

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 11351 / January 10, 2025

SECURITIES EXCHANGE ACT OF 1934
Release No. 102147 / January 10, 2025

ADMINISTRATIVE PROCEEDING
File No. 3-22394

In the Matter of

LIQUIDNET, INC.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Sections 15(b) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Liquidnet, Inc. (“Liquidnet” or “Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and

21C of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

SUMMARY

1. This matter involves violations of the federal securities laws in two regulatory areas by Liquidnet, a registered broker-dealer that operates three alternative trading systems (“ATSs”): two ATSs that trade National Market System (“NMS”) stocks, Liquidnet Negotiation ATS and Liquidnet H20 ATS (the “NMS Stock ATSs”), and one ATS that trades fixed income securities, Liquidnet Fixed Income ATS (the “Fixed Income ATS” and together with the NMS Stock ATSs, the “Liquidnet ATSs”). First, Liquidnet violated Section 15(c)(3) of the Exchange Act and Rule 15c3-5 thereunder (the “market access rule”) by failing to have adequate risk management controls and supervisory procedures in place related to market access for its ATSs. Second, Liquidnet failed to establish adequate written safeguards and written procedures to protect confidential subscriber² trading information and failed to amend its Forms ATS-N and ATS, as required by Regulation ATS. Liquidnet also made material misrepresentations about the firm’s compliance with both Regulation ATS and the market access rule.

2. As a broker-dealer operator of an ATS that provides market access to non-broker-dealers, Liquidnet is subject to the market access rule, which requires subject broker-dealers to have, among other things, a system of financial risk management controls and supervisory procedures to prevent the entry of orders that would exceed appropriate credit thresholds for its non-broker-dealer customers and to establish, document, and maintain a system for regularly reviewing the effectiveness of these controls and procedures, among other things. The market access rule is designed to ensure that broker-dealers “appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.” Risk Management Controls for Brokers or Dealers with Market Access, Exch. Act Rel. No. 63241 (Nov. 10, 2010), 75 Fed. Reg. 69792 (Nov. 15, 2010).

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² “Subscriber” is defined in Rule 300(b) of Regulation ATS as “any person that has entered into a contractual agreement with an [ATS] to access such [ATS] for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders on such [ATS], including a customer, member, user, or participant in an [ATS].” Accordingly, “subscriber” is used throughout the discussion of Liquidnet’s Regulation ATS violations below. The market access rule uses the term “customer” instead, and is therefore used throughout the discussion of Liquidnet’s market access rule violations below.

3. From approximately 2019 through 2023, Liquidnet violated the market access rule by setting credit thresholds for non-broker-dealer customers without first performing adequate due diligence on their creditworthiness and frequently setting customer credit thresholds at a default of \$1 billion – regardless of the customer’s financial standing. Liquidnet also failed to implement systems to prevent these thresholds from being breached within the NMS Stock ATSs, and, until 2023, failed to regularly review and certify its compliance with the market access rule. Liquidnet further made material misrepresentations to certain customers about the firm’s compliance with the market access rule.

4. As the registered broker-dealer operator of an ATS, which operates pursuant to an exemption from exchange registration,³ Liquidnet must comply with certain conditions to the exemption, including Rule 301(b)(10) of Regulation ATS, which requires an ATS operator to establish adequate written safeguards and written procedures to limit access to confidential subscriber trading information to employees of the ATS who operate the system or are responsible for its compliance with applicable rules and regulations. The rule is designed to, among other things, minimize “information leakage of subscribers’ confidential trading information to other business units of the broker-dealer and their affiliates,” where there may be increased potential for misuse of that information. See Regulation of NMS Stock Alternative Trading Systems, Exch. Act Rel. No. 83663 (Jul. 18, 2018), 83 Fed. Reg. 38768, 38775-76 (Aug. 7, 2018) (the “NMS Stock ATS Adopting Release”). Liquidnet must also comply with Rules 301(b)(2) and 304 of Regulation ATS. Rule 304 requires Liquidnet to make public disclosures on Form ATS-N about the operations of the NMS Stock ATSs and the activities of the broker-dealer operator and its affiliates. Rule 301(b)(2) requires Liquidnet to make disclosures to the Commission about the operations of the Fixed Income ATS.

5. From approximately 2019 through 2024, Liquidnet failed to adequately limit internal access to specific systems and tools containing certain confidential subscriber trading information in two ways. First, Liquidnet did not have appropriate access controls for certain ATS data used by technology personnel for testing purposes. Second, Liquidnet permitted internal access to certain confidential subscriber trading information by certain employees who had no operational or compliance responsibilities for the Liquidnet ATSs. This information primarily included match and execution data, but generally did not include subscribers’ unmatched indications of interest⁴ other than on an aggregate, non-symbol specific basis. The access granted to these employees was at times inconsistent with Liquidnet’s public disclosures.

³ As explained below, Rule 3a1-1(a)(2) under the Exchange Act exempts an ATS from the definition of “exchange” under Section 3(a)(1) of the Exchange Act, and thus, the requirement to register as a national securities exchange pursuant to Section 5 of the Exchange Act, if the ATS complies with the conditions of Regulation ATS.

⁴ An indication of interest generally refers to a subscriber’s non-firm willingness to buy or sell a security. The Liquidnet ATSs accepted and matched indications of interest of subscribers and allowed them to agree to terms of a trade on the ATS.

6. Liquidnet also made material misrepresentations to subscribers and potential subscribers in response to due diligence inquiries about the safeguards it maintained over confidential subscriber trading information, the employees who had access to the Liquidnet ATSS, and the scope of that access. In addition, Liquidnet failed to disclose certain information on its Form ATS-N and Form ATS to accurately reflect who had access to confidential subscriber trading information and the nature of that access.

RESPONDENT

7. Liquidnet is based in New York, New York and has been registered with the Commission as a broker-dealer since October 2000. In March 2021, Liquidnet was acquired by TP ICAP plc (“TP ICAP” and the “TP ICAP Acquisition”), a London-based financial services firm listed on the London Stock Exchange. Liquidnet is an agency-only broker that operates three ATSS: two NMS Stock ATSS and the Fixed Income ATS.

BACKGROUND

A. Liquidnet Violated the Market Access Rule

8. Liquidnet provides market access through the Liquidnet ATSS to non-broker-dealer customers⁵ and is therefore required to comply with the market access rule with respect to the market access it provides to those customers. As described in more detail below, from approximately 2019 through 2023, Liquidnet violated three different subsections of the market access rule and made certain misrepresentations to customers about its compliance with the rule.

Liquidnet Set Credit Thresholds Without Adequately Assessing Customer Creditworthiness and Did Not Have Controls for its NMS Stock ATSS in Place to Prevent Certain Orders Exceeding Those Thresholds

9. Exchange Act Rule 15c3-5(b) requires broker-dealers with market access to “establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks” of having market access. 17 C.F.R. § 240.15c3-5(b).

10. Exchange Act Rule 15c3-5(c), among other things, requires that a broker-dealer’s risk management controls and supervisory procedures be reasonably designed to (i) “[p]revent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer ... by rejecting orders if such orders would exceed the applicable credit or capital thresholds” and (ii) “[p]revent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters.” 17 C.F.R. §§ 240.15c3-5(c)(1)(i)-(ii). This provision of the

⁵ The market access rule only applies to a broker-dealer operator of an ATS when providing market access to non-broker-dealer customers. See Rule 15c3-5(a)(1)(ii); 17 C.F.R. § 240.15c3-5(a)(1)(ii).

market access rule requires Liquidnet to set appropriate pre-trade credit thresholds for each non-broker-dealer customer, and to have in place controls that will prevent the entry of orders – on a pre-trade basis – that exceed those thresholds or are erroneously entered.

11. From at least 2019 until 2023, Liquidnet set pre-trade credit risk thresholds for certain non-broker-dealer customers of its NMS Stock ATSs without performing appropriate reviews of customer creditworthiness. Instead, Liquidnet nearly always set pre-trade thresholds at a default aggregate notional value of \$1 billion for these customers, without regard for the credit ratings or financial standing of each individual non-broker-dealer customer.

12. As a result, certain pre-trade alerts, which were intended to flag that customers were close to reaching their credit thresholds, would only be triggered after a customer placed orders totaling an extremely high notional value. These pre-trade alerts were set at 80% of a customer's credit threshold in the NMS Stock ATSs. Therefore, a non-broker-dealer customer with a \$1 billion credit threshold would be able to successfully place orders in the NMS Stock ATSs totaling \$800 million in notional value without triggering those alerts.

13. Because these pre-trade credit thresholds were set at arbitrary levels without appropriate reviews of customer creditworthiness, and the related pre-trade alerts were based on these arbitrary thresholds, these risk management controls were not reasonably designed, as the market access rule requires.

14. In addition, from at least 2019, Liquidnet did not have a system in place to prevent the entry of orders by non-broker-dealer customers that exceeded these arbitrary pre-set credit thresholds when aggregated with all orders placed by that customer with the firm. Orders placed by a customer into one of the Liquidnet ATSs would trigger a pre-trade alert if they breached the applicable alert threshold, but if the customer placed a subsequent order that in the aggregate exceeded the customer's credit threshold, that order could be successfully executed, regardless of its size.

15. Therefore, if a non-broker-dealer customer in one of the NMS Stock ATSs with a credit threshold of \$1 billion executed orders totaling \$900 million, the firm's pre-trade alerts would be triggered because the non-broker-dealer customer had reached 80% of its credit threshold, but if that customer placed another order of \$125 million, the order would be executed without any alert being generated, even though the notional value of that order when aggregated with earlier orders exceeded the firm's \$1 billion credit threshold for the customer.

16. Liquidnet was aware by at least 2020 that the firm's existing systems did not aggregate customer orders and therefore could not prevent the entry of a subsequent order exceeding a non-broker-dealer customer's credit threshold. Liquidnet remedied the issue in early 2023, under TP ICAP's supervision. Trading and other documentation relating to credit thresholds in the NMS Stock ATSs indicate that these credit thresholds were not breached.

17. As a result, Liquidnet did not have a reasonably designed system to prevent the entry of orders that exceeded credit thresholds in the aggregate for each non-broker-dealer customer, as required by the market access rule.

***Liquidnet Violated the Market Access Rule by Failing to
Consistently Conduct Annual Reviews and Issue CEO Certifications***

18. Exchange Act Rule 15c3-5(e) requires a broker-dealer to establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures and for promptly addressing any issues. More specifically, broker-dealers must perform a review at least annually to assure the overall effectiveness of these risk management controls and supervisory procedures (“15c3-5 review”) and the broker-dealer’s Chief Executive Officer must certify compliance on an annual basis (“15c3-5 certification”). 17 C.F.R. § 240.15c3-5(e).

19. Despite its awareness by at least 2020 that its systems could not aggregate non-broker-dealer customer orders and therefore could not prevent the entry of a subsequent order exceeding a non-broker-dealer customer’s credit threshold, Liquidnet did not perform a 15c3-5 review covering the entire calendar year in 2021. Specifically, Liquidnet did not review its compliance with the market access rule for the period September 1 through December 31, 2020. Moreover, until 2022, the firm’s 15c3-5 reviews did not adequately test to determine whether the firm’s risk management controls would prevent orders exceeding non-broker-dealer customers’ credit thresholds, as required by the market access rule. In 2022, the firm began to conduct adequate testing and identified various deficiencies in its controls, including those described in paragraphs 14 and 15 above.

20. Despite Liquidnet’s knowledge beginning in at least 2020 that its controls were deficient because its systems could not aggregate non-broker-dealer customer orders, Liquidnet’s CEO signed 15c3-5 certifications in 2020 and 2023 attesting compliance with the requirements of the market access rule. The CEO did not sign certifications in 2021 or 2022.

***Liquidnet Made Material Misrepresentations
to Customers about its Market Access Controls***

21. Liquidnet also made misrepresentations about its market access controls to certain customers and potential customers in response to due diligence questionnaires, stating that Liquidnet was compliant with all regulatory requirements applicable to market access through the firm, that it had aggregate exposure limits in place, and that it had controls that would prevent the entry of orders that exceed appropriate credit thresholds, during a time when the firm was aware that it could not aggregate customer orders or prevent the entry of certain orders that exceeded a customer’s credit threshold.

22. These misrepresentations resulted from the firm's negligence. The firm did not take reasonable steps to ensure the accuracy of its representations, and as a result, made misstatements to customers and potential customers about its market access controls. These misrepresentations were material because these customers and potential customers were considering Liquidnet's representations about its market access controls in determining whether to select the firm as a trading venue, and there was a substantial likelihood that a reasonable customer or potential customer would have considered the disclosures important to their decision.

B. Liquidnet Failed to Comply with Regulation ATS

23. Section 5 of the Exchange Act requires an organization, association, or group of persons that meets the definition of "exchange" under section 3(a)(1) of the Exchange Act, unless otherwise exempt, to register with the Commission as a national securities exchange. Exchange Act Rule 3a1-1(a)(2) exempts from the definition of "exchange," and thus exchange registration, an organization, association, or group of persons that complies with Regulation ATS. As the registered broker-dealer of an ATS that operated pursuant to the Rule 3a1-1(a)(2) exemption, Liquidnet is required to comply with the applicable conditions of Regulation ATS set forth under Rules 300-304. As described in more detail below, from approximately 2019 through 2024, Liquidnet failed to comply with three different conditions of Regulation ATS, thus violating Section 5 of the Exchange Act, and made misrepresentations to certain customers about access to confidential subscriber trading information.

Liquidnet Failed to Establish Adequate Written Safeguards and Written Procedures to Protect Confidential Subscriber Trading Information

24. Among other conditions to the Regulation ATS exemption, an ATS must, pursuant to Rule 301(b)(10) of Regulation ATS, establish adequate written safeguards and written procedures to protect the confidential trading information of subscribers, including by limiting access to employees who operate the system or are responsible for the ATS's compliance with Regulation ATS and other applicable rules. Furthermore, an ATS must adopt and implement adequate written oversight procedures to ensure that its written safeguards and written procedures are followed.

25. Liquidnet disclosed one such written safeguard and written procedure in its public Forms ATS-N for the NMS Stock ATSs: a requirement that an employee requesting access to "an application that contains confidential participant data" must receive their manager's approval in advance, and the manager must provide an explanation affirming both that the employee's access will not adversely impact ATS subscribers and that the particular type of access has been disclosed to the firm's customers. Liquidnet also disclosed that supervisory personnel must make monthly certifications that the use of customer data in their business unit complies with firm policy. Liquidnet failed to establish adequate written safeguards and written procedures, however, because Liquidnet managers and supervisory personnel did not in fact provide these explanations or make

these certifications. In addition, Liquidnet did not have adequate oversight procedures to ensure that these safeguards and procedures were followed.

26. Liquidnet also had written safeguards and written procedures that related to its Transparency Working Group. Liquidnet stated in sales materials provided to subscribers and potential subscribers and in response to subscriber due diligence inquiries that the Transparency Working Group advised the firm on issues relating to the protection and usage of customer data. The group's charter stated, among other things, that the Transparency Working Group sought to ensure that Liquidnet was disclosing to subscribers the firm's processes relating to employee access to confidential subscriber trading information. Several of Liquidnet's policies and procedures, including its trading rules governing the systems and operations of the Liquidnet ATSs (the "Trading Rules"),⁶ required review by the Transparency Working Group before any changes to those policies and procedures could be made.

27. However, in approximately September 2021, the Transparency Working Group disbanded due to employee turnover following the TP ICAP Acquisition. Liquidnet only reconstituted the Transparency Working Group in Summer 2023 at the earliest, after a TP ICAP internal audit team discovered that the working group no longer existed but that the firm was continuing to make inaccurate representations about the group to firm customers. From September 2021 until Summer 2023, the Transparency Working Group was not performing any of the functions Liquidnet described in its sales materials, responses to certain due diligence inquiries, or in the group's charter.

28. Liquidnet also failed to adequately limit internal access to systems containing confidential subscriber trading information. While communications and other documentation do not indicate that confidential subscriber trading information was improperly shared outside the firm, Liquidnet did not comply with Rule 301(b)(10) of Regulation ATS by permitting employees' internal access to certain systems and data as described in paragraphs 29 through 33 below.

29. Until Spring 2024, Liquidnet allowed access to ATS replications of indication, order, and execution data ("replications") from the previous trading day, which were used by certain technology personnel for testing purposes, via generic log-in credentials that were shared among certain technology employees. Liquidnet intended that only technology personnel with a need to perform troubleshooting and other technical work would access these replications, but because the log-in credentials were generic and not user-specific, the firm could not control which employees accessed the replications. In addition, Liquidnet technology personnel saved certain logs containing confidential subscriber trading information in a shared file without any kind of

⁶ Liquidnet's Form ATS filings included a copy of the Trading Rules for the Fixed Income ATS. Liquidnet's Forms ATS-N refer to the Trading Rules for the NMS Stock ATSs for a description of the types of access employees were given to confidential subscriber trading information and state that employees must comply with restrictions on access set forth in the Trading Rules. Liquidnet also provided the Trading Rules to ATS subscribers.

password protection. While the shared file location was generally only provided to Liquidnet technology personnel, any Liquidnet employee with access to the shared file location could also access confidential subscriber trading information even if that employee did not have a basis for accessing such data. The lack of access controls over the replications and logs was inconsistent with statements by Liquidnet on its public Forms ATS-N that the firm was responsible for maintaining the security of customer trading information and that it “instituted technological controls on access to trading information, including username and password controls... and access control lists on systems and networks.”

30. Until October 2023, when the firm removed their access, Liquidnet granted non-U.S. sales coverage employees access to confidential subscriber trading information in the NMS Stock ATSs that was inconsistent with Liquidnet’s Trading Rules. The Trading Rules generally provided that trade coverage personnel were given access to ATS match information only for equities in the region in which the employee was located and for all equities traded by subscribers whom each employee was specifically assigned to cover, but non-U.S. employees in some cases also received confidential subscriber trading information relating to trades in U.S. securities for subscribers they did not cover. These non-U.S. employees did not hold any U.S. securities licenses and did not receive training on applicable U.S. rules and regulations. In some cases, these employees also received access to ATS order and execution information, which they did not need to perform their jobs and to which the firm did not disclose they had access. Documentation relating to employee ATS access indicates that these employees received unmatched indication data only on an aggregate, non-symbol specific basis.

31. From at least 2019 through 2024, Liquidnet also permitted access to confidential subscriber trading information in the NMS Stock ATSs and the Fixed Income ATS that was inconsistent with the firm’s disclosures on Forms ATS-N and ATS and in its Trading Rules and with the requirements of Rule 301(b)(10) of Regulation ATS.

32. For example, Liquidnet granted access to intraday match and execution information in the NMS Stock ATSs to numerous employees working in business development and on the firm’s agency-only high-touch equities trading desk, when the firm’s disclosures represented that these employees had more limited access to confidential subscriber trading information.

33. Liquidnet also granted access to confidential subscriber trading information in the Fixed Income ATS to employees who serviced subscribers of the Fixed Income ATS at the same time as they serviced customers of ReBalance, a fixed income trading platform operated by TP ICAP Global Markets America, LLC, a Liquidnet and TP ICAP affiliate. This was not disclosed on Form ATS or otherwise to subscribers before access was granted. Liquidnet also permitted undisclosed access to confidential subscriber trading information by employees performing jobs in marketing and investor relations, roles that did not include operational or compliance responsibilities for the Liquidnet ATSs. Documentation relating to employee ATS access indicates that these employees did not receive access to unmatched indication data.

Liquidnet Failed to File Accurate Disclosures on its Forms ATS-N and ATS

34. NMS Stock ATSs, as defined in Regulation ATS Rule 300(k), must file a public report on Form ATS-N in accordance with Rule 304 of Regulation ATS to disclose the activities of the broker-dealer operator and the operations of the NMS Stock ATSs. See NMS Stock ATS Adopting Release, 83 Fed. Reg. at 38768. NMS Stock ATSs are required by Rule 304(a)(2)(i) to publicly file certain amendments to the NMS Stock ATSs' Forms ATS-N, in accordance with certain conditions, including: at least 30 calendar days prior to the implementation of a material change to the operation of the ATS or the activities of the broker-dealer operator or its affiliates subject to disclosure on Form ATS-N, and promptly to correct information in any previous Form ATS-N after discovery that such information was materially inaccurate or incomplete when filed. In the NMS Stock ATS Adopting Release, the Commission stated that a change to the operations of an NMS Stock ATS, or the disclosures regarding the activities of the broker-dealer operator and its affiliates, would be material if there is a substantial likelihood that a reasonable market participant would consider the change important when evaluating the NMS Stock ATS as a potential trading venue. See NMS Stock ATS Adopting Release, 83 Fed. Reg. at 38803. The Commission also stated that, among others, one scenario that is particularly likely to implicate a material change is a change to the broker-dealer operator's policies and procedures governing the written safeguards and written procedures to protect the confidential trading information of subscribers pursuant to Rule 301(b)(10)(i) of Regulation ATS. See id.

35. Liquidnet's Fixed Income ATS trades fixed income securities, primarily corporate bonds, and does not trade NMS stocks. As such, the Fixed Income ATS files a Form ATS with the Commission pursuant to Rule 301(b)(2). Unlike Form ATS-N, Form ATS is not a public report. A non-NMS Stock ATS, such as the Liquidnet Fixed Income ATS, must amend its Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS, within 30 calendar days after the end of a quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate, and promptly upon discovering that an initial operation report filed on Form ATS or an amendment on Form ATS was inaccurate when filed.

36. As detailed above in paragraphs 26 through 33, from at least 2019 until 2024, material information in Liquidnet's public Forms ATS-N, which relate to the NMS Stock ATSs, was inaccurate. The firm's practices with regard to which employees had access to subscriber confidential trading information in the NMS Stock ATSs, the nature of that access, the type of supervisory reviews that were performed with respect to that access, and the security of subscribers' trading data differed from the disclosures in the Forms ATS-N. Subscribers evaluating whether to enter orders or continue to enter orders to trade in the NMS Stock ATSs frequently asked the firm about how it protected their confidential trading information. These questions show that the firm's written safeguards and written procedures were material to subscribers and potential subscribers.

37. As a result, after discovering that its Forms ATS were materially inaccurate, Liquidnet was obligated to promptly file correcting amendments to its public Form ATS-N

disclosures for both NMS Stock ATSs to accurately reflect information concerning access to subscribers' confidential trading information and file material amendments to Form ATS-N at least 30 calendar days before granting access to subscriber confidential trading information that differed from its disclosures in its Forms ATS-N. Liquidnet, however, did not do so in these instances.

38. In addition, as described above in paragraph 33, Liquidnet's disclosures about access to confidential subscriber trading information in the Fixed Income ATS's Form ATS were also inaccurate. Accordingly, after discovering that its Forms ATS were materially inaccurate, Liquidnet was required to amend those filings to correct any information that became inaccurate within 30 calendar days after the end of the calendar quarter, but it did not do so in the instances described above.

***Liquidnet Made Material Misrepresentations to Certain Subscribers
and Potential Subscribers about Access to Confidential Subscriber Trading Information***

39. Liquidnet held itself out in its disclosures on Forms ATS-N and ATS, as well as in marketing materials and other materials, as providing anonymity for subscriber trades, minimizing data leakage, and maintaining security over customer data. The lack of adequate access controls over daily ATS replications and logs, described above in paragraph 29, for example, was inconsistent with these representations.

40. The firm was also regularly asked by subscribers and potential subscribers about the general type and scope of access the firm granted to confidential subscriber trading data. In response to these inquiries, Liquidnet often directed subscribers and potential subscribers to the firm's disclosures in its Trading Rules, which, as described in paragraphs 30 through 33 above, were in certain instances inaccurate.

41. Liquidnet also made misrepresentations in response to questions from subscribers and potential subscribers about specific safeguards over confidential subscriber trading information. For example, during a period when the Transparency Working Group had been disbanded, Liquidnet provided subscribers and/or potential subscribers conducting due diligence on the firm copies of its security policy, which stated that all proposed new uses of customer trading information not specifically permitted by the Trading Rules would be reviewed by the Transparency Working Group. Several other subscribers asked about access by non-U.S. persons to trading data; the firm referred them to the Trading Rules, which inaccurately described the nature and extent of access the firm gave to non-U.S. employees.

42. These misrepresentations resulted from the firm's negligence. The firm did not take reasonable steps to ensure the accuracy of its representations, and as a result, made misstatements to customers about access to and safeguards over confidential subscriber trading information. These misrepresentations were material in light of Liquidnet's representations about anonymity and the minimization of data leakage and the fact that subscribers and potential subscribers specifically inquired about such as part of their due diligence on the firm.

VIOLATIONS

43. As a result of the conduct described above, Liquidnet willfully⁷ violated:
- a. Sections 17(a)(2) and 17(a)(3) of the Securities Act, which prohibit, directly or indirectly, in the offer or sale of securities obtaining money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading and engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.
 - b. Section 15(c)(3) of the Exchange Act and Rules 15c3-5(b), (c) and (e) thereunder. Liquidnet violated Rule 15c3-5(b) by failing to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory, and other risks of having market access, Rule 15c3-5(c)(1) because its risk management controls and supervisory procedures were not reasonably designed to systematically limit the financial exposure of the broker or dealer, including preventing the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and preventing the entry of erroneous orders, and Rule 15c3-5(e) because it did not establish, document, and maintain a system for regularly reviewing the effectiveness of the risk management controls and supervisory procedures required by Rules 15c3-5(b) and (c) and promptly address any issues or properly certify for 2021 that such risk management controls and supervisory procedures comply with the rule.
 - c. Section 5 of the Exchange Act by failing to either register as a national securities exchange or operate pursuant to an exemption from such registration, despite meeting the criteria of “exchange” under Exchange Act Section 3(a)(1) and Rule 3b-16(a). Specifically, Liquidnet failed to comply with the following conditions of the Regulation ATS exemption: (1) Rule 301(b)(2), which requires an ATS that does not trade NMS stocks to amend its Form ATS at least 20 calendar days prior to implementing a material change to the operation of the ATS, within 30 calendar days after the end of a calendar quarter when information contained in an initial operation report filed on Form ATS becomes inaccurate, and promptly upon discovering that an initial operation report filed on Form ATS or an amendment on Form ATS was inaccurate when filed; (2) Rule 301(b)(10), which requires an ATS

⁷ “Willfully” for purposes of imposing relief under Section 15(b) of the Exchange Act means “no more than that the person charged with the duty knows what he is doing.” *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Tager v. SEC*, 344 F.2d 5, 8 (2d Cir. 1965).

to establish adequate written safeguards and written procedures to protect subscribers' confidential trading information, including by limiting access to confidential trading information of subscribers to those employees of the ATS who are operating the system or responsible for its compliance with applicable rules, and to adopt and implement adequate written oversight procedures to ensure that the written safeguards and procedures for protecting subscribers' confidential trading information are followed; and (3) Rule 304, which requires an NMS Stock ATS to file an amendment on Form ATS-N at least 30 calendar days prior to the implementation of a material change to the operations of the ATS or the activities of the broker-dealer operator or its affiliates that are subject to disclosure on Form ATS-N, and promptly to correct information in any previous Form ATS-N after discovery that such information was materially inaccurate or incomplete when filed.

REMEDIAL EFFORTS

44. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff, including engaging a compliance consultant tasked with assisting Liquidnet in remediating the compliance deficiencies identified herein and self-reporting the conduct relating to access controls over ATS replications described in paragraph 29 above.

UNDERTAKINGS

45. Respondent Liquidnet has undertaken to do the following:

- a. Liquidnet shall complete a review of the firm's compliance with the market access rule and Regulation ATS (the "Review"), which shall involve assessments of:
 - i. Liquidnet's risk management controls and supervisory procedures relating to market access to determine whether they are reasonably designed to (i) prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and (ii) prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, as required by Exchange Act Rule 15c3-5(c)(1)(i)-(ii);
 - ii. Liquidnet's procedures for conducting 15c3-5 reviews and causing 15c3-5 certifications to be made, as required by Exchange Act Rule 15c3-5(e);
 - iii. the adequacy of Liquidnet's written safeguards and written procedures to protect the confidential trading information of subscribers to the Liquidnet ATSs and the adequacy of written oversight procedures to ensure that the written safeguards and written procedures are followed, as required by Rule 301(b)(10) of Regulation ATS; and

- iv. Liquidnet's procedures for confirming that its marketing materials, responses to customer due diligence inquiries, and Forms ATS-N and ATS disclosures are accurate.
- b. Liquidnet shall promptly file with the Commission any amendments to Form ATS-N and Form ATS to accurately disclose its written safeguards and written procedures to protect confidential trading information, including its written oversight procedures to ensure that its safeguards and procedures are implemented and followed.
- c. Within 60 days of the entry of the Order, Liquidnet shall complete the Review.
- d. Within 90 days of the entry of the Order, Liquidnet shall submit to the Commission staff a written report (the "Report") that includes:
 - i. an assessment of the matters described in subparagraphs a. and b. above and
 - ii. any remediation measures to be taken by Liquidnet to confirm that the firm's policies and procedures are reasonably designed to achieve compliance with the market access rule and Regulation ATS (the "Remediation Measures").
- e. Within 120 days of the entry of the Order, Liquidnet shall complete the Remediation Measures.

46. Liquidnet shall certify, in writing, compliance with the undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence. The certification and supporting material shall be submitted to Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, or such other person as the Commission staff may request, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings. The Commission staff may make reasonable requests for further evidence of compliance, and Respondent agrees to provide such evidence.

47. For good cause shown, the Commission Staff may extend any of the deadlines set forth above.

48. The Report submitted by Liquidnet will likely include confidential financial, proprietary, competitive business or commercial information. Public disclosure of the Report could discourage cooperation, impede pending or potential government investigations or

undermine the objectives of the reporting requirement. For these reasons, among others, the Report and the contents thereof are intended to remain and shall remain non-public, except (1) pursuant to court order, (2) as agreed to by the parties in writing, (3) to the extent that the Commission determines in its sole discretion that disclosure would be in furtherance of the Commission's discharge of its duties and responsibilities, or (4) is otherwise required by law.

IV.

In view of the foregoing, the Commission deems it appropriate, and in the public interest to impose the sanctions agreed to in Respondent Liquidnet's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Liquidnet cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act; Section 15(c)(3) of the Exchange Act and Rules 15c3-5(b), (c), and (e) thereunder; and Section 5 of the Exchange Act by failing to comply with Rules 301(b)(2), 301(b)(10), and 304 of Regulation ATS promulgated under the Exchange Act.

B. Respondent Liquidnet shall comply with the undertakings enumerated in paragraphs 45 through 48 above.

C. Respondent Liquidnet is censured.

D. Respondent Liquidnet shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$5,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Liquidnet as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Joseph G. Sansone, Chief, Market Abuse Unit, Division of Enforcement, Securities and Exchange Commission, 100 Pearl Street, Suite 20-100, New York, NY 10004-2616.

Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary