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8 February 2013

VIA EMAIL

Manager, Financial Markets Unit
Corporations and Capital Markets Division
The Treasury

**Re: Australia's Financial Market Licensing Regime: Addressing Market Evolution
Options Paper November 2012 (the Consultation Paper)**

Ladies and Gentlemen,

Liquidnet Australia Pty Ltd (Liquidnet) appreciates the opportunity to comment on the Consultation Paper.

Background on Liquidnet

The Liquidnet group provides a system used by institutional investors worldwide to negotiate block orders directly with each other. In the case of Australian equities, matched block orders are forwarded to a local broker for execution and reporting on the Australian Stock Exchange (ASX). Institutions that use Liquidnet reduce their trading costs by avoiding the market impact costs that result when institutional block orders are exposed to high-frequency traders and other short-term traders in the market. Cost savings achieved by institutional investors using Liquidnet are passed on to the hundreds of millions of individual investors globally on whose behalf our customers trade, resulting in reduced trading costs and higher investment returns for these individual investors.

For 2012, Liquidnet's average execution size for Australian equities was AU\$1,213,406 principal value, which was 183 times larger than the average execution size on the ASX during this period.¹

The focus of Liquidnet's business is the execution of large block orders. Systems that reduce trading costs for executing large orders reduce trading costs, and thereby increase investment returns, for the millions of Australian citizens that participate in Superannuation Funds and similar investment vehicles.

We now respond to the specific questions set forth in the Consultation Paper. Liquidnet trades equity securities, so our responses are limited to the trading of equity securities.

Liquidnet Comments

Q1. Do you have any comments on the general form of the current legislative framework for licensing of financial markets in Australia?

We support the efforts of ASIC to review the current market licensing framework. Several years ago we commenced the process of applying for an AML license. We subsequently discontinued the process, as the process was unduly onerous given the scope and nature of our trading activity.

We agree with ASIC that the issuance of exemptions to multiple individual systems is problematic and evidences the need to re-evaluate the current licensing regime. We support ASIC's general approach to update the current licensing system to one where licensing requirements are proportional to the nature of the trading activity to be conducted.

Q2. Do you consider that there are efficiency issues that could be addressed by revising the licensing regime? If so, please provide details.

Please see our response to Question 1.

Q3. Do you consider that there are market integrity or investor protection concerns that could be addressed by revising the licensing regime? If so, please provide details.

Yes. We support ASIC's general approach to update the current licensing system to one where licensing requirements are proportional to the nature of the trading activity to be conducted.

Q4. Do you agree that regulatory change would be desirable in order to better align Australia's market regulatory regime with overseas regimes?

¹ Based on an average of AU\$6,609 per trade derived from figures provided in ASX Group Monthly Activity Report for January to December 2012

Liquidnet currently trades in 41 markets on 5 continents. We support efforts to align regulatory regimes across regions, where appropriate.

Q5. Do you believe that such regulatory alignment could increase the prospects of Australian trading venues and market participants being able to seek regulatory recognition in other jurisdictions?

This is not a concern for Liquidnet as we currently trade in 41 markets on 5 continents.

Q6. Do you consider that more flexibility in the AML regime is warranted, so that a greater number of facilities may be covered?

Yes. Please see our response to Question 1.

Q7. Do you have a preference between Option 1 and Option 2? If so, please provide details.

Both options could improve on the current licensing regime, depending on how these options are implemented. We lean towards a more flexible approach, again subject to how the options are implemented.

Q8. Is there an alternative option that you think would provide a better outcome than either of those presented? If so, please explain this option.

Please see our response to Question 7.

Q9. Is it appropriate for ASIC to have the power to make rules in respect of licensing obligations as indicated in Option 1? What checks and balances should there be on ASIC's rule making power? Should it be limited to matters in which default requirements in the legislation are 'switched off' or should they have the ability to make rules relating to all provisions in Part 7.2?

We support the delegation of rulemaking authority to ASIC.

Q10. If Option 1 were adopted, do you think the discretion should be operated through regulations (Option 1a) or through ASIC guidance (Option 1b)? Please provide details.

We support providing flexibility for ASIC provided that all determinations are made based on objective criteria that are publicly communicated.

Q11. If Option 2 were addressed, how could the limitations to flexibility found in international markets be allowed for in system design?

This is not a concern for us.

Q12. Do you have any general comments in relation to the types of obligations which should or should not apply for particular entities under either option (noting that this will be consulted on in more depth at a later stage)? Please provide details.

As a firm that executes large block orders that, on average, are 183 times larger than the average execution size on the ASX, we provide a customized service that is more akin to a traditional institutional brokerage service than it is to the more commodity-like service provided by exchanges and most other dark pools. Regulations should take into account the customized nature of our service relative to the more commoditized nature of other trading venues.

Similarly, regulations should ensure that any arbitrage in regulation between institutional block crossing systems like Liquidnet and traditional institutional trading firms is minimized.

Regulators also should take into account that systems like Liquidnet do not provide issuer listings or engage in the sale of market data to third-parties.

Q13. Do you have any comments in relation to the perceived advantages of a more flexible market licensing regime? If so, please provide details.

Please see our response to Question 1 above.

Q14. Do you have any comments in relation to the potential drawbacks of the proposed licensing reform? Please provide details of any concerns you have.

As noted in our response to Question 1, licensing requirements should be proportional to the nature of the trading activity to be conducted.

Q15. Do you think that making HFTs (including non market participant HFTs) directly subject to market integrity rules would assist in safeguarding market integrity? Should these rules be limited to those which relate specifically to non market participant HFTs?

We generally support this approach but would need to see a more detailed proposal before we could comment further.

Q16. Do you have any concerns in relation to making HFTs subject to market integrity rules? If so, please provide comments.

Please see our response to Question 15.

Q17. Do you have any comments on how HFT should be defined and how it should be measured?

Please see our response to Question 15.

Q18. Do you have any concerns with this proposed option? If so, please provide comments.

We do not support this proposal. To ensure a level playing field, exemptions for any system should be based on the nature of the specific system and not based on the identity of the firm that is operating the system.

Q19. Do you have any concerns with this proposed option? If so, please provide comments.

We do not have concerns with this proposal.

Q20. Do you consider the fee for a market licence in Australia needs revision? If so, please provide comments.

We agree that the application fee of \$1,448 should be higher. The most significant cost in preparing a license application is not the application fee but rather the internal and external resources required to prepare the application and respond to follow-up requests from the regulators. Licensing applications should be appropriately detailed to ensure that applicants provide full details regarding their system operations; at the same time, regulators should keep to a minimum filing requirements that are bureaucratic in nature and not relevant to the licensing application.

Q21. Do you see cost recovery as an appropriate approach to levying licence fees? Please provide details.

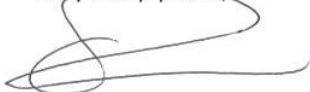
Please see our response to Question 20.

Q22. Would a change in the fee level have any impact on the decision whether to operate a market in Australia? Does the current rate influence this decision?

Please see our response to Question 20.

We appreciate the opportunity to comment on the Consultation Paper.

Very truly yours,



Lee Porter
Director, Liquidnet Australia Pty Ltd