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Bruce C. Bennett

Covington & Burling LLP
The New York Times Building
620 Eighth Avenue
New York, NY 10018-1405
T +1 212 841 1060
bbennett@cov.com

Sections 3(a)(4) and 15 of the
Securities Exchange Act of 1934

March 3, 2020

Ms. Emily Westerberg Russell
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: NeptuneFI Fixed-Income System

Dear Ms. Russell:

We write on behalf of Neptune Networks Ltd., a U.K. corporation ("NeptuneFI"), to seek confirmation that the Staff of the Division of Trading and Markets (the "Staff") of the U.S. Securities and Exchange Commission (the "Commission") will not recommend that the Commission take enforcement action if NeptuneFI owns and operates a passive fixed-income electronic data connectivity and communication system described below (the "NeptuneFI System" or the "System") in the United States without registering as a broker-dealer pursuant to Section 15(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

Description of the NeptuneFI System

NeptuneFI has developed a passive electronic data connectivity and communication system for institutional participants in the fixed-income market. The System, which is currently in operation in the United Kingdom and other markets outside the United States, facilitates the transfer of fixed income market pre-trade data from *sell-side (sender of data)* market participants to *buy-side (recipient of data)* market participants, in each case who are subscribers to the System, via a secure, password-protected website.¹ NeptuneFI believes that this functionality is not currently available in the United States fixed-income market.

All messaging on the NeptuneFI System is secured via end-to-end encryption. This affords complete confidentiality to buy-side and sell-side participants engaging on the System. NeptuneFI has no ability to decrypt any communications that occur on the System, and thus has no access to the content of these messages, either during the period that such messaging is

¹ We use these italicized designations to describe the users of the NeptuneFI System throughout this letter.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 2

ongoing or at any time thereafter. Therefore, other than confirming that participants have completed their interaction so that the System can close out a communication and also remind participants that they cannot complete transactions on the System (which we discuss further below), NeptuneFI cannot participate in any way in messaging that occurs on the System. If the parties do agree on the terms of a transaction and thereafter exit the NeptuneFI System to book, confirm, clear and settle the transaction, the content of any messaging between the two parties is not transferred to (or otherwise available to) any securities infrastructure that the participants may elect to utilize for post-transaction processing, nor is it available to any other market participant.²

Sell-side participants interact with a given buy-side participant on the System if, and only to the extent, the buy-side participant has satisfied the sell-side participant's know your customer, anti-money laundering and other requirements (collectively as to any sell-side participant, the "KYC/AML" requirements), in each case as determined, and enforced, by the sell-side participant. If a buy-side participant satisfies a sell-side participant's KYC/AML requirements, the sell-side participant informs NeptuneFI that the buy-side participant may be enabled on the System to face the sell-side participant. NeptuneFI does not participate in any way in the efforts by any buy-side participant to satisfy a given sell-side participant's KYC/AML requirements.

Once a buy-side participant is enabled on the System to interact with a sell-side participant, the sell-side participant then determines the data that the buy-side participant will receive from the sell-side participant via the System. This data can, and generally does, vary by buy-side participant. NeptuneFI does not participate in any way in the determination by the sell-side of what information will be provided via the System to the buy-side participant and, because all data that is provided on the System is encrypted, NeptuneFI cannot be aware of the content of any such data that is so provided. Only the sell-side participant and buy-side participant that are utilizing the System can review the information that is transmitted via NeptuneFI.

The NeptuneFI System facilitates – in a single location – the transmission by a sell-side participant to a buy-side participant of an aggregated view of multiple single pages of real-time, sell-side fixed-income pre-trade pricing data that is derived directly from the risk management system of the sell-side participant. The System provides data that is presented in standardized formats and is of higher quality and consistency than the periodic, manual spreadsheets (with their high probability of errors and poor timeliness) that are often used by buy-side fixed-income market participants. NeptuneFI believes that this functionality, which is unique in the fixed-income market, enhances the buy-side and sell-side relationship for the benefit of the overall fixed-income market.

The NeptuneFI System's technology infrastructure utility is governed by a collaboration of market participants. NeptuneFI's Board of Directors includes buy-side and sell-side representation, including three buy-side market participants that are also participants in the

² This means that NeptuneFI cannot aggregate or analyze any such information, nor can it transfer any data derived therefrom to any third party. There is thus no opportunity for NeptuneFI to monetize data that flows across the System.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 3

System. For additional information about the current composition of NeptuneFI's governance structure and its Board, see www.neptunefi.com.

As we describe in greater detail in the section captioned "Analysis" below, we believe that, in owning and operating the NeptuneFI System, NeptuneFI would not be acting as a "broker" or "dealer," as such terms are defined under the Exchange Act, if it were to offer the functionality of the System to include the United States.

a. Identity of Participants

The NeptuneFI System currently consists of 59 buy-side and 28 sell-side market participants, each of which is a sophisticated institutional participant in the global fixed-income market, and includes a number of global financial institutions. Participants on the NeptuneFI System must be institutional investors – retail investors are not permitted to access the System. Furthermore, a participant must be a regulated investment firm or credit institution and as such authorized to deal in investments as an agent or as a principal under the laws of any European Economic Area ("EEA") country or non-EEA country or, in the United States, broker-dealers or registered investment advisers.³ The service provided to participants on the NeptuneFI System is identical regardless of whether the participant is a buy-side or sell-side market participant (although, as noted above, the specific information that may be conveyed by a sell-side participant to a buy-side participant on the System will be determined solely by the sell-side participant and thus will vary by participant).

b. NeptuneFI System Functionality

The primary purpose of the NeptuneFI System is to provide a technology infrastructure tool that enables institutional market participants to transmit pre-trade market data and message workflows in standardized, encrypted and easily manipulable formats. The NeptuneFI System messaging function facilitates communications between System participants in a secure infrastructure. These communications can include broadly exchanging terms of potential transactions, including economic terms.

The System software provides a single buy-side market participant the ability to link to multiple sell-side market participants of the buy-side participant's choosing. The System's software does not in any way affect a buy-side participant's ability to select sell-side participants with which to interact. Once the buy-side market participant has selected a sell-side counterparty for a potential transaction, the prospective sell-side counterparty is free to decide whether to accept or reject the message in any manner and for any or no reason.

When a buy-side participant accesses the NeptuneFI System, it will be able to see indicative pricing from any sell-side participant(s) on the System that have completed AML/KYC procedures with such buy-side participant and thus enabled that buy-side participant to interact with it on the System. At any point in time, the indicative pricing provided by any sell-side

³ We note that currently approximately 60% of permitted users of the NeptuneFI System are sell-side broker-dealers. While NeptuneFI does not undertake to maintain that precise percentage of sell-side broker-dealer participation in the future, we provide this metric as an indication of the current extent of participation of broker-dealers on the NeptuneFI System in the near term.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 4

participant is static for such buy-side participant. The NeptuneFI System has no control over (or access in unencrypted form to) the information contained in the message being sent from a sell-side participant to a buy-side participant, other than it must conform to the standard format of the message workflow on the System. As noted above, NeptuneFI has no ability to decrypt any communications that occur on the System, and thus has no access to the content of these messages, either during the period that such messaging is ongoing or at any time thereafter.

While NeptuneFI solicits market participants to utilize the System, the NeptuneFI System does not solicit participants to enter into fixed-income transactions. Buy-side participants are attracted to the System by the ability to access pre-trade fixed-income data for a range of securities from a range of sell-side market participants with which they have a pre-existing relationship in real time, aggregated views that are not otherwise available in the fixed-income market. Sell-side participants are attracted to the System by the ability to distribute data and message flow in order to engage with buy-side participants with which they have a pre-existing relationship regarding potential transactions in fixed-income securities in the fixed-income market.

To the extent that messaging on the System between a buy-side participant and a sell-side participant results in an enforceable contract,⁴ the System is not involved in the post-execution transaction processes. Any market participant that utilizes the NeptuneFI System and seeks to enter into a fixed-income transaction with another participant on the System must exit the System and utilize a different market infrastructure platform to complete post-execution booking, confirmation, clearance and settlement with respect to any such transaction with its counterparty. In addition, NeptuneFI does not provide trading, investment or valuation advice to any of its participants. As noted above, all content that is transmitted on the System is derived from a given sell-side participant's risk-management system, and is selected by the sell-side participant for transmission to the particular buy-side participant with which it is then engaging on the System. NeptuneFI is wholly uninvolved (and because all data transmissions are encrypted, is unable to be involved) in the transmission of information that may be relevant to

⁴ Whether a buy-side participant and a sell-side participant that utilize the messaging function of the System to negotiate a transaction have created a binding oral contract while engaged on the System will depend upon the facts and circumstances of such engagement including the law governing such engagement. If New York law were to govern, we acknowledge that it is possible for participants in securities transactions to enter in to a binding, enforceable contract on an oral basis without reducing such agreement to writing. Section 8-113 of the New York Uniform Commercial Code. Without necessarily admitting that communications between a sell-side participant and a buy-side participant on the System that result in such parties entering into a securities transaction would, in all instances result in the formation of a binding oral contract on the System under New York law, if such a binding oral contract were to result, that outcome would be a result of the interaction of the buy-side and sell-side participants utilizing the secure, encrypted communication function of the System. That result would no more make NeptuneFI a broker than would a telephone carrier be a broker with respect to voice trades entered into by a buyer and seller using phone (or wireless) lines provided by the telephone carrier.

To the extent that utilization of the messaging function on the System results in something short of a binding oral contract, then the buy-side and sell-side participants would also need to utilize different financial market infrastructure to execute the transaction. For ease of presentation, subsequent references herein to post-execution processes also include references to the possibility that bilateral messaging on the System between a buy-side and sell-side participant may result in something that falls short of an enforceable contract, and thus such processes would also include transaction execution.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 5

any investment decision that a buy-side participant may make. We thus believe that NeptuneFI does not participate in any key points in the chain of distribution of a securities transaction.⁵

If a buy-side and sell-side participant, having broadly negotiated the terms of a potential transaction using the messaging functionality of the System and then, having transitioned to their preferred post-execution transaction completion infrastructure, subsequently determine they wish to cancel or modify that transaction, they cannot do so on the NeptuneFI System. Any communication regarding transaction completion, including a modification or cancellation, must occur using the method by which such transaction was completed.

The NeptuneFI System is best characterized as a secure, password-protected and encrypted pipe that affords infrastructure for a sell-side participant to share fixed income market data, and to engage in messaging workflows, with one or more buy-side participants of its own choosing and with which it has a pre-existing relationship. NeptuneFI, in providing this infrastructure, cannot see, or engage in, the activity that ensues.

The NeptuneFI System contains a question asking participants “Are We Done?” This question, which is conveyed by the System to the participants in unencrypted form, inquires whether the buy-side and sell-side participants that are interacting on the System have completed their utilization of the functionality offered by the System (transmission of data and message flows). The “Are We Done” question is either prompted by a pre-established time limit for the discussion or by one of the participants closing the message itself. If the response from the participants is in the affirmative, then a response is generated by the System (again, in unencrypted form) instructing the participants that the NeptuneFI System has completed its function and they must exit the System and, if they desire to enter into a transaction, they must utilize different financial services infrastructure of their choosing for post-execution booking, confirmation, clearance and settlement thereof.

c. Fees

The NeptuneFI System’s compensation structure is comprised solely of annual fixed fees paid by its respective participants. There is a single flat annual subscription fee for buy-side participants and a separate single flat annual subscription fee for sell-side participants. The flat fee for buy-side participants is different from the flat fee for sell-side participants; all buy-side participants pay the same annual fee, as do all sell-side participants.

These flat fees are in no way affected by whether transactions are entered into by participants, even if any such transaction may have been developed based upon information transmitted by a sell-side participant to a buy-side participant via the System and/or from messaging that occurred on the System. NeptuneFI has no ability to ascertain whether interactions on the System result in transactions due to the encryption of the messaging function on the System. In addition, although we do not believe that fees based on the volume of messaging

⁵ See *Massachusetts Financial Services, Inc. v. Securities Investor Protection Corp.*, 411 F. Supp. 411, 415 (D. Mass), *aff’d* 545 F.2d 754 (1st Cir. 1976), *cert. denied*, 431 U.S. 904 (1977), *cited in Securities and Exchange Commission v. Howard J. Hansen*, [1984 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶91,426 (S.D.N.Y. 1984) (“*Hansen*”). We discuss this point further in the “Analysis” section below.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 6

would constitute transaction-based compensation, we note by way of background that a participant's fees are not affected if the participant adopts the bilateral messaging functionality, nor are fees affected by the volume of messages that are subsequently transmitted on the System between participants.

There is thus no means by which NeptuneFI can obtain information from the System that it could use to adjust a given participant's pricing to reflect transactions that arose from interactions by participants on the System.⁶

NeptuneFI and its Board consider the NeptuneFI System to be akin to a public utility, and it operates as a not-for-profit entity. Fee revenue is used solely to cover operating costs. NeptuneFI has no intent to levy transaction-based fees on its participants at any point in the future.

d. No Discrimination Among Market Participants

The NeptuneFI System includes as participants both sell-side and buy-side institutions as described above. Other than the requirement to pay the NeptuneFI System subscription fees and the limitation of the System to institutional buy-side fixed-income market participants and sell-side fixed-income market participants that are broker-dealers or registered investment advisers, NeptuneFI has no means by which to limit which entities may participate on the System. Any institutional fixed-income market participant may contribute data to, or access data on, the System, so long as they pay the relevant annual subscription fee to access the System.⁷

e. Post-execution Transaction Completion Away From The System

As noted above, the NeptuneFI System does not have the capability to perform post-execution processes. If System participants broadly agree to the terms of a potential transaction by utilization of the messaging function of the NeptuneFI System, post-execution booking, confirmation, clearance and settlement occurs away from the System utilizing financial services infrastructure that is selected by the participants. Most likely, the sell-side market participant would, as a broker-dealer or registered investment adviser, accept the transaction within its firewall and, in conjunction with its buy-side counterparty, perform such post-execution functions using market-standard systems and functionality that are entirely separate from the NeptuneFI System.

Because the NeptuneFI System provides a means by which the buy-side and sell-side participants may discuss pricing information and messages regarding potential interest in transacting, the System would not necessarily have a role in the process by which a legally binding

⁶ NeptuneFI regularly solicits feedback as to the functioning and ease of use of its software – a standard procedure for a technology solution. This feedback is solicited solely to enable NeptuneFI to improve its product so as to better serve its participants. The feedback is not solicited to quantify any aspect of usage so as to support a fee structure that differs from the fixed fees described above.

⁷ As noted above, the System is password-protected, so as to ensure that participants are limited to institutional buy-side market participants and appropriately licensed sell-side market participants, in each case that have paid NeptuneFI's flat subscription fee.

COVINGTON

Ms. Emily Westerberg Russell

March 3, 2020

Page 7

contract may be formed,⁸ nor would NeptuneFI have any ability to know that such a negotiation occurred or even that the two participants were engaged in a bilateral discussion.

As discussed above, the System does contain a “Are We Done” query, which is prompted by either a pre-set time limit or by one of the participants closing the message itself. This query is used solely to allow the System to close out any discussions that have ended and to remind participants that they must move to separate financial services infrastructure of their own choosing for post-execution processing.

Analysis

Section 3(a)(4) of the Exchange Act defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others.”⁹ In interpreting Section 3(a)(4) and, in particular, what constitutes “effecting transactions” (a term that is not defined in the Exchange Act or regulations promulgated thereunder), the courts, the Commission and Staff have focused on certain categories of activities that are viewed as hallmarks of broker activity, including if a person:

- Structures prospective securities transactions
- Assists a market participant in identifying potential purchasers of securities
- Screens potential participants in a transaction for creditworthiness
- Solicits securities transactions
- Receives transaction-based compensation
- Participates in negotiations between potential transaction participants
- Provides valuation or other advice as to the merits of a potential investment
- Handles customer securities or funds in connection with securities transactions
- Prepare or sends confirmations of transactions
- Otherwise regularly participates in securities transactions at key points in the chain of distribution.¹⁰

As described above, the NeptuneFI System is a secure, password-protected passive electronic data connectivity and communication system that facilitates communications between institutional buy-side and sell-side market participants in the fixed income market. As we discuss below, we respectfully submit that NeptuneFI, as owner and operator of the NeptuneFI System, will not be engaged in any of the aforementioned activities. We therefore are of the view that NeptuneFI will not meet the definition of a broker for purposes of the Exchange Act.

⁸ See footnote 4 above.

⁹ We believe it is clear that NeptuneFI, in owning and operating the NeptuneFI System, would not be operating as a dealer as such term is defined in Section 3(a)(5) of the Exchange Act (“any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise”).

¹⁰ See, e.g., Hansen, *supra* Note 4; M&A Brokers, SEC No-Action Letter (dated Jan. 31, 2014, as revised Feb. 4, 2014). The relative importance of these factors can vary, depending upon the facts and circumstances at issue. For example, the receipt of transaction-based compensation is typically viewed as a strong indicator of brokerage activity. See, e.g., David W. Blass, Chief Counsel, Division of Trading and Markets, SEC, *A Few Observations in the Private Fund Space*, Remarks to American Bar Association, Trading and Markets Subcommittee (Apr. 5, 2013), at <https://www.sec.gov/news/speech/2013-spcho40513dwghtm>.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 8

a. NeptuneFI will not structure prospective securities transactions – The System is a passive electronic data connectivity and communication facility. All communications are encrypted. Thus, NeptuneFI cannot ascertain discussions that participants may have on the System. NeptuneFI will be unaware of the development of a transaction by participants, and thus cannot, and will not, have any role in structuring any transaction that may result from interaction on the System.

b. NeptuneFI will not assist participants on the System in identifying potential purchasers of securities – The System attracts institutional buy-side and sell-side participants that seek to benefit from the enhanced information transmission facility that the System provides, coupled with a secure messaging system. As noted in paragraph (a) above, NeptuneFI cannot know of any intent on the part of participants to actually engage in a transaction, and thus cannot identify potential transaction participants to other participants in the System.

c. NeptuneFI will not screen potential participants in a transaction for creditworthiness – As described in paragraph (b) above, NeptuneFI has no role in the discussions that buy-side and sell-side participants may have while engaged on the System. In order to participate, a participant must pay the fixed fee charged by NeptuneFI to access the system, confirm it is an institutional investor (if buy-side) and a broker-dealer or registered investment adviser (if sell-side). NeptuneFI will not evaluate a participant's creditworthiness to engage in transactions as part of onboarding a participant onto the System.

d. NeptuneFI will not solicit securities transactions – NeptuneFI markets the System as a secure, password-protected data connectivity and communication system. As described above, utilization costs for participants are fixed, based on category of participant – there is no transaction-based compensation. While NeptuneFI solicits market participants to utilize the System, NeptuneFI does not solicit securities transactions as part of its marketing of the System. It instead markets a public utility-style function that benefits interactions between buy-side and sell-side participants in the institutional fixed income market.

e. NeptuneFI will not receive transaction-based compensation – NeptuneFI charges an annual fixed fee for any buy-side participant, and a different annual fixed fee for any sell-side participant, that desires to access the System. Once paid, these fees do not change during the calendar year, including if two participants do complete one or more transactions away from the System based on interactions that commenced on the System. As noted above, due to the end-to-end encryption of all communications on the System, NeptuneFI is not able to ascertain whether participants in fact completed any transactions that arose from interactions that commenced on the System. Thus, NeptuneFI cannot levy any form of transaction-based fees.

f. NeptuneFI will not participate in negotiations between potential transaction participants – NeptuneFI cannot participate in negotiations between due to the encryption of communications that occur on the System. There is no means by which NeptuneFI could be aware of the commencement of negotiations between a buy-side and sell-side participant on the System. If one such participant were to ask NeptuneFI to assist in the negotiation of a potential transaction, NeptuneFI would decline to do so as it will not carry appropriate registrations in order to engage in such activity.

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 9

g. NeptuneFI will not provide valuation or other advice as to the merits of a potential investment – As NeptuneFI will not be aware of any potential investments, it will not have a means by which to intercede to provide valuation or other advice. If a participant were to reach out to NeptuneFI soliciting such assistance, NeptuneFI would decline to provide it for the reason set forth in paragraph (f) above.

h. NeptuneFI will not handle customer securities or funds in connection with securities transactions – NeptuneFI lacks regulatory authority to handle customer securities or funds, and the System is not designed to enable it do so.

i. NeptuneFI will not prepare or send confirmations for any transactions that may be entered into by buy-side and sell-side participants that utilize the System – Because any discussion is encrypted and thus not known or knowable to NeptuneFI, NeptuneFI cannot prepare confirmations of any transaction resulting from discussions commenced on the System. If a sell-side participant were to request NeptuneFI to deliver a confirmation generated by such participant, NeptuneFI would decline to do so. As the sell-side participants must be broker-dealers or registered investment advisers in order to participate on the System, there would be no reason for any such participant to make such a request.

In light of the foregoing analysis, we therefore are of the view that NeptuneFI will not participate (regularly or otherwise) in key points in securities transactions that may be effected by buy-side and sell-side participants that utilize the NeptuneFI System. Therefore, we do not believe that NeptuneFI, in owning and operating the System in the United States, would be acting as a broker as that term is defined under the Exchange Act.

The Staff has regularly granted no-action relief to operators of passive communications or other systems that assist transaction participants but that do not play a role in effecting transactions in securities for purpose of Section 3(a)(4) of the Exchange Act. The relief that NeptuneFI requests hereby is consistent with these precedents, including those summarized below.

In S3 Matching Technologies LP (dated July 19, 2012), the Staff granted no-action relief to a financial services software company that offered a computerized system that electronically linked registered broker-dealers to one another. The S3 system contained analytical tools relating to order routing and order execution as well as an order message communication tool, but the owner and operator of the system was not involved in the execution, settlement or clearance of transactions. As with the NeptuneFI System, the S3 system was solely an electronic communications system that performed none of the services that would constitute effecting transactions in securities under Section 3(a)(4) of the Exchange Act. In addition, again as is the case with the NeptuneFI System, the S3 system charged members a fee that was not calibrated to the size, value, or occurrence of securities transactions.

In GlobalTec Solutions, LLP (dated Dec. 28, 2005), the Staff granted no-action relief with respect to a desktop application that allowed users to develop personalized trading strategies for publicly traded securities, and to submit orders to participating broker-dealers. Consistent with the NeptuneFI System, the application did not discriminate between participating

COVINGTON

Ms. Emily Westerberg Russell
March 3, 2020
Page 10

broker-dealers in any way. Users of the GlobalTec system could only send orders to a participating broker-dealer after opening an account with that broker-dealer. Other than the transmission of order information, the GlobalTec system did not effect securities transactions between users and participating broker-dealers. Consistent with the NeptuneFI System and the S3 system described above, GlobalTec charged fees to access its system rather than based on the size, value or occurrence of securities transactions conducted through the system.

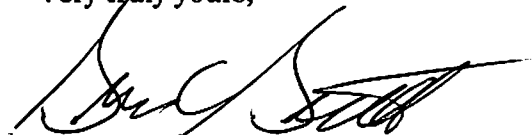
In Loffa Interactive Corp., Inc. (dated Sept. 17, 2003), the Staff granted no-action relief for an electronic communications tool that broker-dealers could use as part of their transaction execution and compliance efforts. In particular, the Loffa system supported compliance with margin requirements with respect to "letter of free funds" requests. The sole function of the Loffa system was to convey information between transaction participants. Loffa did not otherwise participate in the securities transactions in which its broker-dealer clients of the Loffa system would engage, and charged a flat fee per transmission that was not based on the size or value of any transaction that was completed due to information communicated through the System.¹¹

Conclusion

For the reasons set forth above, we believe that NeptuneFI should not be subject to registration under the Exchange Act as a broker-dealer due to its ownership and operation in the United States of the NeptuneFI System. We therefore respectfully request, on behalf of NeptuneFI, that the Staff confirm that it will not recommend that the Commission take enforcement action under Section 15(a) of the Exchange Act if NeptuneFI operates the NeptuneFI System as described above without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

If the Staff has any questions regarding this request, please contact the undersigned at (212) 841-1060.

Very truly yours,



Bruce C. Bennett

¹¹ See also the following no-action letters, each of which involved the electronic conveyance of information relating to the possible purchase and sale of securities, without the system owner being deemed to be effecting any such transactions or otherwise providing brokerage services for purposes of Section 3(a)(4) of the Exchange Act: Broker-to-Broker Networks, Inc. (dated Dec. 1, 2000); Evare, LLC (dated Nov. 30, 1998); StockPower Inc. (dated July 24, 1998); Quick America Corporation (dated June 28, 1993).