

July 7, 2011

By e-mail

Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Nova Scotia Securities Commission
Superintendent of Securities, Nunavut
Ontario Securities Commission
Superintendent of Securities, Prince Edward Island
Saskatchewan Financial Services Commission
Superintendent of Securities, Yukon

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and

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Re: Liquidnet Canada Inc. - Comment Letter on proposed National Instrument 23-103, "Electronic Trading and Direct Electronic Access to Marketplaces"

Ladies and Gentlemen,

Liquidnet Canada Inc. (Liquidnet) appreciates the opportunity to submit this comment letter on proposed National Instrument 23-103, "Electronic Trading and Direct Electronic Access to Marketplaces" (the Rule Proposals), recently published by the Canadian Securities Administrators (CSA).

Liquidnet supports the Rule Proposals, which will help address the risks presented by unfiltered access to marketplaces.

Liquidnet's proposed modification

Liquidnet recommends one minor modification to the proposed rule that will not in any way impact upon the objectives of the Rule Proposals. Our proposed rule modification will address an inequity in the proposed rule that would hurt buy-side institutional investors. These buy-side investors invest for the long-term and are the most important source of investment capital for Canadian issuers.

Under the proposed rule, marketplace participants, including buy-side institutions, are required to implement various controls relating to trading on marketplaces. Buy-side institutions that access marketplaces through dealer intermediaries are not subject to these controls, as the obligation falls on the dealer that acts as the intermediary between the institution and the marketplace. We support this approach.

However, if the institution has direct access to a marketplace, the institution must assume these additional obligations. We propose that where an institution has direct access to a marketplace, the marketplace operator should have the ability, like any dealer, to assume these responsibilities. This would, of course, be subject to the institution's consent.

Marketplaces should have equal rights to dealers to take on this responsibility

If a dealer can take on this responsibility, a marketplace operator like Liquidnet similarly should have the right to take on this responsibility. In advance of the effective date of a similar rule adopted in the U.S.,¹ Liquidnet's U.S. affiliate already has implemented these controls for trading in U.S. securities. Liquidnet is equally capable of implementing these controls for trading in Canadian securities, and there is no reason why a dealer should have this right and not a marketplace like Liquidnet. In this regard, it should be noted that Liquidnet is both a dealer and a marketplace.

Promoting incentives that benefit investors and the market

Without this proposed modification, the proposed rule as currently written would incentivize marketplaces to deny access to institutions, and it would incentivize institutions to avoid direct access to marketplaces. This is contrary to public policy because institutions can benefit from direct access to marketplaces such as Liquidnet. The benefits of direct access to marketplaces include greater control over the order (which can lead to reduced trading costs² and reduced risk of a trading

¹ Rule 15c3-5 under the U.S. Securities Exchange Act of 1934.

² Liquidnet was ranked #1 in institutional execution quality in the two most recent annual surveys published by *Pensions & Investments*. "Tradewatch," *Pensions & Investments*, March 7, 2011, <http://www.pionline.com/article/20110307/CHART1/110309936> (accessed July 7, 2011). Tradewatch, *Pensions & Investments*, March 8, 2010,

error) and greater transparency to the customer over the handling of the customer's order. Providing institutions with direct access to marketplaces also helps to reduce the un-level playing field that buy-side institutions face in a market dominated by high-frequency traders and other short-term traders.

The rule as currently proposed also would incentivize firms to avoid registration as marketplaces and opt to conduct their trading activity under the more liberal regime of dealer matching. As we have noted in previous comment letters, Liquidnet performs the same function as dealers that match customer buy and sell orders, yet, as a registered marketplace, we are subject to a significantly higher level of regulation. This type of discrimination against marketplaces (i.e., where dealers, but not marketplaces, can assume the responsibility for implementing risk controls) not only is unfair; it also incentivizes marketplaces to de-register (and dis-incentivize dealers to register as marketplaces), which is contrary to public policy.

Ensuring the most effective and efficient implementation of controls

Our proposed modification would help ensure the most effective and efficient implementation of risk controls. As a marketplace operator, we are in the best position to implement the controls set forth in the Rule Proposals, including preventing the entry of orders that exceed pre-determined credit thresholds and preventing the entry of orders that exceed size or price parameters. It also is more efficient when the marketplace operator implements these types of controls as it helps avoid unnecessary duplication of work by marketplace participants.

Is the proposed rule too lenient on marketplaces?

While we do not make a specific recommendation on this point, we recommend that the CSA consider whether the rule as currently proposed is too lenient on marketplaces and the risk that this presents to the overall market, for example, why shouldn't a marketplace have an obligation to prevent the entry of erroneous orders in terms of specifically determined size or price parameters with respect to its own marketplace. The proposed rule would require that "marketplaces prevent the execution of orders outside of thresholds set by the regulation services provider," but in the U.S., for example, the controls that we have implemented relating to erroneous orders go beyond thresholds that are mandated by regulation.

Requirements for immediate notification of order and trade information to compliance staff

This proposed obligation could be unduly burdensome to marketplace participants. Such alternatives should be considered in connection with the CSA's analysis under Appendix B (Cost-Benefit Analysis). More generally, the potential overall burden of the Rule Proposals on buy-side institutions should be more specifically addressed under Appendix B. The CSA should consider whether there are

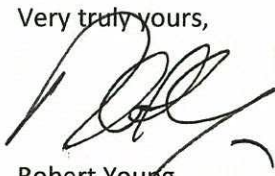
<http://www.pionline.com/apps/pbcs.dll/article?AID=/20100308/CHART/100309924&crit=liquidnet&template=printart>
(accessed July 7, 2011).

alternative ways to achieve the intended objective of this requirement – for example, by mandating that compliance staff have the right to receive order and trade information upon request.

Conclusion

Liquidnet Canada supports the Rule Proposals, subject to our proposed modification. We appreciate the opportunity to submit this comment letter.

Very truly yours,



Robert Young
Liquidnet Canada Inc.
President and CEO



Sophia Lee
Liquidnet Canada Inc.
General Counsel and CCO