



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

November 19, 2010

Norman Reed, Esq.
General Counsel
Omgeo LLC
55 Water Street
New York, NY

Re: Omgeo LLC

Dear Mr. Reed:

In your letter dated November 19, 2010, on behalf of Omgeo¹ you request that the Division clarify that Omgeo's Broker-Dealer Participants that rely on TradeSuite to satisfy their confirmation delivery obligations to their Institutional Customers could still rely on the Division's March 12, 2008 Response Letter granting no-action relief under Rule 10b-10(a) if Broker-Dealer Participants relying on TradeSuite 7.1 provide the Additional Disclosures through free form text on TradeSuite confirmations, as well as through dedicated fields that are currently available solely in TradeSuite 7.1 but not available in Prior Versions of TradeSuite.

In the March 12, 2008 Response Letter, the Division stated that, based on the facts and representations set forth in Omgeo's March 11, 2008 Request Letter, it would not recommend enforcement action to the Commission under Rule 10b-10 if Broker-Dealer Participants rely on TradeSuite to satisfy their confirmation delivery requirements to their Institutional Customers where the disclosures that are customarily provided on the back of paper confirmations are electronically provided. In footnote 4 of Omgeo's March 11, 2008 Request Letter, Omgeo represented that as of March 11, 2008, TradeSuite included the Previously Existing Dedicated Fields and would include the Additional Dedicated Fields by the end of the first quarter of 2009. Until the Additional Dedicated Fields were added, Omgeo stated that Broker-Dealer Participants would use free form text to disclose the information that would be included in the Additional Dedicated Fields. Omgeo further stated that, after the end of the first quarter of 2009, its understanding was that Broker-Dealer Participants would use the Dedicated Fields to disclose all of the information required under Rule 10b-10, as applicable.

Although Omgeo included the Additional Dedicated Fields by the end of the first quarter of 2009 in TradeSuite 7.1, not all Broker-Dealer Participants or Institutional Customers upgraded

¹ Unless otherwise noted, each defined term in this letter has the same meaning as defined, directly or by reference, in your letter.

Mr. Norman Reed, Esq.

November 19, 2010

Page 2 of 2

to the new version of TradeSuite. In particular, you note that while a Broker-Dealer Participant may have upgraded to TradeSuite 7.1, its Institutional Customer may be using a Prior Version of TradeSuite, resulting in the Institutional Customer not being able to view the information provided in the Additional Dedicated Fields, when applicable. Accordingly, Omgeo requests that the Division clarify that Broker-Dealer Participants that use TradeSuite 7.1 may rely on the March 12, 2008 Response Letter if they send to all Institutional Customers confirmations containing the Additional Disclosures both in free form text and in the Additional Dedicated Fields of TradeSuite 7.1. As discussed, we are treating your letter as a request for a modification of the facts and representations relied on by the Division when it issued the March 12, 2008 Response Letter.

Based on the facts and representations set forth in your letter, the Division will not recommend enforcement action to the Commission under Exchange Act Rule 10b-10 if Broker-Dealer Participants using TradeSuite 7.1 send to their Institutional Customers confirmations containing the Additional Disclosures both in free form text and in the Additional Dedicated Fields, in reliance on the March 12, 2008 Response Letter.

This response expresses the Division's position regarding enforcement action only and does not purport to express any legal conclusions with respect to the applicability of the statutory or regulatory provisions of the federal securities laws or any self-regulatory organization rules to Omgeo, Broker-Dealer Participants or Institutional Customers. Moreover, this response is based solely on the facts and representations you have made, and any different facts or conditions may require a different response.

In addition, the Division notes that the Commission has long taken the view that broker-dealers may use electronic media to satisfy their Rule 10b-10 delivery obligations,² provided that the medium used to send the information is not so "burdensome that the intended recipients cannot effectively access the information provided."³ In this respect, we emphasize that broker-dealers relying on a vendor's electronic platform to fulfill their Rule 10b-10 obligations must ensure that their customers can effectively access all of the information required by Rule 10b-10 in a format that is understandable but not burdensome for the customer to access. To the extent that this is not the case, broker-dealers may not be able to rely on that vendor's electronic platform to fulfill their Rule 10b-10 obligations.

Sincerely,



James A. Brigagliano
Deputy Director

² See *Use of Electronic Media by Broker-Dealers, Transfer Agents and Investment Advisers for Delivery of Information*, Securities Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996).

³ *Id.* at 24646-47.



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November 19, 2010

James A. Brigagliano, Esq.
Deputy Director
Division of Trading & Markets
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: Omgeo LLC

Dear Mr. Brigagliano:

Omgeo LLC ("Omgeo") requests that the staff of the Division of Trading & Markets ("Division") of the Securities and Exchange Commission ("SEC" or "Commission") issue an interpretation clarifying that Omgeo's broker-dealer customers ("Broker-Dealer Participants"), which rely on Omgeo's TradeSuite service ("TradeSuite") to satisfy their confirmation delivery obligations to their institutional customers (each, an "Institutional Customer"), are in compliance with the Division's March 12, 2008 letter ("March 12, 2008 Response Letter") granting no-action relief under Rule 10b-10(a) under the Securities Exchange Act of 1934 ("Exchange Act"),¹ if Broker-Dealer Participants rely on TradeSuite version 7.1 ("TradeSuite 7.1") to provide certain disclosures (the "Additional Disclosures")² through free form text on TradeSuite confirmations, as well as through dedicated fields that are currently available solely in TradeSuite 7.1, but are not available in versions of TradeSuite prior to TradeSuite 7.1 ("Prior Versions of TradeSuite").

Omgeo's Request

In the March 12, 2008 Response Letter, the Division stated that, based on the facts and representations in Omgeo's request letter dated March 11, 2008 ("Omgeo's March 11, 2008 Request Letter"), the Division would not recommend enforcement action to the Commission under Exchange Act Rule 10b-10 against Omgeo's Broker-Dealer Participants if they rely on

¹ Letter re: Omgeo (March 12, 2008).

² The Additional Disclosures are: (1) "mixed capacity," and "principal, agent and agent for another;" (2) third-party remuneration received; (3) markup/markdown; (4) current yield; (5) yield to maturity; and (6) yield to call.

TradeSuite to satisfy their confirmation delivery obligations to Institutional Customers under Rule 10b-10(a) where the disclosures customarily provided on the back of paper confirmations are provided electronically, as discussed in Omgeo's March 11, 2008 Request Letter. In footnote 4 of Omgeo's March 11, 2008 Request Letter, Omgeo stated that as of the date of Omgeo's March 11, 2008 Request Letter, TradeSuite currently included dedicated fields disclosing specified information, where applicable ("Previously Existing Dedicated Fields").³ Omgeo also stated that it would add certain dedicated fields ("Additional Dedicated Fields," with the Previously Existing Dedicated Fields, the "Dedicated Fields") to provide the Additional Disclosures by the end of the first quarter of 2009.⁴ Omgeo's March 11, 2008 Request Letter stated that Broker-Dealer Participants may use free form text to disclose the information to be added by the Additional Dedicated Fields until the end of the first quarter of 2009, but that after the first quarter of 2009, Omgeo understood that Broker-Dealer Participants would be using Dedicated Fields (including the Additional Dedicated Fields) to disclose information required by Rule 10b-10 where such Dedicated Fields were available.

Omgeo added the Additional Dedicated Fields by the end of the first quarter of 2009 by introducing a new version of TradeSuite, TradeSuite 7.1. Prior Versions of TradeSuite contained the Previously Existing Dedicated Fields, but they did not include the Additional Dedicated Fields. Broker-Dealer Participants relying on Prior Versions of TradeSuite therefore had to upgrade to TradeSuite 7.1 to disclose the Additional Disclosures through the Additional Dedicated Fields by the end of the first quarter of 2009 in order to be in compliance with the March 12, 2008 Response Letter.

Although some Broker-Dealer Participants upgraded to TradeSuite 7.1 by the end of the first quarter of 2009, many of their Institutional Customers continued to receive TradeSuite confirmations using Prior Versions of TradeSuite, rather than upgrading to TradeSuite 7.1. As a result, these Institutional Customers were not able to review the Additional Disclosures through the Additional Dedicated Fields, because the Additional Dedicated Fields were not available in Prior Versions of TradeSuite. Omgeo therefore requests that the Division clarify that Broker-Dealer Participants may rely on TradeSuite 7.1 to send confirmations containing the Additional Disclosures in both free form text, as well as through the Additional Dedicated Fields, where

³ The Previously Existing Dedicated Fields available through TradeSuite as of March 11, 2008 were: (1) trade date; (2) identity of the security; (3) price; (4) shares, units or principal amount; (5) capacity; (6) commission; (7) reported price; (8) debt security subject to redemption prior to maturity; (9) dollar price (where debt security transaction effected on the basis of yield; (10) non-governmental debt security not rated by a nationally recognized statistical rating organization; (11) market maker status; (12) non-SIPC membership; and (13) time of the transaction.

⁴ The Additional Dedicated Fields contain the Additional Disclosures, see fn. 2, supra.

James A. Brigagliano, Esq.
November 19, 2010
Page 3

their Institutional Customers rely on Prior Versions of TradeSuite to receive TradeSuite confirmations in reliance on the March 12, 2008 Response Letter.⁵

Providing this clarification would be consistent with prior Division positions regarding the use of TradeSuite since at least 1974, when the Division first explicitly permitted The Depository Trust Company ("DTC") to confirm broker-dealer transactions using DTC ID, TradeSuite's predecessor, including via wire transfer.⁶ This relief was expanded nine years later, to explicitly permit DTC to send ID confirmations on behalf of its broker-dealer participants through a variety of electronic means in satisfaction of Rule 10b-10.⁷ Omgeo notes that those prior letters did not explicitly require use of dedicated fields to provide disclosures required by Rule 10b-10⁸.

We note also that under this proposed modification to facts and representations relief on by the Division when it issued the March 12, 2008 Response Letter, Institutional Customers would still receive all of the disclosures required by Rule 10b-10 during the period of time before Omgeo discontinues the Prior Versions of TradeSuite.

We welcome the opportunity to discuss this request for clarification with you. If you have any questions regarding this matter, please call me at 212-855-3244 or our outside counsel, Jack Drogin of Schiff, Hardin LLP at 202-778-6422. On behalf of Omgeo, we appreciate the Division's consideration of this matter.

Sincerely,



Norman M. Reed
General Counsel

cc: Paula R. Jenson
Joseph Furey
Daniel Fisher
Ignacio A. Sandoval

⁵ In this respect, Omgeo notes that it will cease supporting Prior Versions of TradeSuite for Broker-Dealer Participants and Institutional Customers by July 15, 2011.

⁶ See letter re: The Depository Trust Company (October 29, 1974).

⁷ See letter re: The Depository Trust Company (January 31, 1983).

⁸ See, also, letter re: Society for Worldwide Interbank Financial Telecommunication (May 27, 2010) (where use of dedicated fields was not required for compliance with Rule 10b-10).