PICKARD DJINIS AND PISARRI LLP
ATTORNEYS AT LAW
1990 M STREET, N.W., SUITE 660
WASHINGTON, D.C. 20036
WWW.PICKDJIN.COM

TELEPHONE
(202) 223-4418

FACSIMILE
(202) 331-3813

January 2, 2019

Submitted Electronically
Mr. Eduardo A. Aleman, Assistant Secretary
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: Commission File No. SR-DTC-2018-010

Dear Mr. Aleman:

This letter is submitted on behalf of SS&C Technologies, Inc. ("SS&C") in response to the Commission's request for comment regarding a proposal by the Depository Trust Company ("DTC") seeking to amend its Settlement Guide Procedures to permit the DTC to charge a fee for providing status information ("Status Information") for institutional transactions in Eligible Securities ("Institutional Transactions") to a central matching service ("CMS" or "Matching Utility").[1] For the reasons explained herein, SS&C urges the Commission not to approve DTC's request unless and until DTC demonstrates that the proposed change will not hinder the development of linked and co-ordinated facilities for clearance and settlement of transactions, and that it will not otherwise impose an impermissible burden on competition.

SS&C is a global provider of financial services-related solutions to investment management, banking and other financial sector clients. SS&C has offered local and centralized matching facilities, electronic trade confirmation ("ETC") services and standing settlement instructions outside the United States for more than 20 years. In 2015, the Commission issued an order permitting it to offer its matching and ETC services in the U.S. without registering as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act").[2] The SS&C Order, like an earlier order issued to DTC's Matching

[1] Exchange Act Release No. 84751 (December 7, 2018), 83 Fed. Reg. 63948 (December 12, 2018) (hereafter, the "Proposal").

[2] *Bloomberg STP LLP; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption from Registration as a Clearing Agency,* Exchange Act Release No. 76514 (November 24, 2015), 80 Fed. Reg. 75388 (December 1, 2105). This order is referred to herein as the "SS&C Order."

Utility affiliate (formerly known as DTCC Omgeo, recently renamed ITP),[3] (collectively, the "Matching Orders") was conditioned upon the development of linkages and interfaces to permit interoperability among all CMS.

Unfortunately, despite efforts to negotiate these linkages and interfaces with ITP, SS&C has been unable to bring about the interoperability the Matching Orders envisioned. Among the sticking points is a disagreement regarding the scope of the trade data that should be covered by interoperability. SS&C believes that the covered trade data includes not just notices of execution, settlement instructions, confirmations and affirmations, but also the pre-settlement details included in the acknowledgement DTC issues when it receives an affirmed confirmation. ITP, on the other hand, contends that it has the right to charge SS&C for this data, which ITP receives from DTC for free.

As a result of the stalemate between SS&C and ITP,[4] the U.S. market for matching services continues to be monopolized by DTC's affiliate, as it has been since the advent of central trade matching almost 20 years ago. Because of this impasse, the Staff of the SEC's Division of Trading and Markets recently granted no-action relief allowing SS&C to begin operating its CMS in the United States without first establishing linkages to ITP.[5] This relief was predicated on an expectation that SS&C and ITP would "continue to negotiate in good faith to achieve interoperability."[6]

In the Proposal, DTC, *at its affiliate ITP's request*, seeks to amend its Settlement Guide so that it may charge a fee to provide Status Information on Eligible Transactions to a Matching Utility that submits a transaction to DTC. It is impossible to tell from this filing if or how this Status Information differs from the pre-settlement details that the DTC already supplies to ITP through TradeSuite.[7] Without further clarity, DTC's fee proposal appears to

---

[3] *Global Joint Venture Matching Services - US, LLC; Order Granting Exemption from Registration as a Clearing Agency,* Exchange Act Release No. 44188 (April 17, 2001), 66 Fed. Reg. 20494 (April 23, 2001). Matching (US) LLC (The DTC Matching Utility affiliate is referred to herein as "Omgeo" or "ITP").

[4] Although Bloomberg STP LLP also received a clearing agency exemption to provide central trade matching services, this potential competitor appears to have abandoned its plans to enter the CMS market. *See* note 2, *supra.*

[5] Letter from Christian Sabella, Deputy Director Div. of Trading and Markets to Mari-Anne Pisarri, Pickard Djinis and Pisarri LLP (October 2, 2018). This relief put SS&C on equal footing with ITP, which continues to operate its CMS without satisfying the interoperability conditions of its own Matching Order. *See* note 3, *supra.*

[6] *Id.*

[7] TradeSuite is an Omgeo/ITP service that automates post-trade messaging and settlement for domestic and cross-border trades of equity and fixed income securities. DTC's Inventory Management System (*i.e.,* the depository) supplies TradeSuite with updates regarding the pre-settlement status of affirmed trades.

be a thinly veiled tax on interoperability, and a new way for DTC to perpetuate its monopoly over central trade matching. SS&C urges the Commission to disapprove DTC's request unless and until DTC demonstrates that (i) the Proposal will not impede the development of linked and co-ordinated clearance and settlement facilities, and (ii) the competitive burdens the Proposal would impose are necessary, appropriate and outweighed by the Proposal's benefits to the national system of clearance and settlement.

Central Trade Matching in a Linked and Co-Ordinated Environment

In order to satisfy the interoperability conditions of the Matching Orders, SS&C and ITP must develop sufficient linkages between their respective CMS to allow end-user clients of one matching service to communicate with all end-user clients of the other matching service, regardless of which matching service completes the trade match prior to settlement.[8] After extensive negotiation, SS&C and ITP have agreed that the Matching Utility that has the investment manager (buy side) on its platform will perform the match, and the Matching Utility that has the broker-dealer (sell side) on its platform will transmit the affirmed confirm (*i.e.,* delivery order) to DTC for clearance and settlement. The parties have further agreed not to charge each other for sending messages back and forth across the interface.

As noted above, the parties have been unable to agree on whether interoperability includes the acknowledgement message DTC sends back to ITP (or, presumably another Matching Utility that represents the broker).[9] While SS&C has offered to transmit this message through the interface, without charge, when it represents the broker, ITP refuses to reciprocate. ITP seeks to justify its refusal by explaining that it incorporates the confirm acknowledgement data it receives from DTC into a value-added Cumulative Eligible Report that it sells through its TradeSuite ID service. Instead of supplying SS&C with the raw post-confirmation/pre-settlement DTC messages, ITP insists that SS&C buy ITP's value-added service:

> [W]e are happy to discuss with SS&C what we proposed in our original comment letter to the SEC dated April 6, 2015, which was a single access method, leveraging Omgeo TradeSuite ID as a point of access to DTC, NSCC and the community of Custodians/settlement agents on Omgeo's network. Leveraging the existing market infrastructure would avail SS&C of all of the features and functionality which

[8] SS&C Order, § III.B.ii.(2). The same provision is found in ITP's Matching Order, § IV.C.2.b.(2).

[9] Custodians and other settlement agents use the information in the acknowledgement message to determine what, if anything, they need to do to ensure that their trades settle on time. The Custodians who have been involved in the interoperability negotiations between SS&C and ITP have endorsed SS&C's proposal to include pre-settlement status messages within the scope of interoperability, noting their need of this information to ensure the prompt and accurate settlement of their trades.

> TradeSuite ID has developed which would include access to TradeSuite ID reports such as the Cumulative Eligible Report and other settlement staging activities Omgeo performs for its clients. . . . [10]

As SS&C explained in the Request for Commission Action it submitted, seeking the Commission's assistance in resolving the interoperability stalemate,[11] SS&C has no intention of buying ITP's services. Instead, SS&C intends to develop its own services to *compete with* those offered by ITP, as the Commission contemplated when it rejected Omgeo's proposal that it serve as the single point of access to DTC. In addition to identifying the benefits of a multiple-access model in terms of safety, soundness and innovation, the Commission also noted this very risk inherent in the single-access model:

> [I]f the Commission were to require each matching service provider to access DTC through Omgeo, such dependency could allow Omgeo to impose surcharges or other costs on its competitors that are not imposed on Omgeo itself, which the Commission believes could lead to unnecessary costs. Even if no fees were imposed, the structure could also limit innovation in the provision of matching services by other matching service providers.[12]

The Proposal's Effect on Interoperability

With the SEC having rejected its request for a single access model and SS&C refusing to pay for the settlement status messages ITP receives from the depository for free, ITP appears to have latched onto a new way to safeguard its monopoly over central trade matching in the United States – asking DTC to charge it for Status Information, and to confirm that DTC will not send Status Information to a competing Matching Utility unless that competing Matching Utility has the sell side on its platform and submits the transaction for settlement. Given the sealed ecosphere in which DTC operates,[13] the proposal for the depository to charge ITP a fee is, in effect, a proposal to switch revenue from one DTC pocket to another, while giving ITP an excuse not to pass acknowledgement messages

[10] Email from Matthew Nelson, Managing Director, Omgeo Global Product and Strategy, to Robert Moitoso, Senior Vice President, Financial Markets Group, SS&C, *et al.* on October 17, 2016 (1:10 p.m.).

[11] Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri to the Commission, dated October 25, 2017 ("Section 9 Request"); *See also* letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri to the Commission, dated March 7, 2018. Note that the raw settlement status messages to which SS&C seeks access are not Omgeo's intellectual property, but rather are a byproduct of the matching process.

[12] SS&C Order at 23; 80 Fed. Reg. at 75393.

[13] Although Omgeo began as a joint venture between DTC and Thomson Financial, it has been wholly owned by DTC since 2013.

through the CMS interface for free. In this way, the Proposal appears to be inconsistent with the principles of interoperability mandated in the Matching Orders.

The Proposal also appears to be anti-competitive, in both interoperating and non-interoperating environments.[14]

The Proposal's Effect on Competition

SS&C agrees with DTC's assessment that "the proposed rule change could impact competition."[15] However, SS&C does not agree with DTC's contention that the Proposal does not impose a burden on competition for Matching Utilities because the amount of the fee it proposes to charge will not be specified until a later date.[16] The competitive effect of any new fee depends on whether or not the fee is a true cost on each CMS in the market place. Where ITP is concerned, the proposed fee seems to be merely a paper transfer of revenue between DTC and its captive Matching Utility, without any revenue or cost impact at the parent level. In order to gain a competitive advantage, ITP may choose not to pass the illusory fee through to its participants. On the other hand, the proposed fee would be a true cost to SS&C, which would be faced with a damning choice of either absorbing the fee and raising its operating costs, or passing the fee through to its customers, forcing its prices to become less competitive and punishing end users for not staying with the DTC Matching Utility.

DTC's proposal to restrict Matching Utilities' ability to redistribute Status Information also raises competitive concerns, because DTC is not similarly restricted from monetizing this information through the depository or an affiliate other than ITP.[17]

Conclusion

For all of the foregoing reasons, SS&C submits that the SEC should not approve the Proposal unless and until DTC demonstrates that it will not hinder the development of linked and co-ordinated facilities for clearance and settlement of transactions, and that it will not otherwise impose an impermissible burden on competition. Given the interplay between the

---

[14] An interoperating environment is one in which one CMS represents the buy side and a different CMS represents the sell side to a trade. A non-interoperating environment is one in which a single CMS has all the interested parties to a trade on its platform.

[15] Proposal, *supra* note 1, 83 Fed. Reg. at 63951.

[16] *Id*.

[17] *Id.,* 83 Fed. Reg. at 63950.

issues raised by the Proposal and the interoperability issues raised in SS&C's Section 9 Request,[18] SS&C urges the Commission to resolve all of these issues at the same time.

Very truly yours,

Mari-Anne Pisarri

cc: The Honorable Jay Clayton, Chairman
The Honorable Robert J. Jackson, Jr.
The Honorable Hester M. Peirce
The Honorable Elad L. Roisman
Brett Redfearn, Director, Div. of Trading and Markets
Jeffrey Mooney, Associate Director, Div. of Trading and Markets

[18] *See* note 11, *supra.* This Request has now been pending for almost 15 months.