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Norman M. Reed
General Counsel

Omgeo
55 Water Street
22nd Floor
New York, NY 10041

Tel 212.855.3244
Fax 212.855.3215
www.omgeo.com

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Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-08-11

Dear Ms. Murphy:

Omgeo LLC ("Omgeo") appreciates the opportunity to comment on the Commission's proposal to adopt clearing agency standards for operation and governance (the "Proposal").¹ Although Omgeo expresses no views on the application of the Commission's Proposal to registered clearing agencies, as discussed below, we believe that because Omgeo is an exempted clearing agency performing solely one clearing agency function (*i.e.*, trade matching), the Commission should not apply the specific rules contained in the Proposal to Omgeo.

Omgeo is a Delaware limited liability company that is a joint venture between The Depository Trust & Clearing Corporation ("DTCC") and certain subsidiaries of Thomson Reuters.² In 2001, the Commission granted an exemption from registration as a clearing agency to Omgeo Matching Services – US, LLC, which is a wholly-owned subsidiary of Omgeo, permitting Omgeo to operate specified electronic confirmation and central matching services that otherwise would have required it to register as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act").³ As discussed below, Omgeo believes that its status as an exempted clearing agency has worked well over the past ten years, supporting the Commission's policy decision that where an entity provides solely limited clearing agency services such as trade matching, which does not require the handling of funds or securities, an exemption from clearing agency registration,

¹ See Securities Exchange Act Release No. 34-64017 (March 3, 2011).

² DTCC was created in 1999 as a holding company for The Depository Trust Company ("DTC") and the National Securities Clearing Corporation, each of which is registered as a clearing agency pursuant to Section 17A of the Exchange Act.

³ See Securities Exchange Act Release No. 44188 (April 17, 2001) (Order Granting Exemption from Registration as a Clearing Agency).

coupled with appropriate oversight and control, as contained in Omgeo's exemptive order (the "Exemptive Order"), is appropriate.⁴

I. Omgeo as an Exempted Clearing Agency

A. Omgeo's Clearing Agency Functions

Omgeo currently offers matching services to registered broker-dealers and institutional investors through two of its services, TradeSuite and Central Trade Manager ("CTM"). TradeSuite is a matching service that automates messaging and settlement for equity and fixed income securities, on behalf of broker-dealers, investment managers, custodians and interested parties.⁵ CTM is a trade management service that permits broker-dealers and investment advisers to confirm electronically their cross-border transactions and transactions in non-U.S. domestic equity and fixed incomes securities.

B. Commission Policy on Matching Service Providers

In the Commission's interpretive release on "Confirmation and Affirmation of Securities Trades; Matching" ("Matching Release"),⁶ the Commission stated its view that "matching constitutes a clearing agency function within the meaning of the clearing agency definition under Section 3(a)(23) of the Exchange Act."⁷ As a result, the Commission stated that "only an entity that is registered as a clearing agency or is exempt from such registration may provide a matching service."⁸

⁴ *Id.*

⁵ TradeSuite, which is the current name of the ID System that was formerly operated by DTC, consists of the following four functions: (1) TradeMessage, which provides for the automated exchange of post-trade messages between broker-dealers, custodians and institutions, including messages such as block-trade notices of execution, allocation instructions, trade confirmations and affirmations; (2) TradeMatch, which electronically compares institutions' allocations with broker-dealers' trade data; (3) TradeSettle, which supplies allocations, trade confirmations, and settlement messages with account and settlement data from Omgeo's ALERT service and routes settlement instructions to custodian banks and broker-dealers' clearing agents; and (4) TradeHub, which is a real-time global message translator which routes messages between parties using different communications protocols, message formats, and firm and securities identifiers.

Omgeo's ALERT service is a global database used for the maintenance and communication of standing settlement and account instructions ("SSI"). ALERT reduces trade failure by enabling a community of investment managers, broker-dealers and custodian banks to share accurate SSI automatically worldwide.

⁶ See Securities Exchange Act Release No. 39829 (April 8, 1998).

⁷ For purposes of the Matching Release, the Commission defined "Matching" as "the term that is used to describe the broker-dealer's trade data submission... with the institution's allocation instructions... to determine whether the two descriptions of the trade agree."

⁸ *Id.* Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission before performing any of the functions of a clearing agency. However, Section 17A(b)(1) also states that the Commission, upon its own motion or upon a clearing agency's application, may conditionally or

As the Commission stated in the Matching Release, an entity that limits its clearing agency function to providing matching services need not be subject to the full panoply of clearing agency regulation,⁹ but instead, may be properly regulated through “appropriate conditions,” such as those enumerated in Omgeo’s Exemptive Order. The purpose of the Matching Release was therefore “to seek comment on the concept of providing exemptive relief either through registration as clearing agencies subject to reduced requirements or through the grant of a conditional exemption from registration to qualified [electronic trade confirmation] vendors that provide a matching service.”

In the aftermath of the Matching Release, the Commission made the policy decision that an entity that provides central trade matching as its sole clearing agency function may be conditionally exempted from clearing agency registration.¹⁰ In proposing an exemption for Omgeo, the Commission stated that in addition to considering the public interest and the protection of investors, the primary factor in evaluating Omgeo’s application would be whether Omgeo was so organized and had the capacity to be able to facilitate prompt and accurate matching services subject to the specific conditions Omgeo proposed.¹¹ The Commission noted in particular, that Omgeo represented it would provide the Commission with: (1) an independent audit report that addressed all the areas discussed in the Commission’s Automation Review Policies (“ARPs”) prior to beginning commercial operations and annually thereafter,¹² (2) on-site inspection rights, and (3) a current balance sheet and income statement prior to beginning operations.¹³

C. Omgeo’s Exemptive Order

In response to the Commission’s publication of Omgeo’s application for an exemption from clearing agency registration,¹⁴ the Commission received 36 comment letters, eleven of which praised Omgeo’s timing in light of the industry’s need for straight-through processing and a shortened

unconditionally exempt the clearing agency from any of the provisions of Section 17A or the rules and regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A.

⁹ *Id.* At Section IV.

¹⁰ *See, e.g.*, Securities Exchange Act Release Nos. 34-41377 (May 7, 1999) (Order Granting Thomson Financial Technology Services, Inc., a Conditional Exemption from Clearing Agency Registration); and 44188 (April 17, 2001) (Order Granting [Omgeo an] Exemption from Registration as a Clearing Agency).

¹¹ In the Notice of Filing of Application for Exemption from Registration as a Clearing Agency, the entity that actually was proposed to receive the exemption from registration was Global Joint Venture Matching Service – US, LLC (“GJVMS”). For purposes of the discussions in this letter, we do not distinguish Omgeo from GJVMS. *See* Securities Exchange Act Release No. 43450 (November 9, 2000) (Omgeo Notice of Filing of Application for Exemption from Clearing Agency Registration).

¹² Securities Exchange Act Release Nos. 27445 (November 16, 1989) and 29185 (May 9, 1991).

¹³ *Id.*

¹⁴ *See* Securities Exchange Act Release No. 43540 (November 9, 2000).

settlement cycle to reduce risks, and stressed that there remained no more meaningful efficiencies to be drawn from the then current settlement system. These letters applauded Omgeo's intention to interoperate with other competitors and pledged support in furtherance of Omgeo's progress. Seventeen letters requested that before the Commission granted an exemption to Omgeo, that it take steps to safeguard interoperability and competition among service providers.

In response to these concerns, the Commission imposed significant conditions on Omgeo's interoperability with other central matching services in Omgeo's Exemptive Order. The Commission also imposed significant conditions on Omgeo's operations in the Exemptive Order. Specifically, the Commission required that before beginning commercial operations, Omgeo was required to provide the Commission with an audit report that addressed all areas discussed in the Commission's ARPs. Omgeo was also required to provide the Commission, beginning in Omgeo's first year of operation, with annual reports and any associated field work prepared by competent, independent audit personnel that were generated in accordance with the annual risk assessment of the areas set forth in the ARPs. Omgeo was required to provide the Commission with annual audited financial statements prepared by competent independent audit personnel. The Commission further required that Omgeo report all significant outages to the Commission.¹⁵ The Commission required Omgeo and its service providers to respond to requests from the Commission for additional information relating to its central matching and electronic confirmation services, to provide access to the Commission to conduct on-site inspections of all facilities, including automated systems and systems environment, records and personnel relating to Omgeo's central matching service and electronic confirmation system.¹⁶ Omgeo was prohibited from providing any additional clearing agency functions (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted by the Exemptive Order.

The Commission stated that it carefully considered the comment letters received in response to Omgeo's application and the fact that Omgeo would combine two principle systems already in use by broker-dealers and institutional investors for post-trade, presettlement processing of U.S. trades. The Commission concluded that the conditions set forth in the Exemptive Order appropriately addressed the issues raised by the commenters.¹⁷ Significantly, the Commission determined that in light of the conditions prescribed in the Exemptive Order, Omgeo would have sufficient operational and processing capability to facilitate prompt and accurate matching services. The Commission also

¹⁵ If it appeared that an outage would last more than thirty minutes, Omgeo would report it immediately. If it appeared it would be resolved in less than thirty minutes, Omgeo would report it within a reasonable amount of time after the outage was resolved.

¹⁶ The Commission also required Omgeo to provide periodic reports on affirmation rates, keep adequate records of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission, and any customer complaint, all of which pertain to Omgeo's central trade matching and electronic confirmation services.

¹⁷ The Commission also found that the conditions imposed on Omgeo respecting other central matching services would promote transparency, consistency and interoperability in central trade matching and would assure that other central trade matching services would receive equal treatment.

noted that Omgeo's exemption would be subject to conditions that were designed to enable the Commission to monitor Omgeo's risk management procedures, operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the fundamental goals of Section 17A of the Exchange Act.

In granting Omgeo's exemption from clearing agency registration, the Commission stated that it was guided by the requirements of Section 17A of the Exchange Act. The Commission considered, among other things, Omgeo's risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of Section 17A of the Exchange Act (*i.e.*, the safety and soundness of the national clearance and settlement system). After carefully considering the impact of Omgeo's proposal on the national clearance and settlement system, specifically the fact that its matching service was the sole clearing agency function that Omgeo would perform, the Commission determined that an exemption from registration as a clearing agency was appropriate.¹⁸ The Commission therefore found that granting Omgeo's exemption from clearing agency registration was consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

II. Application of Commission Proposal to Omgeo

As discussed below, Omgeo believes that the Commission's well-designed, individually-crafted order exempting Omgeo from registration as a clearing agency provides an optimal degree of regulation of Omgeo in light of the sole clearing agency function it provides. The specific rules proposed by the SEC in the Proposal therefore should not be applied to Omgeo, because such rules generally assume either that a clearing agency: (1) provides central counterparty ("CCP") services, (2) otherwise performs other clearing agency functions, such as providing net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds and securities, or (3) provides clearing agency functions to swap participants. Because as discussed above, Omgeo's clearing agency functions are limited solely to matching services for equity and fixed income securities and exchange-traded derivatives (other than swap agreements), application of the rules proposed in the Proposal should not be necessary.¹⁹ Moreover, as discussed below, because Omgeo has worked constructively with the Commission staff to apply Omgeo's Exemptive Order since 2001, the purposes of the proposed rules generally have been met already, without the need for the application of rules of general applicability intended for multi-faceted clearing agencies performing far more substantial clearing agency functions than Omgeo performs.

¹⁸ Omgeo represented that it would not perform other functions of a clearing agency such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market or handling funds or securities.

¹⁹ Omgeo intends to begin providing matching services for exchange-traded options on securities, commodity futures and options on commodity futures in the near future. Unlike swap agreements, which prior to Dodd-Frank had been traded exclusively over-the-counter with little transparency, Omgeo's matching services for derivatives will be limited to exchange-traded derivatives with price transparency and a regulated audit trail. Omgeo is also considering providing matching services for its customers' foreign exchange transactions.

A. The Commission's Proposal

The Commission's Proposal consists of:

- Proposed Rule 3Cj-1 (Designation of Chief Compliance Officer);
- Proposed amendment to Rule 17Ab2-1 (Registration of Clearing Agencies);
- Proposed Rule 17Ad-22 (Standards for Clearing Agencies);
- Proposed Rule 17Ad-23 (Clearing Agency Policies and Procedures to Protect the Confidentiality of Trading Information of Clearing Agency Participants);
- Proposed Rule 17Ad-24 (Exemption from Clearing Agency Definition for Certain Security-Based Swap Dealers and Registered Security-Based Swap Execution Facilities);
- Proposed Rule 17Ad-25 (Clearing Agency Procedures to Identify and Address Conflicts of Interest);
- Proposed Rule 17Ad-26 (Standards for Board or Board Committee Members); and
- Proposed Rule 17Aj-1 (Dissemination of Pricing and Valuation Information by Security-Based Swap Clearing Agencies that Perform Services as a Central Counterparty).

Of the proposed rules listed above, only Proposed Rules 3Cj-1, 17Ad-22,²⁰ 17Ad-23, 17Ad-25 and 17Ad-26 potentially could apply to Omgeo, as the other proposed rules by their terms apply to clearing agencies providing services other than trade matching or that provide clearing agency services to security-based swap transactions.²¹ Below we discuss each of these potentially applicable proposed rules and why Omgeo is already optimally regulated under its Exemptive Order, obviating the need to apply these rules to Omgeo.²²

²⁰ As discussed below, only specified paragraphs of Proposed Rule 17Ad-22 might arguably apply to Omgeo.

²¹ Proposed Rules 17Ad-22(b) and (c)(1) by their terms apply solely to clearing agencies that perform CCP services, which would mean a clearing agency that interposes itself between counterparties to securities transactions to act functionally as the buyer to every seller and the seller to every buyer. *See* Proposed Rule 17Ad-22(a)(1). Proposed Rules 17Ad-22(d)(10) and (d)(14) apply solely to clearing agencies providing central securities depository services. Because Omgeo does not provide either those services, those rules would not apply to Omgeo.

²² Also discussed below is Omgeo's collateral management solution for instruments including security-based swaps, ProtoColl, and why providing such software should not require Omgeo to register as a clearing agency.

B. Proposed Rule 3Cj-1

Proposed Rule 3Cj-1 would require clearing agencies to designate a Chief Compliance Officer, the compensation and removal of whom would require the approval of the majority of the clearing agency's board of directors. The Chief Compliance Officer would report directly to the clearing agency's board of directors or senior officer, in consultation with the board or senior officer, resolve any conflicts of interest that may arise, and be responsible to administer the clearing agency's policies and procedures. The Chief Compliance Officer would also be responsible for ensuring compliance with the Exchange Act, establishing policies and procedures for the prompt remediation of any non-compliance issues identified by the Chief Compliance Officer, and establish and follow appropriate procedures for the prompt handling, management response, remediation, retesting and closing of non-compliance issues. Each year, the Chief Compliance Officer would be required to prepare and sign a report that contains a description of the clearing agency's compliance with the federal securities laws, and the clearing agency's policies and procedures (including its Code of Ethics). After the Chief Compliance Officer has certified to the report's accuracy and completeness, the report would be submitted to the clearing agency's board of directors prior to filing with the Commission, which would occur within 60 days of the end of the fiscal year covered by the report.

Omgeo believes that the application of Proposed Rule 3Cj-1 to Omgeo is unnecessary. Omgeo currently has a Chief Compliance Officer who reports directly to Omgeo's Chief Executive Officer and the Audit Committee on Omgeo's Board of Managers,²³ and who is responsible for Omgeo's compliance with the federal securities laws. Working with the Commission staff, pursuant

²³ Omgeo's Audit Committee is responsible to oversee the management of Omgeo's legal, compliance and regulatory risk. Under the Audit Committee's charter, it is required to, without limitation:

- (1) Oversee the design and management of Omgeo's Compliance Program, including policies and procedures reasonably designed to ensure that compliance issues are resolved effectively and expeditiously by the Chief Compliance Officer and senior management;
- (2) Be responsible for reviewing and endorsing management's appointment of a Chief Compliance Officer for Omgeo, and presenting that appointment to the Omgeo Board of Managers for its approval;
- (3) Oversee the structure, staffing, and resources of Omgeo's Compliance Department;
- (4) Monitor ongoing compliance activities and issues by receiving regular updates from the Chief Compliance Officer;
- (5) Review key risks and compliance concerns detected as part of the Compliance Program;
- (6) Understand the potential impact on Omgeo of changes in applicable laws, regulations, regulatory guidance and industry practices; and
- (7) Review the process for communicating the Code of Ethics to personnel, any submissions by Omgeo employees under the Code of Ethics, including confidential anonymous submissions, regarding questionable accounting or auditing matters; and the results of management's investigation and follow-up (including disciplinary action) of any instances of non-compliance or purportedly material violations of law.

to Omgeo's Exemptive Order, Omgeo's Chief Compliance Officer regularly consults with Omgeo's Chief Executive Officer, General Counsel, Managing Director of Human Resources Strategy and Practices, and Chief Information Security Officer, as appropriate, to address compliance issues that arise. The Chief Compliance Officer is also responsible for the administration of Omgeo's Standards of Business Conduct, which each Omgeo employee is required to acknowledge in writing that they have read, understood and agree to abide. The Chief Compliance Officer regularly conducts compliance training for Omgeo employees so that those employees are educated in Omgeo's internal compliance policies and procedures. In light of Omgeo's existing Chief Compliance Officer function, and Omgeo's sole clearing agency function, Omgeo believes that application of Proposed Rule 3Cj-1 to Omgeo is unnecessary.²⁴

C. Proposed Rule 17Ad-22

Listed below are the paragraphs of Proposed Rule 17Ad-22 that arguably could apply to Omgeo and a discussion of why such application is either unnecessary, inappropriate or otherwise not necessary in the public interest or for the protection of investors.

1. Proposed Rule 17Ad-22(c)(2).

Proposed Rule 17Ad-22(c)(2) would require a clearing agency to post on its web site an annual audited financial report. Each financial report generally would be required to include a complete set of financial statements of the clearing agency's two most recent fiscal years, prepared in accordance with generally accepted accounting principles ("GAAP"). The report also would be audited in accordance with the Public Company Accounting Oversight Board rules by a registered public accounting firm that is qualified and independent in accordance with Rule 2-01 of Regulation S-X and would include a report of the registered public accounting firm that complies with paragraphs (a) through (d) of Rule 2-02 of Regulation S-X.

As a private, for-profit company, Omgeo is not currently required to make its financial statements public under Commission rules. As stated above, however, Omgeo files audited financial statements with the Commission annually, pursuant to Omgeo's Exemptive Order.²⁵ Although Omgeo understands that participants in a clearing agency that provides CCP services or that acts as a central securities depository might have an interest in knowing the financial condition of the clearing agency, Omgeo does not perform such functions. Instead, Omgeo's clearing agency functions are limited solely to trade matching, which does not involve the handling of funds or securities, the novation of securities transactions, marking to the market, or other activities that could expose Omgeo's customers to the severe losses that

²⁴ Omgeo notes also that Exchange Act Section 3C(j)(1) requires each *registered* clearing agency to designate an individual to serve as chief compliance officer (emphasis added). Because Omgeo is exempted from registration, that section should not be applied to Omgeo.

²⁵ Omgeo's financial statements are audited by PriceWaterHouseCoopers LLP ("PwC"), a major (i.e., "Big-4") international accounting firm, and presented to the Omgeo Audit Committee annually by PwC.

the insolvency of a registered clearing agency might cause. Omgeo therefore believes that the application of Proposed Rule 17Ad-22(c)(2) to Omgeo is unnecessary.

2. Proposed Rule 17Ad-22(d)(1)

Proposed Rule 17Ad-22(d)(1) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well founded, transparent and enforceable (legally and practically) structure for each aspect of their activities in all relevant jurisdictions. The Commission stated that the clearing agency should have written procedures in place that, at a minimum, address the significant aspects of the clearing agency's risk management in order to provide a well founded legal framework and must be clear, internally consistent, and readily accessible by the public in order to provide a transparent legal framework. In addition, the clearing agency must be able to enforce its policies and procedures that contemplate enforcement by the clearing agency.

Application of Rule 17Ad-22(d)(1) to Omgeo is both unnecessary and impracticable. It is unnecessary because Omgeo already structures its activities to comply with the applicable laws and regulations in all jurisdictions in which it does business.²⁶ It is impracticable because, unlike a registered clearing agency, Omgeo's relationships with its customers are based on mutually agreed upon commercial terms, governed by bilateral contracts that are consistent with the Exchange Act and Omgeo's Exemptive Order. Although Omgeo publishes procedures for its customers to follow in order to avail themselves of Omgeo's services, Omgeo is not a self-regulatory organization, and it therefore cannot adopt rules that are enforceable against its participants.

3. Proposed Rule 17Ad-22(d)(2)

Proposed Rule 17Ad-22(d)(2) would require clearing agencies to establish, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. The Commission stated that this proposed requirement is intended to reduce the likelihood of defaults by participants, while also providing flexibility to tailor standards that are linked to the obligations of participants.

Unlike registered clearing agencies, Omgeo does not incur significant financial exposure with respect to its customers. Moreover, an operational problem at one of Omgeo's customers, although potentially significant to the marketplace, would not itself threaten Omgeo's viability. Finally, as mentioned above, Omgeo is unable to adopt enforceable rules

²⁶ Beginning in April 2009, Omgeo has required all of its customers to sign its new Master Services Agreement as a condition to obtaining any new services from Omgeo, which among other things, (1) provides standardized terms and conditions across its global customer base, (2) requires Omgeo customers to use Omgeo services in accordance with all applicable laws, rules and regulations (including specifically the Foreign Corrupt Practices Act and laws, rules and regulations administered by the Department of the Treasury's Office of Foreign Assets Control), and (3) clarifies Omgeo's potential liability.

for its customers to follow because it is not a self-regulatory organization. Application of Proposed Rule 17Ad-22(d)(2) to Omgeo is therefore unnecessary and impracticable.

4. Proposed Rule 17Ad-22(d)(3)

Proposed Rule 17Ad-22(d)(3) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner whereby risk of loss or of delay in access to them is minimized.

Because Omgeo holds no assets on behalf of participants, application of Proposed Rule 17Ad-22(d)(3) to Omgeo is unnecessary.

5. Proposed Rule 17Ad-22(d)(4)

Proposed Rule 17Ad-22(d)(4) would require a clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to identify sources of operational risk and minimize these risks through the development of appropriate systems, controls, and procedures. The Commission stated that a clearing agency that develops systems, controls and procedures which, taken as a whole, are designed to limit the identified sources of operational risk to the extent reasonably practicable would be able to satisfy this requirement. The Proposal also discussed the importance of adequate business continuity and recovery plans for clearing agencies.

Application of Proposed Rule 17Ad-22(d)(4) to Omgeo is unnecessary, because, in light of its sole clearing agency function, it is already sufficiently regulated by the Commission, pursuant to its Exemptive Order, to address its operational risks. Omgeo's regulated services are governed by the Commission's ARPs, and its systems are regularly audited by Commission staff. These reviews regularly address operational risk in total and focus broadly on Omgeo's risk assessment and mitigation practices. Working with the Commission staff under the auspices of ARP review activities, Omgeo has developed and maintained robust operations and back-up systems with a wide range of controls minimizing operational risk.²⁷ Pursuant to its Exemptive Order, Omgeo is required to furnish the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment areas set forth in the ARPs. Moreover, Omgeo is required to report all significant systems outages to the Commission.²⁸ Omgeo also must permit the Commission's on-site inspections of all its facilities (including automated systems and systems environments), records and personnel relating to its matching and electronic trade confirmation services. In light of Omgeo's sole clearing agency function, and Omgeo's performance over the past ten years, the

²⁷ Omgeo's back-up facilities are routinely tested so that its staff is trained on its alternative facilities and its facilities are up to date and minimize downtime.

²⁸ As stated in note 15, *supra*, if it appears that the outage may last for thirty minutes or longer, Omgeo reports the outage immediately. If it appears the outage will be shorter than thirty minutes, Omgeo must report it within a reasonable time after it has been resolved.

requirements of its Exemptive Order have shown themselves to be fully sufficient to address the interest of Proposed Rule 17Ad-22(d)(4), causing application of the Proposed rule to Omgeo to be unnecessary.

6. Proposed Rule 17Ad-22(d)(5)

Proposed Rule 17Ad-22(d)(5) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks.

Because Omgeo does not effect money settlement with its participants, application of Proposed Rule 17Ad-22(d)(5) to Omgeo is unnecessary.

7. Proposed Rule 17Ad-22(d)(6)

Proposed Rule 17Ad-22(d)(6) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide that their operations are cost-effective in meeting the requirements of participants while maintaining the safety and security of operations.

Because of Omgeo's sole clearing agency function, and Omgeo's private, for-profit status, the Commission determined in Omgeo's Exemptive Order to limit appropriately the regulation of Omgeo's prices to its customers. Pursuant to Omgeo's Exemptive Order, Omgeo may not charge its customers more for use of its central matching service when one or more counterparties are customers of other central matching services than Omgeo charges its customers when all counterparties are customers of Omgeo. Moreover, because DTCC, which is industry-owned, is the majority owner of Omgeo's Class A Interests, which controls the U.S. regulated aspects of Omgeo's business, DTCC can influence the prices Omgeo charges for its U.S. regulated services. This system has worked well, and therefore application of Proposed Rule 17Ad-22(d)(6) to Omgeo is unnecessary.

8. Proposed Rule 17Ad-22(d)(7)

Proposed Rule 17Ad-22(d)(7) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear trades, and to ensure that these risks are managed prudently on an ongoing basis.

Omgeo takes very seriously the need to address and minimize the sources of risks relating to its domestic and cross-border linkages. Unlike registered clearing agencies, however, which transmit funds and securities through cross-border or domestic linkages, Omgeo's services are limited to the processing of post-trade information. Omgeo merely provides data processing that until recently (*i.e.*, prior to Omgeo) was typically done manually in an inefficient, splintered manner. The linkages Omgeo provides are therefore logical linkages, providing for the standardization of information and information formats among global transaction participants, permitting information to be shared and processed in a

uniform and efficient manner worldwide. In the event of the failure of one of Omgeo's linkages, this data processing would therefore be done on a delayed basis by Omgeo once the linkage was restored, or manually by the participants to the transactions, albeit, in a less efficient manner, and without Omgeo's centralized audit trail. The risks posed by a problem in one of Omgeo's linkages are therefore of a different type and far less significant, than in the case of registered clearing agencies. Omgeo's regulation by Exemptive Order therefore strikes the correct balance on the regulation of its linkages to clear transactions.

9. Proposed Rule 17Ad-22(d)(8)

Proposed Rule 17Ad-22(d)(8) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements of Section 17A of the Exchange Act.

In light of the sole clearing agency function Omgeo provides, the Commission determined that it may operate as a for-profit, commercial venture. That is because Omgeo's governance is already sufficiently regulated by Omgeo's Exemptive Order. As stated above, Omgeo is a joint venture between Thomson Reuters and DTCC. Pursuant to Omgeo's Form CA-1, Omgeo's Board of Managers consists of eleven voting managers and one non-voting manager.²⁹ Seven of the voting managers are industry representatives, four of which are nominated by DTCC, and three by Thomson Reuters. Of the four remaining managers, two are appointed by each of DTCC and Thomson Reuters. Also, as explained in Omgeo's Exemptive Order, DTCC owns over 50% of Omgeo's Class A Interests, which Interests govern the U.S. regulated aspect of Omgeo's business. DTCC, as an industry-owned utility, therefore has a significant influence over the management and operation of Omgeo's U.S. regulated businesses. Omgeo's governance is therefore appropriately transparent to fulfill the public interest in light of Omgeo's sole clearing agency function. Application of Proposed Rule 17Ad-22(d)(8) to Omgeo is therefore unnecessary.

10. Proposed Rule 17Ad-22(d)(9)

Proposed Rule 17Ad-22(d)(9) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using the clearing agency's services.

In light of Omgeo's sole clearing agency function, which does not include the handling of funds or securities or the guarantee of transactions, application of Proposed Rule 17Ad-22(d)(9) to Omgeo is unnecessary.

²⁹ See letter to Jerry W. Carpenter, Esq., Assistant Director, Commission from Carl H. Urist, General Counsel, Omgeo (January 24, 2002). None of Omgeo's Industry Board Representatives are officers or employees of DTCC, Thomson Reuters or any of their respective affiliates. *Id.*

11. Proposed Rule 17Ad-22(d)(11)

Proposed Rule 17Ad-22(d)(11) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of their default procedures publicly available.

In light of Omgeo's sole clearing agency function, application of Proposed Rule 17Ad-22(d)(11) to Omgeo is unnecessary.

12. Proposed Rule 17Ad-22(d)(12)

Proposed Rule 17Ad-22(d)(12) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and that intraday or real-time finality is provided where necessary to reduce risks.

Because Omgeo does not settle transactions, application of Proposed Rule 17Ad-22(d)(12) to Omgeo is unnecessary.

13. Proposed Rule 17Ad-22(d)(13)

Proposed Rule 17Ad-22(d)(13) would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds delivery to achieve delivery versus payment.

Because Omgeo does not settle transactions, application of Proposed Rule 17Ad-22(d)(13) to Omgeo is unnecessary.

14. Proposed Rule 17Ad-22(d)(15)

Proposed Rule 17Ad-22(d)(15) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to disclose to their participants the clearing agency's obligations with respect to physical deliveries.

Because Omgeo does not settle transactions, application of Proposed Rule 17Ad-22(d)(15) to Omgeo is unnecessary.

C. Proposed Rule 17Ad-23

Proposed Rule 17Ad-23 would require all clearing agencies to establish, maintain, implement and enforce written policies and procedures that are reasonably designed to protect the confidentiality of transaction information received by the clearing agency. Such transaction information includes, but is not limited to, trade data, position data, and any non-public information about a clearing agency participant or any of its participant's customers. The proposed rule also provides that the required written policies and procedures shall include, but not be limited to, (a) limiting access to confidential trading information of clearing members to those employees of the clearing agency who are operating

the system responsible for its compliance with applicable laws or rules, and (b) limitations on personal trading by employees and agents of the clearing agency.

Omgeo has a robust, company-wide information security program comprised of dedicated staff, written and enforced policies and procedures, and processes and technology intended to protect the confidentiality of customer transaction information, including in particular trade data, non-public information about a matching customer and any of its customer's customers. Working with the Commission staff over the past ten years, Omgeo has put in place a robust system of controls to minimize the risk that such information will become available to unintended third-parties within or outside of Omgeo. This includes automated systems and training for Omgeo's employees. Moreover, Omgeo has received a SAS 70 Type II certification for its ALERT, TradeSuite, CTM and OASYS services from PwC,³⁰ most recently on March 31, 2011, demonstrating Omgeo's commitment to information technology controls in the areas of quality, accuracy, timeliness and security.³¹ At the request of Commission staff, Omgeo consistently provides the SAS 70 Type II certifications to ARP examiners. The current system of regulation has therefore worked well, and application of Proposed Rule 17Ad-23 to Omgeo is unnecessary.

D. Proposed Rule 17Ad-25

Proposed Rule 17Ad-25 would require clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify existing or potential conflicts of interest. For example, there may be conflicts of interest between the activities of a clearing agency and the interests of its participants or board members, which could affect decision making by officers or directors or actions by participants in seeking to influence its operations. The Commission stated that the proposed rule would also require the clearing agency's policies and procedures to be reasonably designed to minimize conflicts of interest in decision making by the clearing agency.

The Commission previously determined that in light of the sole clearing agency function provided by Omgeo, its policies and procedures are best regulated through its Exemptive Order and ongoing consultations with the Commission staff.³² Omgeo believes that application of Proposed Rule 17Ad-25 is unnecessary in light of its sole clearing agency function.

³⁰ Omgeo OASYS is a U.S. domestic trade allocation and acceptance service that automatically communicates trade and allocation details between investment managers and broker-dealers. OASYS automates post-trade processing of allocation instructions to broker-dealers automatically following trade execution.

³¹ Statement on Auditing Standards ("SAS") No. 70, Service Organizations, is an auditing standard developed by the American Institute of Certified Public Accountants ("AICPA"). A service auditor's examination performed in accordance with SAS No. 70 represents that a service organization has been through an in-depth audit of their control activities to ensure that controls operated effectively throughout the audit period. Omgeo's 2010 SAS 70 audit period was from July 1, 2010 through December 31, 2010, and included 47 control activities.

³² For example, as stated above in the discussion of Proposed Rule 17Ad-22(d)(8), Omgeo's Board of Managers consists of eleven voting managers and one non-voting manager. Seven of the voting managers are industry representatives, four of which are nominated by DTCC, and three by Thomson Reuters. Of the four

E. Proposed Rule 17Ad-26

Propose Rule 17Ad-26 would require clearing agencies to establish governance standards for their directors serving on the board or board committees.

Omgeo believes application of Proposed Rule 17Ad-26 to it is unnecessary. That is because Omgeo's governance is already sufficiently regulated by Omgeo's Exemptive Order. As stated above, Omgeo is a joint venture between Thomson Reuters and DTCC. Under Omgeo's Exemptive Order, Omgeo's Board of Managers consists of eleven voting managers and one non-voting manager. Seven of the voting managers are industry representatives four of which are nominated by DTCC, and three by Thomson Reuters. Of the four remaining managers, two are appointed by each of DTCC and Thomson Reuters. In light of Omgeo's sole clearing agency function, and DTCC's status as an industry-owned utility, the Commission determined that this structure provides a reasonable representation of industry on Omgeo's board. Also, as explained in Omgeo's Exemptive Order, DTCC owns over 50% of Omgeo's Class A Interests, which Interests govern the U.S. regulated aspect of Omgeo's business. DTCC, as an industry-owned utility, therefore has a significant influence over the management and operation of Omgeo's U.S. regulated businesses. Omgeo believes its current structure, as determined by its Exemptive Order therefore provides an appropriate amount of regulation of Omgeo's governance in light of its sole clearing agency function.³³

F. Commission Discussion of Collateral Management Service Providers to Swap Participants

Proposed Rule 17Ad-24 would establish an exemption from clearing agency registration for the functions of registered security-based swap dealers and registered security-based swap execution facilities, which are comparable to functions carved out from the definition of clearing agencies for dealers and exchanges in the traditional securities markets.³⁴

remaining managers, two are appointed by each of DTCC and Thomson Reuters. Omgeo's Board structure therefore includes provisions to require industry input and avoid conflicts of interest by DTCC and Thomson officers and directors on Omgeo's Board. As stated in note 29, *supra*, none of Omgeo's Industry Board Representatives are officers or employees of DTCC, Thomson Reuters or any of their respective affiliates. Omgeo also notes that the conditions in Omgeo's Exemptive Order were imposed in consultation with the U.S. Department of Justice ("DOJ"), which reviewed the Exemptive Order before it was issued.

³³ As stated in note 32, *supra*, the conditions in Omgeo's Exemptive Order were imposed in consultation with the U.S. DOJ, which reviewed the Exemptive Order before it was issued.

³⁴ Section 3(a)(23)(B) of the Exchange Act generally excludes from the definition of "clearing agency:" (a) any national securities exchange solely by reason of its providing the facilities for comparison of data respecting the terms of settlement of securities transactions effected on such exchange, and (b) any broker-dealer if such broker-dealer would be deemed a clearing agency solely by reason of functions performed by such institution as part of customary brokerage or solely by reason of acting on behalf of a clearing agency or participant therein in connection with the furnishing by the clearing agency of services to its participants in the use of services of the clearing agency or its participants.

In its discussion of Proposed Rule 17Ad-24, the Commission stated that certain entities providing collateral management services may be acting as clearing agencies under the Exchange Act. More specifically, the Commission stated that entities that calculate net payment obligations among counterparties for security-based swaps and provide instructions for payments, including with respect to quarterly interest, credit events, and upfront fees, are likely acting as an intermediary in making payments or deliveries or both in connection with transactions in securities. As a result of acting as such an intermediary in making payments or deliveries or both in connection with securities transactions, the Commission stated that it preliminarily believes that these entities would fall within the definition of a clearing agency and would generally need to register.³⁵

Omgeo offers a collateral management solution to its customers, including swap participants, through its ProtoColl software. ProtoColl supports the collateral and margin management activities of Omgeo's customers allowing them to define and monitor the terms of collateral agreements, such as credit support annexes ("CSAs") across a broad spectrum of collateralized products. Each customer's usage of ProtoColl is unique, as ProtoColl software merely enables customers to process their margin and collateral data, in accordance with the customer's business needs. To do this, ProtoColl customers each individually determine the collateral agreement definitions via a flexible rules-based engine as well as the input data according to which the ProtoColl software will operate. Customers are required to certify their acceptance of the ProtoColl software as the final part of delivery.³⁶

As with Omgeo's other products, Omgeo's ProtoColl software is limited to data processing. Unlike Omgeo's central trade matching, however, Omgeo acts solely as a software vendor in providing ProtoColl to customers. As such, Omgeo does not believe it acts as an intermediary in making payments or deliveries with respect to the security-based swap transactions ProtoColl services. Moreover, as an exempted clearing agency, Omgeo is already subject to extensive regulation, which the Commission determined in Omgeo's Exemptive Order is appropriate to the nature of the clearing agency functions it provides. The policy considerations that led the Commission to Propose Rule 17Ad-24, which would exempt security-based swap participants from clearing agency registration should similarly lead the Commission not to require Omgeo to register as a clearing agency due solely to its role as a collateral management software vendor.

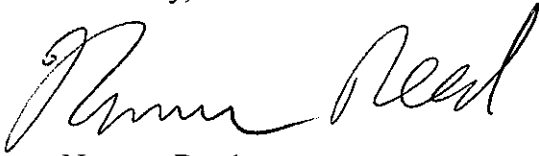
³⁵ Section 3(a)(23)(A) of the Exchange Act defines a "clearing agency" to include any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities.

³⁶ The customers provide all of the data inputs for use with ProtoColl.

III. Conclusion

Omgeo appreciates the opportunity to comment on the Commission's Proposal and provide the information set forth above. Should you wish to discuss these comments further, please contact me at 212-855-3244, nreed@dtcc.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman Reed". The signature is fluid and cursive, with the first name "Norman" written in a larger, more prominent script than the last name "Reed".

Norman Reed
General Counsel