

**Liquidnet Canada Inc.**  
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July 23, 2014

By e-mail

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (NB)  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

c/o The Secretary  
Ontario Securities Commission  
20 Queen Street West  
19<sup>th</sup> Floor, Box 55  
Toronto, Ontario M5H 3S8  
[comments@osc.gov.on.ca](mailto:comments@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  
Montréal (Québec) H4Z 1G3  
[consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

Re: Liquidnet Canada Inc. – Response to CSA Notice and Request for Comment

Ladies and Gentlemen,

Liquidnet Canada Inc. (Liquidnet) appreciates the opportunity to submit this comment letter on “CSA Notice and Request for Comment – Proposed Amendments to National Instrument 21-101 Marketplace Operation and National Instrument 23-101 Trading Rules” (the Proposed Amendments).

### **1. Information transparency for government debt securities**

We are not commenting on this proposal.

### **2. Marketplace systems and business continuity planning**

#### ***Business continuity testing***

We would support a requirement that testing of business continuity plans be done according to prudent business practices.

Regarding the requirement for all marketplace participants to participate in industry-wide testing, the CSA should consider whether this obligation should be limited to only apply to protected marketplaces. The CSA should further consider whether this obligation as applied to marketplace participants should be limited to marketplace participants that are investment dealers, as the unavailability of the systems of marketplace participants that are not dealers would not impact other marketplace participants – their (non)availability does not have an industry-wide impact.

The CSA should also confirm that any standards adopted are consistent with existing IIROC standards for BCP testing.

#### ***Uniform test symbols in production environments***

Liquidnet Canada supports a requirement for marketplaces to use uniform test symbols for the purpose of testing to be performed by market participants in a production environment. The use of test symbols in this manner is an important element of an effective trading risk management program. Clearing firms and information processors also should provide support for test symbols, but this requirement should not delay the introduction of test symbols for other market participants.

We also would support a requirement for marketplaces to disclose their policies relating to this type of testing. In all cases, testing should be subject to the marketplace having received reasonable prior notice from the market participant and compliance with reasonable security and risk controls established by the marketplace.

#### ***Security breaches***

We would support a requirement that a marketplace notify a regulator or securities regulatory authority of any material security breach in a timely mannerly.

### ***Expansion of scope of ISRs***

We would support a requirement that a marketplace’s annual ISR include a review of the marketplace’s auxiliary systems, as defined in the Proposed Amendments. In the Proposed Amendments, an auxiliary system is defined as “any system that shares network resources with one or more of the trading related systems, that if breached would pose a security threat to a trading related system.”

### ***Launch of new marketplaces and material changes to marketplace technology requirements***

The CSA proposes that “a marketplace would not be able to launch operations or implement a material change to its technology requirements before the later of three months after a regulator or securities regulatory authority, as applicable, has completed its review and a reasonable time that would allow marketplace participants to complete any necessary systems work and testing.”

The CSA should further clarify this requirement. This requirement should apply only where the proposed change would require participants of the applicable marketplace or market participants generally to implement material changes to their own technology. This requirement should not apply, for example, for changes in system functionality that do not require participants of the applicable marketplace or market participants generally to implement material changes to their own technology; ie, do not have a material impact outside that one marketplace.

This requirement also should not apply where market participants are required to download and install an updated version of the marketplace’s software, and the update does not otherwise require market participants to implement material changes to their own technology nor impact on other marketplaces or market participants. Finally, this requirement also should not apply where a marketplace offers an alternative access technology that does not impact the ability of market participants to interact with the marketplace through existing technology.

If this type of change is subject to a public comment process, it should be clarified that the intent of the comment process is to solicit comment on the relative difficulty of implementing the technical change being proposed.

### ***Other system related amendments***

We do not object to these proposals.

#### **3. Use of marketplace participants’ trading information for research**

Any use of trading information by a marketplace for research purposes should be subject to the marketplace providing clear and specific disclosure to market participants regarding the intended usage.

#### **4. Co-location and other access arrangements with a service provider**

While a marketplace can notify service providers regarding its access criteria and take reasonable steps to monitor that service providers comply with these criteria, we are not clear that a marketplace can ensure compliance by a third-party.

Liquidnet does not provide co-location.

## 5. Information in Forms 21-101F1, 21-101F2 and 21-101F3

### ***Guidance regarding significant changes to Form 21-101F1 and Form 21-101F2***

We appreciate the CSA's initiative to provide additional guidance as to what constitutes a significant change, and we support the changes being proposed in this section.

While the current regulations require 45 days prior notice of a significant change, the approval process can take well in excess of 45 days because of the requirement for public notice and comment and the work that is required by the applicant and the regulator before a proposal can be issued for public comment. In the case of changes made by Liquidnet Canada relating to system functionality, operational processes and similar matters, these changes might impact participants of the Liquidnet marketplace, but they typically would not impact participants who are not subscribers, nor market participants generally.

In our view, public comment on a proposed marketplace rule change would be appropriate when the rule change would have a significant impact on market participants that are not participants of the specific marketplace. If a change would only have a significant impact on those participants who are subscribers of the specific marketplace, advance notice to the regulator would be appropriate, but it would not seem appropriate to require publication of the proposed change for public comment. We believe that a 20-day prior notice period would be sufficient for the regulator to review and identify potential concerns relating to a proposed rule change. If the marketplace were not able to address the regulator's concerns within the 20-day period, then the 20-day period could be extended. While we believe that affirmative approval should not be required, the regulator should have the right to delay or deny a proposed change if any of the regulator's concerns have not been properly addressed.

Under our proposed approach, one factor that should be taken into consideration in determining whether a rule change would have a significant impact on market participants would be whether the marketplace has a business model that involves protected quotes. If a marketplace has a business model that does not involve protected quotes, it is less likely that changes to the marketplace's rules would have a significant impact on market participants that are not participants of the specific marketplace.

Liquidnet Canada and its affiliates provide a system for matching equity block trades in forty-three markets on five continents globally. There is one other jurisdiction where Liquidnet is required to provide the regulator with prior notification of marketplace changes; in this jurisdiction, Liquidnet is required to provide 20 days' prior notice. This other jurisdiction does not require public notice or a public comment period, nor is prior approval required from the regulator.

The current approval process in Canada, which can take well in excess of 45 days, puts Canadian marketplaces at a competitive disadvantage relative to competing marketplaces in the US and other jurisdictions. The extended approval period also can delay implementation of system enhancements that have been requested by customers. We would request that the CSA consider ways in which the approval process could be streamlined to promote innovation and protect the competitiveness of Canadian marketplaces.

***Provision of proposed form changes to regulation services provider***

We support this proposal.

***Annual certification of Form 21-101F1 and Form 21-101F2 information***

We do not object to this proposal. Any certification should be to the knowledge of the chief executive officer after reasonable diligence.

***Filing of materials related to outsourcing***

We do not object to filing with regulatory authorities our policies and procedures and other materials related to the outsourcing of any key marketplace service or system. We appreciate that the regulators have provided Liquidnet guidance in the past as to which types of services and systems would constitute key marketplace services and systems. We would recommend that the CSA document this guidance for the benefit of marketplaces generally.

We would also like to confirm that any commercial terms would not be made public.

***Changes to Form 21-101F3***

We do not object to these changes.

**6. Provision of data to an information processor**

The CSA's proposal would prohibit a marketplace from making order and trade information required to be reported under NI 21-101 available to any other person or company before the marketplace makes this information available to the information processor. Marketplaces should have an obligation to maintain records that demonstrate compliance with this obligation and regulators should have the necessary resources to monitor for compliance.

Under the CSA's proposal, firms and individuals that subscribe to direct feeds would continue to obtain market data prior to firms and individuals that subscribe to market data through the information processor. The proposal focuses on when marketplaces make order and trade information available to users, but the proposal should instead focus on when marketplace participants receive data from the two sources. To ensure fair and equal access to market data, marketplaces should have an obligation to implement procedures that prevent direct feed recipients from receiving market data prior to recipients that obtain market data from the information processor.

**7. Obligations of a recognized exchange to a regulation services provider**

We are not commenting on this proposal.

**8. Form of information provided to regulators**

We do not object to this proposal.

**9. Clearing and settlement**

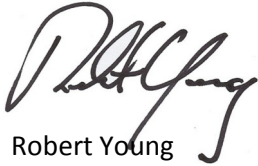
We support the CSA's proposal that marketplace participants should not be unreasonably prevented from having access to the clearing agency of their choice. We support this proposal in light of the vertical integration of trading and clearing services in the Canadian market.

**10. Requirements applicable to information processors**

We are not commenting on this proposal.

Liquidnet appreciates the opportunity to comment on the Proposed Amendments.

Very truly yours,



Robert Young  
Chief Executive Officer, Liquidnet Canada