

**BETWEEN:**

**ONTARIO SECURITIES COMMISSION**

**(Applicant)**

**- and -**

**LIQUIDNET CANADA INC.**

**(Respondent)**

**APPLICATION FOR ENFORCEMENT  
PROCEEDING**

(Subsection 127(1) and Section 127.1 of the  
*Securities Act*, RSO 1990, c S.5)

**A. OVERVIEW**

1. This case involves inadequate controls by a marketplace over the confidential trade and order information of marketplace participants.
2. Liquidnet Canada Inc. (**LCI**), a registered investment dealer, has operated fixed income and equities alternative trading systems (**ATSs**). In 2023, LCI discovered that certain order and trade information of participants in LCI's fixed income ATS was visible to certain employees of LCI's foreign affiliates, who were not authorized under Ontario law to view the information. The available evidence does not indicate whether such employees actually viewed this information or whether information was visible to third parties. The order and trade information visible to these employees did not include indications of interest submitted to LCI's fixed income ATS.
3. After self-identifying the problem, LCI voluntarily suspended trading in Canadian debt securities on its fixed income ATS, and delivered an incident report to the Ontario Securities Commission (the **Commission**). The report represented that the shutdown of its fixed income ATS was necessary for "system enhancements", but was not as forthcoming as it should have been about the underlying issue, namely that order and trade information was visible to certain employees of LCI's foreign affiliates.

4. It later came to light that the LCI Equities ATS infrastructure permitted access to participant order and trade information without consent in connection with orders placed on the LCI Equities ATS. Such access extended to employees of foreign affiliates of LCI who were not authorized to see it. The available evidence does not disclose whether such employees actually viewed this information or whether information was visible to third parties. The order and trade information visible to employees of LCI's US affiliate did not include indications of interest submitted to the LCI Equities ATS.

5. When marketplaces, including alternative trading systems, permit access to confidential participant order or trade information without consent, they undermine investor confidence and the fairness and efficiency of our markets. Marketplaces must have a robust compliance system in place to address all relevant risks, including those associated with operating a shared technology platform in multiple jurisdictions. Marketplaces must also provide the Commission with accurate information when suspending trading or responding to the Commission's inquiries.

## **B. GROUNDS**

The Commission makes the following allegations of fact:

### **(a) LCI**

6. LCI is a corporation incorporated under the laws of Canada. LCI is one of a family of companies that include Liquidnet, Inc., LCI's US-based affiliate (**Liquidnet US**), and Liquidnet Europe Limited, Liquidnet's UK-based affiliate.

7. LCI has been registered with the Commission as an investment dealer since 2004.

8. LCI operated an ATS where marketplace participants can submit indications of interest which can match with other indications of interest that can result in trading in fixed income products (the **LCI Fixed Income ATS**) until August 2023, when LCI suspended trading of Canadian debt securities on it, as described further below.

9. LCI has also operated an ATS where marketplace participants can submit indications of interest which can match with other indications of interest that can result in trading in equities products (the **LCI Equities ATS**). LCI continues to operate the LCI Equities ATS.

## **(b) Unauthorized Access to Market Participants' Trade and Order Information**

10. Certain order and trade information of Canadian marketplace participants on the LCI Fixed Income ATS and on the LCI Equities ATS has been visible to employees of certain LCI foreign affiliates. The available evidence does not disclose whether the employees of LCI's affiliates actually viewed or accessed this information or whether information was visible to third parties. The order and trade information visible to the employees of LCI's affiliates did not include indications of interest submitted to the LCI Fixed Income ATS or LCI Equities ATS.

11. Certain of these employees were not authorized under Ontario securities law to see this order and trade information. These employees were not authorized to see it because access by these employees to this order and trade information was not required in order for LCI to provide services to these marketplace participants, and the marketplace participants did not consent to have this order and trade information shared with these employees of certain of LCI's foreign affiliates.

## **(c) LCI's Suspension of Trading on the LCI Fixed Income ATS**

12. By, at the latest, June 30, 2023, LCI became aware that its fixed income staff could potentially access certain order and trade information of clients of Liquidnet US, and that, vice versa, certain employees of LCI affiliates could also access order and trade information of LCI's marketplace participants on the LCI Fixed Income ATS. After self-identifying the issue, LCI suspended trading of Canadian debt securities on the LCI Fixed Income ATS on or about August 29, 2023 so that the issue could be remediated.

## **(d) LCI's Communication of the Suspension to the Commission**

13. On August 30, 2023, LCI communicated the fact of the shutdown to the Commission, and provided an incident report (the **Incident Report**). The Incident Report indicated:

- (a) that "Liquidnet is making system enhancements that impact the Marketplace which require us to suspend trading to complete the enhancements";
- (b) that "there was no 'incident' causing the suspension. Rather, to update the system we need to briefly suspend trading in fixed income securities";

(c) that the suspension began “in connection with discussions of systems enhancements”;  
and

(d) that “Liquidnet regularly reviews its systems and determined an enhancement was warranted”.

14. The Incident Report did not indicate that there was visibility of LCI’s marketplace participants’ trade and order information on the LCI Fixed Income ATS to employees of LCI foreign affiliates, nor that the visibility issue precipitated the perceived need for “system enhancements”.

15. In September and October 2023, the Commission and LCI exchanged correspondence regarding the suspension of trading on the LCI Fixed Income ATS, including updates on the contemplated completion of the system enhancements and the resumption of trading. In the course of this correspondence, LCI’s responses to the Commission were unclear in respect of the degree to which the systems used by LCI and its affiliates were segregated, and did not, at this time, advise that employees of LCI affiliates could access trade and order information of LCI’s marketplace participants.

16. At a quarterly meeting with the Commission on November 1, 2023, and in subsequent correspondence with the Commission, LCI advised that the suspension of trading on the LCI Fixed Income ATS was related to the visibility issues described above.

17. LCI’s communications to the Commission in Fall 2023 were not as forthright as they could have been, and LCI ought to have advised the Commission of the visibility issue earlier than it did.

#### **(e) LCI’s Reporting Regarding the LCI Equities ATS**

18. By October 2024, LCI realized that there was also unauthorized visibility of marketplace participants’ information on the LCI Equities ATS, which LCI promptly reported to the Commission.

#### **(f) LCI’s Insufficient Safeguards and Procedures**

19. Prior to 2023, LCI failed to implement reasonable safeguards and procedures to protect its marketplace participants’ order and trade information. LCI has since increased safeguards and procedures.

### **(g) LCI's Inadequate Oversight Procedures**

20. Further, LCI's oversight procedures to ensure that the safeguards and procedures that it has now established to protect its marketplace participants' order and trade information are followed were inadequate.

### **(h) LCI's Outsourcing of Services and Systems**

21. LCI outsources some of its key services and systems to one or more affiliates, including the provision of its trading technology. LCI's outsourcing arrangements do not require those affiliates to implement reasonable safeguards to protect LCI's marketplace participants' order and trade information, nor do they require those affiliates to implement adequate oversight procedures.

## **C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

22. The Commission alleges the following breaches of Ontario securities law:

- a. LCI has released marketplace participants' order and trade information to certain employees of certain of LCI's foreign affiliates without consent, contrary to s. 5.10(1) of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**);
- b. LCI has carried on business without implementing reasonable safeguards and procedures to protect order or trade information, contrary to s. 5.10(2) of NI 21-101; and
- c. LCI has carried on business without implementing adequate oversight procedures to ensure that the safeguards and procedures that it has established to protect order or trade information are followed, contrary to s. 5.10 (3) of NI 21-101.

## **D. ORDER SOUGHT**

23. The Commission requests that the Tribunal approve the settlement agreement between the Commission and LCI with respect to the matters herein and that the Tribunal make orders under s. 127(1) and s. 127.1 of the *Securities Act*, RSO 1990, c. S.5, as contemplated by the settlement agreement.

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