Citation: Omega Securities Inc. (Re), 2018 ONSEC 48
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**IN THE MATTER OF
OMEGA SECURITIES INC.**

**REASONS FOR APPROVAL OF SETTLEMENT
(Sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5)**

Hearing:	October 4, 2018	
Decision:	October 4, 2018	
Panel:	Mark Sandler AnneMarie Ryan	Commissioner and Chair of the Panel Commissioner
Appearances:	Keir Wilmut Gregory Ljubic	For Staff of the Commission
	Eliot Kolers Sinziana Hennig	For Omega Securities Inc.

I.   BACKGROUND

[1]   Omega Securities Inc. (**OSI**) is a registrant operating two Alternative Trading Systems (**ATSs**) in Ontario: **Omega ATS** and **Lynx ATS**. Omega ATS commenced operations in December 2007. Lynx ATS commenced operations in February 2014.

[2]   OSI is regulated by the Ontario Securities Commission (the **Commission**) and the Investment Industry Regulatory Organization of Canada (**IIROC**). The establishment and operations of ATSs are governed by the regulatory framework set out in the *Securities Act*[1] (the **Act**), as well as National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and its related Companion Policy (collectively, the **Marketplace Rules**).

[3]   Part 7 of NI 21-101 sets out transparency provisions for certain marketplaces, including those operated by OSI. These transparency provisions require such marketplaces to disseminate accurate and timely information relating to orders and trades to an information processor. Information processors consolidate order and trade information and disseminate that information to market participants and data vendors. These transparency requirements are of critical importance to the regulatory framework. They support fair and efficient markets, confidence in those markets and the regulator's ability to monitor marketplaces and their regulatory compliance.

[4]   Staff of the Commission (**Staff**) identified deficiencies with OSI's systems. In particular, OSI was disseminating inaccurate information respecting the identity of buy and sell brokers for certain transactions, the time of receipt of certain orders, and the time that certain trades were executed. As well, there were some discrepancies between the number of messages disseminated across OSI's data feeds.

[5]   Staff was of the view that it could not allow these serious deficiencies to continue without timely regulatory action. Accordingly, on November 13, 2017, Staff commenced an application before the Commission seeking a temporary order suspending OSI's registration and ceasing the trading in any securities by OSI pending completion of a hearing on the merits. Staff alleged four areas of non-compliance with NI 21-101:

   a.   Inaccurate identification of brokers participating in mid-point peg transactions;

   b.   Time stamp deficiencies;

   c.   Content discrepancies across OSI's data feeds; and

   d.   Dissemination of data to certain subscribers before making it available to OSI's information processor (the **TMX IP**).

[6]   The following day, on November 14, 2017, Staff published OSC Staff Notice 23-706 *Omega Securities Inc.* (the **Self-Help Notice**), advising marketplaces and marketplace participants that they might consider declaring self-help

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[1] *Securities Act*, RSO 1990, c S.5.

pursuant to Part 6 of National Instrument 23-101 *Trading Rules*, thereby exempting them from the Order Protection Rule set out in that Part.[2]

[7]   On November 17, 2017, the Commission began hearing Staff's application for a temporary order. On November 23, 2017, the Commission declined to suspend OSI's registration, but issued a temporary order (the **Temporary Order**) imposing certain terms and conditions on OSI's registration, pursuant to s. 127(5) and paragraph 1 of s. 127(1) of the Act.[3] The terms and conditions included the following:

    a.   OSI shall forthwith provide notice on its website and to its subscribers in writing that the time of execution of trades disseminated pursuant to its ITCH protocol may differ, at the millisecond level, from the time internally recorded by OSI in its matching engine for the execution of these trades;

    b.   OSI shall upgrade from the ITCH 3.0 protocol to the ITCH 5.0 protocol as expeditiously as possible, in compliance with existing regulatory requirements;

    c.   OSI shall report, on a monthly basis, in writing, to Staff of the Commission and to IIROC, if IIROC so requests, on the ongoing steps taken by OSI to upgrade to the ITCH 5.0 protocol;

    d.   OSI shall implement a MRF Feed patch as expeditiously as possible, in compliance with existing regulatory requirements, including IIROC approvals or certification;

    e.   OSI shall forthwith notify its subscribers that after seven days, all order acknowledgement messages sent pursuant to its FIX Feed will be sent at the millisecond level, except to such subscribers which notify OSI in writing within seven days that they choose not to receive such acknowledgements to the millisecond level;

    f.   OSI shall comply with the terms of the notification referred to in paragraph (e), above, and provide a written report to Staff of the Commission within 14 days and to IIROC, if requested by IIROC, outlining steps taken to so comply; and

    g.   OSI shall retain, within 14 days or such later time period as approved by Staff of the Commission, at its own expense, the services of an independent systems reviewer or reviewers that are approved by Staff of the Commission to provide reporting to OSI and Staff of the Commission and to IIROC, if IIROC so requests, regarding the effectiveness of the MRF Feed patch and the ITCH 5.0 protocol, on a quarterly basis for a 12 month period, after each respectively, is implemented.

[8]   The Commission extended the Temporary Order, on consent, on multiple occasions to facilitate ongoing efforts by the parties to settle this matter. Those efforts led to a settlement agreement, the terms of which are set out below. The terms include payment of an administrative penalty of $500,000, together with

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[2]The Order Protection Rule requires marketplaces to establish, maintain and ensure compliance with written policies and procedures reasonably designed to prevent inferior-priced orders from "trading through," or being executed before immediately accessible, visible, better-priced limit orders.

[3] The hearing panel's Reasons on Application for a Temporary Order were published on December 14, 2017; see *Omega Securities Inc. (Re)*, 2017 ONSEC 42.

terms and conditions imposed on OSI's registration, and designed to ensure compliance with the Marketplace Rules. These terms and conditions largely track, with appropriate modifications, the terms and conditions contained in the Temporary Order. The Temporary Order expired on October 4, 2018.

[9] On that same day, October 4, 2018, the Commission approved the settlement on the terms proposed by the parties. An Order was issued in substantially the form appended to the settlement agreement. Written reasons were to follow. These are our written reasons.

II.   THE CONDUCT

[10] The Marketplace Rules set out requirements for ATSs. Subsection 7.1(1) of NI 21-101 requires marketplaces to provide "accurate and timely information regarding orders" to the information processor. Subsection 9.1(2) of the Companion Policy to NI 21-101 states that the information provided "should contain all relevant information, including details as to...[the] time of the order or trade."

[11] Subsection 7.2(1) of NI 21-101 requires a marketplace to provide "accurate and timely information regarding trades" to the information processor, which includes properly specifying the IDs of the buyer and seller broker involved in an execution.

[12] The Marketplace Rules do not dictate how to implement these requirements. ATSs determine the appropriate measures to meet regulatory requirements, which include selecting the appropriate computer software and hardware (commonly referred to as the **Trading Platform**).

[13] The OSI Trading Platform disseminates information regarding trading activity on Omega ATS and Lynx ATS using three data feeds:

a.   The **ITCH Feed**, which disseminates information to the TMX IP;

b.   The **MRF Feed**, which disseminates information to IIROC; and

c.   The **FIX Feed**, which disseminates information to other destinations.

[14] OSI failed to comply with the Marketplace Rules due to the following:

a.   Inaccurate identification of brokers participating in mid-point peg transactions;

b.   Time stamp deficiencies for unmatched orders;

c.   Time stamp deficiencies for matched orders (i.e. executed trades);

d.   Time stamp discrepancies for identical events on different feeds; and

e.   Content discrepancies across OSI's data feeds.

A.   Inaccurate Identification of Brokers Participating in Mid-Point Peg Transactions

[15] In July 2013, OSI introduced a new order type that would allow investors to place mid-point peg orders on Omega ATS and Lynx ATS.

[16] From July 2013 to June 2016, OSI's Trading Platform reversed the buyer broker ID and the seller broker ID for over 65,000 mid-point peg transactions on

Omega ATS and Lynx ATS. The incorrect data was publicly disseminated on the ITCH Feed.

[17] OSI corrected its systems in June 2016 and reported to IIROC and the Commission's Market Regulation Branch while doing so. The corrected process was certified by IIROC. Since that time, messages regarding mid-point peg transactions disseminated by OSI for Omega ATS and Lynx ATS using the ITCH Feed have reflected the proper buyer and seller broker IDs.

B.   Time Stamp Deficiencies for Unmatched Orders

[18] When a buy or sell order is received by OSI's systems, a "time of order receipt" is assigned to that order.

[19] Prior to June 8, 2018, the "time of order receipt" information sent by the ITCH Feed to the TMX IP was replaced with a time label that instead reflected the "time of transmission." Prior to December 11, 2017, this was also the case with respect to the MRF Feed.

[20] In compliance with the terms of the Temporary Order, on December 11, 2017, OSI implemented an MRF Feed patch, such that "time of order receipt" information is currently being disseminated accurately on the MRF Feed. The process was certified by IIROC.

[21] Also in compliance with the terms of the Temporary Order, on June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that "time of order receipt" information is currently being disseminated accurately on the ITCH Feed.

C.   Time Stamp Deficiencies for Matched Orders (i.e. Executed Trades)

[22] When a buy order is matched with a sell order on OSI's marketplaces, the resulting trade execution message is time-stamped with the "time of the trade."

[23] Prior to June 8, 2018, the "time of the trade" information sent by the ITCH Feed to the TMX IP was replaced with a time label that instead reflected the "time of transmission." Prior to December 11, 2017, this was also the case with respect to the MRF Feed.

[24] As a result of the December 11, 2017 patch and June 8, 2018 upgrade, "time of the trade" information is currently being disseminated accurately on the MRF and ITCH Feeds.

D.   Time Stamp Discrepancies for Identical Events on Different Feeds

[25] The internal clocks for OSI's ITCH Feed and the MRF Feed were, at times, desynchronized, such that the "time of transmission" was not always the same for the two feeds. As a result, the time labels assigned to orders and trades not only failed to accurately reflect the "time of order receipt" or "time of the trade," but were not the same across all feeds.

[26] Staff's investigation found that in almost all cases, the time stamp discrepancies were within one to two milliseconds, although in a number of instances, during periods of exceptional market conditions or when OSI was experiencing technical difficulties, the discrepancies exceeded 50 milliseconds.

[27] As a result of the December 11, 2017 patch and June 8, 2018 upgrade, any variance between time stamps on the ITCH and MRF Feeds appears to have been eliminated.

E. Content Discrepancies Across OSI's Data Feeds

[28] OSI disseminates the ITCH Feed of Omega ATS from two different computer ports: **Port 4005** and **Port 4006**.

[29] On some trading days between June 2013 and June 2016, the number of messages (i.e. orders and transactions) disseminated via Port 4005 differed from the number of messages disseminated via Port 4006. As a result, some market participants accessing the ITCH Feed were deprived of full information about trading activity on Omega ATS.

[30] Also, on certain trading days, the number of transactions disseminated on the MRF Feed (which went to IIROC) did not equal the number of transactions disseminated on either Ports 4005 or 4006 of the ITCH Feed. As a result, on some of those trading days, IIROC was not provided with copies of all messages transmitted to market participants.

III. THE TERMS OF THE SETTLEMENT AGREEMENT

[31] The parties agreed (as do we) that by engaging in the conduct described immediately above, OSI breached Ontario securities law in three ways:

a. OSI disseminated inaccurate post-trade information relating to mid-point peg transactions executed on Omega ATS and Lynx ATS, in breach of subsection 7.2(1) of NI 21-101;

b. OSI disseminated inaccurate pre-trade information relating to orders for exchange-traded securities displayed by Omega ATS and Lynx ATS to the TMX IP, in breach of subsection 7.1(1) of NI 21-101; and

c. OSI disseminated inaccurate post-trade information relating to trades for exchange-traded securities executed on Omega ATS and Lynx ATS to the TMX IP, in breach of subsection 7.2(1) of NI 21-101.

[32] The settlement agreement proposed that the Commission make the following order:

a. The settlement agreement be approved;

b. Pursuant to paragraph 1 of subsection 127(1) of the Act, the following terms and conditions be imposed on OSI's registration:

    i. OSI shall continue to ensure that:

        (a) The broker IDs of counterparties to a trade are recorded accurately;

        (b) Timestamps pertaining to the "time of order receipt" and the "time of the trade" are disseminated in accordance with Part 7 of NI 21-101, and if transmission times are disseminated, they are disseminated in addition to the aforementioned timestamps and identified as such;

        (c) The MRF Feed is providing IIROC with accurate timestamps of order receipt and execution of trades;

ii.   OSI shall continue to retain the independent systems reviewer (the **Independent Systems Reviewer**) to perform quarterly reviews and provide written reports regarding the effectiveness of the MRF Patch, on a quarterly basis for a 12-month period following December 11, 2017, and provide these reports to Staff and IIROC, if IIROC so requests.

iii.   OSI shall continue to retain the Independent Systems Reviewer to perform quarterly reviews and provide written reports regarding the effectiveness of the upgrade to the ITCH 5.0 protocol on a quarterly basis for the four quarters ending after June 8, 2018, and provide these reports to Staff and IIROC, if IIROC so requests.

iv.   OSI shall maintain policies and procedures designed to ensure, on an ongoing and consistent basis, that mechanisms are in place to ensure that OSI's systems and their operations are compliant with NI 21-101; and

c.   Pursuant to paragraph 9 of section 127(1) of the Act, OSI shall pay to the Commission an administrative penalty in the amount of $500,000, which shall be designated for allocation or for use by the Commission in accordance with subclauses 3.4(2)(b)(i) or (ii) of the Act.

[33]   We have been advised that the $500,000 administrative penalty has been paid.

IV.   ANALYSIS

[34]   The Commission is to deny approval of a settlement agreement only in exceptional circumstances. As stated in *Cheng (Re)*,

> [t]his deference is explained, in part, by the high desirability of encouraging settlement agreements between Staff and respondents, and promoting certainty in the industry. Of course, the Commission is fully entitled to reject a settlement agreement which falls outside the range of reasonable outcomes available in the circumstances and thus, is contrary to the public interest. The Commission is to consider the terms of the settlement agreement in their totality, rather than considering each term in isolation.[4]

[35]   In our view, this settlement agreement falls within the range of reasonable dispositions available in the circumstances and is in the public interest.

[36]   Accurate and timely collection and dissemination of information by marketplaces is of critical importance to the integrity of Ontario's capital markets and to the confidence of both participants and investors in those markets. The dissemination of inaccurate market information could result in an unfair advantage to some investors and unfair disadvantage to others. Accurate information also assists regulators in performing their enforcement and regulatory mandates. Inaccurate reporting of data by a marketplace impedes regulators in carrying out effective oversight of public markets. It follows that a marketplace's non-compliance with any regulatory transparency requirements must be treated as a serious matter.

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[4] *Cheng (Re)*, 2018 ONSEC 34 at para 8.

[37] In our view, the $500,000 administrative penalty, viewed together with the other sanctions, sends a strong and appropriate deterrent message. Deterrence, in this context, includes both specific and general deterrence.

[38] The settlement agreement also takes into consideration factors relied upon by OSI to contextualize or mitigate its conduct. These factors include the following:

a. The absence of any prior record of non-compliance with securities law;

b. OSI's acknowledgment of non-compliance, obviating the need for a contested hearing;

c. OSI took steps to begin to address the issues identified in Staff's application for a temporary order before the application was heard. Its proposed "fixes" to each of the deficiencies identified figured prominently in the terms and conditions the Commission imposed at the temporary order hearing;

d. Staff and OSI agree that, up to the date of the settlement agreement, OSI fully complied with the terms of the Temporary Order. This involved the following:

   i. On November 24, 2017, OSI provided notice on its website and to its subscribers in writing that the time of trades disseminated on its ITCH Feed could on occasion differ, at the millisecond level, from the time internally recorded by OSI;

   ii. On November 27, 2017, OSI notified all of its subscribers that after seven days, all order acknowledgment messages sent by its gateways would be sent at the millisecond level. Since December 1, 2017, OSI's Trading Platform has recorded the time that all incoming messages are first received by OSI to the millisecond level. OSI provided a written report of this change to Staff and to IIROC;

   iii. On December 11, 2017, OSI implemented an MRF Feed patch such that the correct matching engine time stamp is being disseminated on the MRF Feed;

   iv. On June 8, 2018, OSI upgraded the ITCH Feed from the ITCH 3.0 protocol to the ITCH 5.0 protocol, such that the correct "time of the order" and "time of the trade" are being disseminated on the ITCH Feed; and

   v. OSI has engaged the Independent Systems Reviewer to provide a quarterly review of all data feeds, and determined the scope and format of this testing, in cooperation with IIROC and the Commission's Market Regulation Branch; and

e. During the 10-day period from Staff's issuance of the Self-Help Notice to the Commission's issuance of the Temporary Order, OSI's trading volumes dropped by more than 96%, and commission revenues fell accordingly. As of the date of the settlement agreement, OSI's market share had just recently returned to its approximate level prior to the commencement of this enforcement proceeding.

[39] OSI has already incurred significant costs to comply with the Temporary Order. These financial costs, while necessitated by OSI's conduct, reflect that OSI has paid a financial price substantially larger than that represented by the $500,000 administrative penalty.

V. CONCLUSION

[40] For these reasons, we approved the terms of the settlement agreement set out in paragraph 32 above.

[41] We are grateful to all counsel for their assistance in this matter.

Dated at Toronto on this 4th day of October, 2018.

"Mark J. Sandler"	*"AnneMarie Ryan"*
Mark J. Sandler	AnneMarie Ryan