 20-second period, or that its automated system is accurately affirming prices within the 20-second period.