
Liquidnet Australia Pty Ltd

Australian Rules

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Rules

Introduction

Liquidnet Australia Pty Ltd (**Liquidnet Australia** or **LAU**) operates a licensed market in Australia where orders for most securities quoted on ASX Limited may be matched. Participants in Liquidnet Australia's market may only be substantial institutional investors.

The market operated by LAU is part of a broader electronic network which facilitates trading in securities quoted on many of the world's exchanges.

Trading is anonymous and Liquidnet Australia may not place any proprietary trades on its market, except to rectify an error trade. Orders may be placed for securities to be traded on LAU's market by related parties of Liquidnet Australia (**Liquidnet Entities**) which operate markets or act as broker-dealers outside Australia for their members. Such orders are placed only on behalf of those Liquidnet Entities' members' behalf, never for the Liquidnet Entities in their own right.

Orders from a member's order management system are transmitted into Liquidnet Australia's facility as non-binding indications of liquidity which may ultimately be matched in whole or in part with other indications on the Liquidnet system.

The purpose of the Liquidnet Australia market and the Liquidnet system generally is to provide another alternative to institutional investors to achieve best execution for the funds and other accounts they manage. The fact that members using the system do not know the identity of the party they are negotiating with means that there is no information leakage of the kind that is often associated with off-market dealing. In turn, the artificial rise (or fall) in the price of a security that results from information leaking that there is a big buyer (or seller) in the market, is also avoided.

These Operating Rules, the Procedures and the Subscriber Agreement which a member signs when subscribing to be a member of Liquidnet Australia, together set out the terms and conditions of the agreement between Liquidnet Australia and the member.

Part I Interpretation

Section 1.1 Definitions

In these Rules:

applicable market means the market or exchange on which securities, which are traded on the Liquidnet System, are quoted.

Contract has the meaning set out in Section 1.4.

Corporations Act means the *Corporations Act 2001* of the Commonwealth of Australia.

General Liquidnet Trading Rules means the rules usually called "Liquidnet Trading Rules" which Liquidnet Holdings, Inc and its subsidiaries apply to all institutional investors using the Liquidnet System, as amended from time to time.

An **LAU Member** is:

- (a) an entity that has entered into a Subscriber Agreement with LAU and is authorised by LAU to use the System for the purposes of trading on the LAU Market; or
- (b) where an order on the LAU Market originates from an Other Liquidnet member, means LAU itself as executing broker.

Liquidnet Entity means Liquidnet, Inc or LAU or any other corporation of which Liquidnet Holdings, Inc is the ultimate holding company.

Member has the meaning set out in the General Liquidnet Trading Rules and includes LAU Members and all Other Liquidnet members.

OMS means software that a member uses to manage its order flow.

Operating Rules means these Rules including the General Liquidnet Trading Rules, both as incorporated and/or amended in accordance with Sections 1.3 - 1.5 inclusive.

Other Liquidnet Entity means a Liquidnet Entity other than LAU.

Other Liquidnet member means an entity that has entered into a Subscriber Agreement with Liquidnet, Inc or any other Liquidnet Entity other than LAU.

Procedures means the procedures attached to, and supplementing these Rules, as amended or updated from time to time.

Relevant Liquidnet Entity means:

- (a) in relation to orders for, or trades in, securities quoted on an exchange in the United States, Liquidnet, Inc;
- (b) in relation to orders for, or trades in, securities quoted on an exchange in Europe, Liquidnet Europe Limited;
- (c) in relation to orders for, or trades in, securities quoted on an exchange in Hong Kong, Singapore, Japan or Thailand, Liquidnet Asia Limited;
- (d) in relation to orders for, or trades in, securities quoted on an exchange in Australia, LAU; and

- (e) in relation to orders for, or trades in, securities quoted on an exchange elsewhere, the Liquidnet Entity which is licensed by the relevant regulatory authority to operate a market and/or operate as a broker dealer in relation to those securities.

Rules means these Australian Rules, as amended from time to time.

Subscriber Agreement means an agreement so named or any other similarly named agreement between a Relevant Liquidnet Entity and a member of that entity, as amended or varied from time to time.

System means the Liquidnet trading system which consists of:

- (f) the Liquidnet network;
- (g) the Liquidnet client software installed on the trader's and System administrator's computer; and
- (h) the Liquidnet integration adaptor, which integrates Liquidnet with a member's order management system.

Section 1.2 Definitions in Other Documents

Terms used in these Rules which are defined in any of:

- (a) the General Liquidnet Trading Rules;
- (b) a Subscriber Agreement; or
- (c) the Procedures,

have the same meanings in these Rules, unless also defined in these Rules.

Terms defined in these Rules, when used in any of the Subscriber Agreement, the General Liquidnet Trading Rules or the Procedures, have the same meaning as in these Rules, unless specifically defined in the relevant document.

To the extent that a matter is covered in these Rules and also covered in a Subscriber Agreement, the provisions of these Rules in no way limit or restrict the provisions of the relevant Subscriber Agreement.

To the extent that a matter is covered in these Rules and the General Liquidnet Trading Rules, the provisions in these Rules will prevail to the extent of any inconsistency.

Section 1.3 Incorporation of General Liquidnet Trading Rules

The terms of the General Liquidnet Trading Rules are incorporated into these Rules as if set out in full in these Rules.

These Rules, together with the General Liquidnet Trading Rules, as incorporated, constitute the operating rules of the LAU Market (as defined in Section 2.1.1) for the purposes of the *Corporations Act*.

Section 1.4 Complete Contract

The General Liquidnet Trading Rules, the Rules, the Procedures and the Subscriber Agreement constitute the complete contract:

- (a) between LAU and each LAU Member; and

- (b) between an LAU Member and each other LAU Member (**Contract**).

Section 1.5 Amendments to Rules and Contract

LAU may amend or vary these Rules, the General Liquidnet Trading Rules or the Procedures at any time, and subject to compliance with all legal and regulatory requirements, provided that such a change shall not take effect until the latest of the dates set forth in (a), (b) and (c) below of this Section 1.5. It may do so by issuing a Notice to Members or by publishing the changed terms in the Procedures or by issuing the Rules, as amended.

Such changes form part of the Contract on and from the date that they are expressed to have effect when made to the Procedures.

In the case of changes proposed to these Rules or the General Liquidnet Trading Rules or in any Notice to Members, such changes form part of the operating rules of the LAU market, and consequently form part of the Contract, on and from the latest of the following dates:

- (a) the date that they are expressed to have effect;
- (b) the earlier of the date of any approval of the changes given by ASIC or the Treasury of Australia, if applicable, and the expiry of any period for non-disallowance of the changes by the Treasury of Australia; and
- (c) five business days after LAU sends a notice of the change to the LAU Members.

Section 1.6 Notices to Members

LAU Members must comply with Notices to Members given to them by LAU from time to time, when those Notices take effect. Failure by an LAU Member to comply with any Notice to Members may result in suspension or termination as set forth in Rule 4 below.

Section 1.7 Procedures

LAU may approve additions or changes to the Procedures. Any such addition or change shall not take effect until one week after notice from LAU (or until a later date specified by LAU in such notice).. The Procedures form part of the Contract but do not form part of these Rules. However, if an Operating Rule requires the person to comply with any of the Procedures, failure by the person to comply with that Procedure is a contravention of the Operating Rule.

Section 1.8 Governing Law

These Rules will be interpreted in accordance with the laws applicable in New South Wales.

Section 1.9 Submission to Jurisdiction

LAU and each LAU Member:

- (a) irrevocably submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales; and
- (b) irrevocably waives any immunity from, or any objection to, any action in the courts exercising jurisdiction in New South Wales.

Section 1.10 Interpretation

Unless expressed to the contrary, in these Rules the following principles of interpretation apply:

- (a) headings do not affect interpretation;
- (b) a reference to a law, a statute or a provision of a law, statute or a Rule includes that law, statute, provision or Rule as amended, re-enacted or replaced from time to time;
- (c) references to a Rule or Section or paragraph are references to a Rule, section or paragraph of these Rules;
- (d) references to “GLR” are references to the General Liquidnet Trading Rules;
- (e) reference to a term which is defined in, or which relates to a matter dealt with by a particular provision of, the *Corporations Act*, has the same meaning as in the relevant definition in or provision of the *Corporations Act*;
- (f) “includes” means includes without limitation;
- (g) a reference to “written” or “in writing” means any mode of representing or reproducing words or information in tangible or in visible form, including electronically produced, displayed and recorded matter;
- (h) “publish” means make information available to the public and/or to members by any means including electronic means;
- (i) references to time are to local time in Sydney;
- (j) if a word or phrase is declined, its other grammatical forms have corresponding meaning.

Part II The Market

Section 2.1 The Market

2.1.1 *LAU Market*

LAU operates a market (**LAU Market**) through use of the System which consists of matching orders for members resident in Australia in respect of securities quoted on the securities exchanges in Australia.

2.1.2 *Securities*

The securities that may be traded on the LAU Market are all equity securities quoted on ASX Limited, including shares, units in trusts, stapled securities and equity securities which may include a debt component, and any other class of securities on ASX Limited and such other securities quoted on a licensed exchange or market in Australia that LAU includes in the Procedures from time to time (together, **LAU Securities**).

2.1.3 *Domestic Orders*

LAU Members may place orders in relation to LAU Securities directly on the LAU Market.

2.1.4 *LAU Members' Outbound Orders*

An LAU Member may also place orders for securities which are available through the System but which are not on the LAU Market in accordance with the Rules and, when doing so, is deemed to be placing the order through LAU as introducing broker and then through the Relevant Liquidnet Entity as executing broker.

2.1.5 *LAU Members' Inbound Orders*

An Other Liquidnet Member may place orders in relation to LAU Securities on the LAU Market and, when doing so, is deemed to be using the Liquidnet Entity with which it has entered into a Subscriber Agreement as its introducing broker and LAU as executing broker.

Section 2.2 Liquidnet Australia

2.2.1 *No Orders as Principal*

Neither LAU nor any Other Liquidnet Entity may place an order on the System for securities for itself, except in its role as market operator in order to maintain an orderly market, such as to correct an error trade.

2.2.2 *LAU's Obligations as AFSL Holder*

Inbound Trades. When acting on the LAU Market as executing broker for orders placed by an Other Liquidnet Entity on behalf of a member of that entity, LAU will be subject to these Rules to exactly the same extent as any other LAU Member but will be subject to the additional constraint set out in Rule 2.2.1.

Outbound Trades. When LAU is acting as introducing broker for LAU Members, LAU and the LAU Member for which it is acting as introducing broker will be subject to the legislation and such of the General Liquidnet Trading Rules as are relevant in the jurisdiction in which the relevant securities are quoted. The LAU Member will be responsible to LAU for the orders and trades that are placed on the System for securities outside the LAU Market.

2.2.3 Confidentiality

LAU will take all reasonable measures to protect from unauthorised use or disclosure information provided to it in confidence by or on behalf of an LAU Member pursuant to the Rules. For the purposes of this Rule disclosure of information to the following people or in the following circumstances does not constitute unauthorised use or disclosure:

- (a) to the Australian Securities and Investments Commission, the Reserve Bank of Australia, a settlement facility or a clearing facility approved by LAU whose operator has been granted an Australian clearing and settlement facility licence under the *Corporations Act*;
- (b) pursuant to an agreement or arrangement between LAU and any governmental agency or regulatory authority including an exchange, market operator, clearing house or clearing and settlement facility in Australia or elsewhere whose functions include the regulation or supervision of trading in, or clearing and settlement of, securities in Australia or elsewhere;
- (c) where required to be disclosed by LAU under any law or any order of any court or tribunal, authority or regulatory body;
- (d) which at the time of disclosure to or by LAU, was generally available to and known by the public;
- (e) for the purposes of LAU's meeting its obligations as a licensed market operator; and
- (f) to any governmental agency or regulatory authority including another market operator, clearing house or clearing and settlement facility (in Australia or elsewhere) which requests LAU to provide the information to it, in the proper exercise of its powers relating to:
 - (i) the order and good government of LAU Members; or
 - (ii) the efficient, honest, fair, competitive and informed trading, clearing and settlement of securities (in Australia or elsewhere).

2.2.4 Conflict

In order to minimise any conflict that might otherwise arise from LAU's use of the Liquidnet system, Rule 2.2.1 provides that LAU may not trade as principal on the System, subject to one exception. No Representative of LAU who works on LAU's trading desk may have access to price or other information about securities which is on the System, except to the extent that the information is also available to all LAU Members.

Section 2.3 Disorderly Market

2.3.1 *When does a disorderly market occur?*

A disorderly market occurs where an undesirable situation or practice which threatens or may threaten fair, orderly and transparent execution through the System occurs, and includes:

- (a) an emergency where the functions of the System are, or are threatened to be, severely and adversely affected by an event external to the System, including fire, accident, flood, bomb threat, threat of violence, substantially inclement weather, power failure, communication breakdown, computer or systems breakdown or malfunction or danger to personnel; or
- (b) action or proposed action by a government, government instrumentality, a financial market, a settlement facility or any other body in Australia or overseas, or any exceptional or unforeseen circumstance, which is at variance with or which threatens or may threaten just and equitable principles of trading or the public interest;
- (c) a situation where the System or connections to or from it are not operating because of hardware or software breakdown; or
- (d) when LAU is of the view that for any reason the placing of orders or their execution on the System cannot occur in an orderly manner and gives notice by effecting an operational halt in respect of all securities.

2.3.2 *LAU's general powers on a disorderly market*

If in LAU's opinion, a disorderly market has developed or is developing, LAU may take any steps whatsoever to correct the situation or practice and may give direction to LAU Members accordingly.

LAU may, but is not obliged to, consult with or obtain a report or advice from, other persons as it sees fit to assist it in making a decision to deal with the situation or practice. Even if LAU proceeds to consult with or seek a report or advice from another person, LAU may make a decision before receiving a report or advice and need not take the results of any consultation, report or advice into consideration in making its decision.

If LAU determines that the undesirable situation or practice has sufficiently abated to permit the orderly functioning of the System, LAU shall order the removal of any restrictions which have been imposed under this Rule, and may make such additional orders (including extended trading hours) as it deems necessary or appropriate to minimise the effect of the situation or practice.

2.3.3 *Specific remedies available*

Without limiting any other rights it may have, LAU may take any one or more of the following steps if it deems a disorderly market to exist:

- (a) suspend the functioning of the System so far as it affects the LAU Market;
- (b) limit the placing of orders and/or execution in respect of particular securities and take any other action it considers necessary as a consequence of so limiting the placing of orders and execution;

- (c) limit the placing of orders and execution in respect of a particular LAU Member or Members and take any other action it considers necessary as a consequence of limiting such placing of orders and/or execution;
- (d) cancel an executed transaction provided that the details of the transaction have not been transmitted to the clearing facility;
- (e) give directions to an LAU Member or Members to act in such a manner as will in its opinion correct or assist in overcoming the situation or practice; or
- (f) refrain from taking any action which it might normally take.

Part III The System

Section 3.1 Hours of Trading

The System is open for extended trading. LAU will notify members either in the Procedures or by way of Notice to Members regarding trading hours for the LAU Market.

Section 3.2 Execution Fees

Execution Fees will be payable as provided in the most recent of the Procedures or the Subscriber's Agreement, as applicable to an LAU Member.

Section 3.3 Execution or Functionality

The way orders are formed, placed, matched and executed on the System, and the types of system functionality available to members are set out in the General Liquidnet Trading Rules.

Section 3.4 Settlement

When a trade is executed on the LAU Market in any type of security, the members on either side of the trade must comply with the requirements of the settlement system in which trades of that type of security usually settle, so that the trade settles within the usual period provided for settlement on that settlement system.

Section 3.5 Reporting

The reporting of trades executed on the LAU Market will occur as set out in the Procedures.

Part IV Members

Section 4.1 Admission

LAU will only admit as participants LAU itself and entities which:

- (a) have total equity assets or total liquid assets under management of at least US\$200 million;
- (b) are professional investors, as defined in the *Corporations Act* and which effect transactions on the LAU Market only either on their own behalf or as trustee or manager of a relevant managed fund;
- (c) are able to demonstrate, based on past trading activity, that they are able to execute block trades on a consistent basis;
- (d) are Corporations resident in Australia and, if required under the *Corporations Act*, hold an Australian financial services licence issued under that Act in relation to the business that they will carry on as a member of the LAU Market or in connection with which they will carry on their business as a member of the LAU Market; and
- (e) have order management systems where the LAU Member or its order management system vendor is able to work with LAU to implement an interface between the LAU Member's order management system and the System, which interface enables the transmission of order information from the LAU Member's order management system to the System;
- (f) enter into a subscriber agreement and other documentation required by LAU; and
- (g) meet such other operational conditions and criteria as LAU or its clearing broker establishes from time to time.

Section 4.2 Continuing Obligations

4.2.1 ***Compliance with Operating Rules and Corporations Act***

An LAU Member must:

- (a) at all times satisfy the criteria for, and any conditions of, its admission;
- (b) at all times comply, and ensure that its traders comply with the Operating Rules, and any condition of an exemption granted from the Operating Rules, and with Chapter 7 of the *Corporations Act*;
- (c) at all times comply with all conditions imposed on it under any Australian financial services licence held by it under the *Corporations Act*;
- (d) notify LAU upon becoming aware that ASIC or another regulatory body is instituting proceedings against it, if the proceedings relate to its participation on the system; and
- (e) never participate on the System on the direct instructions of a retail client.

4.2.2 *Providing Information*

An LAU Member shall provide such information to LAU as LAU requests in connection with the LAU Market and any trades of the Member on the LAU Market or through the System, in relation to LAU's obligations as a licensed market operator.

4.2.3 *Consultation for Disciplinary Action*

If LAU, or a committee of LAU, is considering taking any action or exercising any power in relation to an LAU Member's perceived non-compliance with the Rules, LAU or the LAU committee and the LAU Member will discuss the matter.

Section 4.3 Suspension

LAU may suspend an LAU Member's access to the System if:

- (a) the LAU Member no longer satisfies the criteria for, or the conditions of, admission that originally applied to it or LAU decides there has been a material breach of the Operating Rules by the LAU Member;
- (b) the LAU Member does not log into the System regularly;
- (c) the LAU Member does not take an appropriate level of action on matches which causes frustration to other LAU Members;
- (d) a liquidator, receiver, receiver and manager or administrator or some other form of Controller is appointed in respect of the property of the LAU Member or to the LAU Member itself;
- (e) the LAU Member fails to provide information reasonably requested by LAU at any time; or
- (f) if an action or event is such that it significantly threatens or may threaten the orderliness of LAU's Market.

Section 4.4 Duration of Suspension

Where an LAU Member's rights as member are suspended under Rule 4.3, the suspension shall be effective from the date on which the LAU Member failed to comply with the relevant Rule or on such later date that LAU stipulates for compliance for the purposes of this Rule.

Section 4.5 When Suspension Ends

Where an LAU Member has been suspended from the LAU Market, the suspension may be lifted if the original cause for the suspension has ceased or been remedied.

Section 4.6 Termination

If an LAU Member has failed to remedy its acts or omissions that gave rise to a suspension under Rule 4.3 within such time as determined by LAU, LAU may

upon notice terminate the LAU Member's membership of the LAU Market. LAU's rights under this Rule do not limit its rights under any other provision of the Contract.

Section 4.7 Resignation

An LAU Member may resign by giving notice to LAU.

Section 4.8 Disconnections

Subject to the Operating Rules, an LAU Member's access to the System will be at the discretion of LAU. LAU may determine at its discretion, without limitation and in addition to circumstances contemplated in the Subscriber Agreement, whether to disconnect an LAU Member's access to the System in any of the following circumstances:

- (a) in any of the situations set out in Rule 2.3.1;
- (b) the LAU Member's rights as a member are to be suspended or terminated under this Rule 4; or
- (c) if LAU believes that the continued use of the connection will affect the LAU Market's fair and orderly operation.

Part V Surveillance and Discipline

Section 5.1 Powers

For the purposes of meeting its obligations as operator of the LAU Market, LAU may:

- (a) monitor and assess LAU Members' conduct and their compliance with the Operating Rules;
- (b) conduct such internal reviews as it sees fit, including internal reviews arising out of allegations by an LAU Member or any other person; and
- (c) set up such committee or committees as it sees fit to perform such monitoring and reviews.

Section 5.2 Procedures

The exercise of any power by LAU or a committee appointed under Rule 5.1 and the conduct of any investigation or assessment contemplated by this Rule 5, will be carried out in accordance with the Procedures.