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August 13, 2008

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
rule-comments@sec.gov

Re: File No. S7-16-08, Exemption of Certain Foreign Brokers or Dealers

Ladies and Gentlemen,

Liquidnet, Inc. appreciates this opportunity to comment on the proposed rule to amend Rule 15a-6.

Introduction

We agree with the Commission that the pace of internationalization in securities markets around the world has continued to accelerate. Through our trading system, our institutional customers have access to our global natural liquidity pool of more than 7.5 billion shares per day on average listed in 29 countries throughout North America, Europe, Africa, Asia and Australia. With advances in technology and network speed and capacity, institutions can use our negotiation system to negotiate and execute block trades directly with other institutions across the globe in real-time. By making block-size liquidity available to institutions on a cross-border basis, we reduce cross-border trading costs for our institutional customers. These cost savings may be passed on directly to the tens of millions of U.S. and other global individuals on whose behalf our institutions trade, including mutual fund investors and retirement fund beneficiaries.[1]

The approach adopted by the Commission in the proposing release is a commendable response to the acceleration of cross-border trading. By taking a proactive approach in this area, the Commission will make it easier for Liquidnet and other U.S. firms as we interact with regulators globally to remove barriers to competition. We believe the further removal of regulatory impediments and the fostering of competition by U.S. and other global regulators will invariably result in greater innovation and reduced trading costs for institutions globally.

[1] We currently operate our H2O system in the U.S. only. Our H2O system provides for automatic executions at the mid-point of the national best bid and ask in the market at the time of execution. We plan to expand our H2O system globally, which would include cross-border trading.

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The proposing release takes into account the distinct regulatory concerns of the market where a customer is located and the market where a trade is executed and settled. The regulators in the market where the customer is located are concerned primarily with customer protection issues; for example, ensuring accurate description of products and services and adequate disclosure of risks. Regulators in the market where the trade is executed are concerned primarily with market structure issues, including operation of the local market, capital adequacy of the market and its participants, proper settlement of transactions and open competition for the provision of trading services. They also are focused on detecting and preventing market manipulation and insider trading in the local market. We believe the proposals in the release take this distinction into account.

Proposed modifications relating to solicited trades

Liquidnet supports the proposed modifications to the exemptions for foreign brokers or dealers soliciting trades from U.S. customers, but we suggest a change in how the term "foreign security" is defined. Under Proposed Exemption A(1), a foreign broker or dealer can be exempted from U.S. registration subject to certain conditions. One condition is that the foreign broker or dealer must be engaged in a "foreign business", which requires that 85% or more of the aggregate value of its trades are in "foreign securities". Our suggested change relates to the definition of "foreign security" for equity securities.

We believe an equity security should be characterized as a U.S. or foreign security based on where the security is listed and where trades in the security settle. For example, a trade in a security listed on the London Stock Exchange will settle through the CREST system in the U.K. A trade in a U.S.-listed security will settle through NSCC or DTC in the U.S. Where a security is listed in multiple securities, the customers and the broker will determine where the trade settles. The benefit of this proposed definition is that brokers could automate monitoring for compliance with the 85% requirement.

The test proposed by the Commission for equity securities would look to whether the issuer is a "foreign private issuer" under Securities Act Rule 405. Rule 405 sets out various elements to be considered in making this determination, and we are not clear as to how we could automate monitoring for compliance with the 85% requirement. We also are not clear as to whether the data for making this determination would be available. For example, considering the four factors set forth in Rule 405:

- Could we determine whether 50% of an issuer's securities are owned directly or indirectly by residents of the U.S.?
- Could we determine whether the majority of an issuer's executive officers or directors are U.S. citizens or residents? Is this required disclosure for all public companies globally?
- Could we determine whether 50% of an issuer's assets are located in the U.S.?
- Is it always clear whether the business of an issuer is principally administered in the U.S.?

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Even if we could make all of these determinations, the process of manually collecting this information for thousands of trades would be burdensome. We recommend that the Commission either substitute our proposed test for the one proposed by the Commission or that the Commission afford broker-dealers the option to select either of the two tests.

Exemption A(1) appears to remove the requirement in current Rule 15a-6 that the U.S. broker-dealer be responsible for receiving, delivering and maintaining funds and securities. We have found this requirement to be burdensome to implement in practice. Our understanding of the general business practice in the institutional marketplace is that an institution will have a custodian or prime broker in the jurisdiction where the trade is executed and settled. That custodian or prime broker will settle the trade on behalf of the institution with the executing broker and its clearing firm in the foreign jurisdiction, so we are not clear as to the practicality or necessity of the U.S. broker-dealer being involved in the settlement process, in light of the added costs involved. Accordingly, we support the removal of this requirement as proposed under Exemption A(1).

Conclusion

We appreciate the opportunity to comment on the Commission's rule proposal. We support the Commission's proposal as it would reduce barriers to cross-border trading, resulting in greater competition and lower trading costs for institutions globally and the tens of millions of beneficiaries of the accounts that they manage.

Very truly yours,

Howard Meyerson
General Counsel