



DIVISION OF
MARKET REGULATION

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

December 14, 2006

Carl H. Urist, Esq.
General Counsel
Omgeo LLC
55 Water Street
New York, NY 10041

Re: No-Action Request of Omgeo LLC

Dear Mr. Urist:

In a letter dated December 14, 2006, Omgeo LLC ("Omgeo") requests assurances that the staff of the Commission would not recommend enforcement action under certain rules of the Commission with respect to Omgeo's new trade management service, Omgeo Central Trade Manager ("Omgeo CTM"). In particular, Omgeo seeks no-action relief to permit certain trade information provided by Omgeo CTM to investment managers,¹ and the manner in which that information is provided, to satisfy the confirmation requirements of Rule 10b-10 under the Securities Exchange Act of 1934 ("Exchange Act"). Omgeo also seeks assurances that the staff would not recommend enforcement action to the Commission under Rule 204-2(a)(7) and (b)(3) of the Advisers Act if an investment manager who is registered with the Commission as an investment adviser treats printed or downloaded Trade Components Information ("TCI") satisfying certain requirements as (i) an original communication for purposes of Rule 204-2(a)(7) and (ii) a confirmation for purposes of Rule 204-2(b)(3) under the Investment Advisers Act of 1940 ("Advisers Act"), without receiving a confirmation meeting the requirements of Rule 10b-10 directly from the broker-dealer.

In its letter, Omgeo makes the following representations:

Omgeo CTM compiles in a central database information about trades entered by both broker-dealers and investment managers.² The trade information entered by broker-dealers will include all of the information required by Exchange Act Rule 10b-10.

Omgeo anticipates including specific text fields in its database by the end of the second quarter of 2007 that will permit broker-dealers to make each of the disclosures required by Rule 10b-10. Disclosures required by Rule 10b-10 that are currently not

¹ In your letter, you define "investment manager" as the party placing the order with the broker-dealer that begins the Omgeo CTM trade-matching process.

² Omgeo refers to this information as "Trade Components Information."

made in specific text fields of the Omgeo CTM database will be made, when applicable, in additional non-designated text fields.

Investment managers wishing to view Rule 10b-10 information in Omgeo CTM will be able to do so through either a browser-based interface with Omgeo CTM or by sending Omgeo CTM a message referred to as an "InfoRequest message."

Investment managers that send an InfoRequest message to Omgeo CTM will receive in reply a message from Omgeo CTM that contains all of the required Exchange Act Rule 10b-10 information. These reply messages from Omgeo CTM are referred to as "InfoResponse messages" or "InfoSettlementResponse messages." Investment managers may give Omgeo CTM standing instructions to provide them with such response messages at a pre-determined interval (e.g., every five minutes), which would contain all of the information required by Rule 10b-10, for each trade that reaches matched status.

In response to a browser inquiry, the Rule 10b-10 information is displayed in three separate screens on the inquiring party's computer. Six specific fields that would contain required Rule 10b-10 elements are not currently available through a browser inquiry.³ These fields (and the corresponding Rule 10b-10 information) will be included in the information provided in response to an InfoRequest message. Omgeo anticipates adding the six fields to the information that is displayed in the computer screens in response to a browser inquiry by the end of the first quarter of 2007.

Omgeo will enhance the browser-based interface to enable the inquiring party to print or download all of the Rule 10b-10 information (in addition to other trade information) displayed in the three computer screens through a single click instruction.⁴ Omgeo anticipates completing this enhancement by the end of the first quarter of 2007.

Specific fields for certain statements that Rule 10b-10 requires the broker-dealer to make are not currently available in Omgeo CTM.⁵ Omgeo anticipates adding those

³ These fields are for: broker-dealer capacity; characterization of the yield at which a transaction in a debt security was effected (e.g., current yield, yield to maturity or yield to call), information regarding a transaction in a debt security effected at yield to call (the type of call, the call date and the call price), and a statement that a debt security, other than a government security, is unrated.

⁴ Such a request currently requires one click instruction to print out each computer screen.

⁵ Those statements regard: (1) whether the broker-dealer is a market maker in the security (Rule 10b-10(a)(2)); (2) the name of the person from whom the security was purchased or to whom it was sold for the customer or the fact that such information will be furnished upon written request of the customer (Rule 10b-10 (a)(2)(i)(A)); (3) payment for order flow for transactions in certain types of securities (Rule 10b-10 (a)(2)(i)(C)); (4) the source and amount of any other remuneration received or to be received by the broker-dealer (Rule 10b-10 (a)(2)(i)(D)); (5) the difference between the price to the customer and the broker-dealer's contemporaneous purchase or sale price (Rule 10b-10 (a)(2)(ii)(A)); (6) the reported trade price and the price to the customer (Rule 10b-10 (a)(2)(ii)(B)); (7) whether the customer has paid an odd-lot differential or equivalent

fields by the end of the second quarter of 2007. Until then, Omgeo anticipates that the broker-dealer will make those statements, when applicable, in additional non-dedicated text fields. All information contained in such additional text fields is available to an investment manager through a browser inquiry and through a request for an InfoResponse message or an InfoSettlementResponse message.

A broker-dealer – like an investment manager – can electronically request and receive from Omgeo CTM all of the information compiled in the Omgeo CTM database, including the information needed to satisfy Rule 10b-10.

All Omgeo CTM clients will have continual access to the Omgeo CTM system and will be able to view, on the next business day after trade date (T+1), information on trades effected in their Omgeo CTM accounts, including the transaction date, the type of transaction (e.g., buy or sell), the security, the execution prices and the quantity.

Omgeo CTM is developing a new system feature that will allow third parties designated by a broker-dealer or investment manager to access all required Rule 10b-10 information for a trade processed by Omgeo CTM (“third party interaction feature”), including the information stored electronically by Omgeo CTM. The third party could be the beneficial owner of the account whose securities are the subject of the trade, an affiliate of the beneficial owner, or a representative or adviser of the beneficial owner. The third party will be able to review the trade information in the Omgeo CTM database but will not be able to change that information or enter any other information.

A broker-dealer relying on the no-action relief requested in your letter would, on request, separately provide the Rule 10b-10 information for trades to the account for which the trades were executed. The Rule 10b-10 information would be provided in a manner agreed upon by the broker-dealer and the account and may be provided only when requested or on a regular basis. Furthermore, until such time as the third party interaction feature described above is available in Omgeo CTM, the broker-dealer would use Omgeo CTM to satisfy the requirements of Rule 10b-10 only for trades in which payment for the securities purchased or delivery of the securities sold is made by the account or its custodian against delivery of the securities or payment for the securities by the broker-dealer. (Such trades are commonly referred to as ‘delivery versus payment/receive versus payment trades.’) After the third party interaction feature is available in Omgeo CTM, the second condition would not apply, regardless of whether the account in a trade made use of that feature.

fee (Rule 10b-10 (a)(3)); (8) whether a debt security is subject to redemption before maturity (Rule 10b-10 (a)(4)); (9) a security’s yield to maturity and the represented yield (Rule 10b-10 (a)(6)(iii)); (10) asset-backed securities (Rule 10b-10 (a)(7)); and (11) a broker-dealer’s Securities Investor Protection Corporation membership (Rule 10b-10 (a)(9)).

Exchange Act Rule 17a-3(a)(8) requires a broker-dealer to make and keep current copies of confirmations of all purchases and sales of securities. A broker-dealer would need to retain the required Exchange Rule 10b-10 information compiled in the Omgeo CTM database as a required record under such rule. Omgeo believes that a broker-dealer would satisfy the requirements of Exchange Act Rule 17a-3(a)(8) by requesting and retaining the required Rule 10b-10 information from Omgeo CTM. A broker-dealer could request the required information through either a browser inquiry or by sending an "InfoRequest message" to Omgeo CTM. A broker-dealer would retain this information in compliance with Exchange Act Rule 17a-4.

Response:

Based on the facts and representations set forth in your letter, the staff of the Division of Market Regulation will not recommend enforcement action to the Commission under Exchange Act Rule 10b-10 against a broker-dealer who relies on Omgeo CTM to provide investment managers with transaction information through a browser inquiry function in a form that can be viewed in three or fewer computer screens or through an electronic message from Omgeo CTM, in the manner described in your letter, that contains all of the required Rule 10b-10 information, and that can be downloaded and printed.⁶ Omgeo anticipates that Omgeo CTM will have this capability by the end of the first quarter of 2007.

This no-action relief is based on your representations that broker-dealers will comply with the following conditions. First, the broker-dealer will, on request, provide all of the information required by Rule 10b-10 for trades to the beneficial owner of the account whose securities are the subject of a trade in a manner agreed upon by the broker-dealer and the beneficial owner. This Rule 10b-10 information may be provided by the broker-dealer to the beneficial owner of the account only when requested or on a regular basis.

Second, until such time as the third party interaction feature is available in Omgeo CTM, the broker-dealer will use Omgeo CTM to satisfy the requirements of Rule 10b-10 only for trades in which payment for the securities purchased or delivery of the securities sold is made by the beneficial owner or the custodian against delivery of the securities or payment for the securities by the broker-dealer (i.e., delivery versus payment/receive versus payment transactions). The staff of the Division of Market Regulation understands that after the third party interaction feature is available in Omgeo CTM this condition would not apply regardless of whether the beneficial owner in a trade used that feature.

⁶ However, we note that because a broker-dealer cannot delegate its responsibilities under the federal securities laws to a third party, broker-dealers using Omgeo CTM to satisfy the requirements of Rule 10b-10 will ultimately be responsible for compliance with Rule 10b-10. See, e.g., Letter re: The Depository Trust Company (1983).

The Division of Investment Management has asked us to inform you that it would not recommend enforcement action to the Commission under Section 204 and Rule 204-2(a)(7) under the Advisers Act against any registered investment adviser that participates in the Omgeo CTM system if the investment adviser downloads or prints a paper copy of the TCI, and treats it as an original communication for purposes of Rule 204-2(a)(7),⁷ without receiving a confirmation meeting the requirements of Rule 10b-10 directly from the broker-dealer. The Division of Investment Management also would not recommend enforcement action to the Commission under Section 204 of the Advisers Act and Rule 204-2(b)(3) thereunder if the investment adviser treats the downloaded or printed TCI as a confirmation for purposes of that provision.⁸ These positions are based on the facts and representations set forth in your letter, particularly your representation that the TCI: (a) will contain all of the information required under Rule 10b-10; and (b) if accessed through a browser inquiry, will be in a form that can be viewed in three or fewer computer screens.

These positions concern enforcement action only. It is based solely upon the representations you have made and is limited strictly to the facts and conditions described in your letter. Any different facts or circumstances, including any change to the operation of Omgeo CTM, may require a different response. Finally, we express no view with respect to other questions the proposed activities of Omgeo CTM may raise, including the applicability of any other federal or state laws or the applicability of self-regulatory organization rules concerning customer account confirmations.

Sincerely,



Catherine McGuire
Chief Counsel

⁷ Rule 204-2(a)(7) provides in pertinent part that a registered investment adviser shall make and keep true, accurate and current originals of all written communications it receives, and copies of all written communications it sends, relating to any receipt, disbursement, or delivery of funds or securities, or the placing or execution of any order to purchase or sell any security.

⁸ Rule 204-2(b)(3) requires a registered investment adviser with custody or possession of client funds or securities to make and keep copies of confirmations of all transactions effected by or for the account of any such client. Pursuant to the provision and Rule 204-2(a), the records must be true, accurate and current.



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December 14, 2006

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Dear Ms. McGuire and Mr. Scheidt:

Omgeo LLC ("Omgeo") is submitting this letter to request assurances that the staff of the Commission would not recommend enforcement action under certain rules of the Commission with respect to Omgeo's new trade management service, Omgeo Central Trade Manager ("Omgeo CTM"). In particular, Omgeo seeks no-action relief to permit certain trade information provided by Omgeo CTM to investment managers,¹ and the manner in which that information is provided, to satisfy the confirmation requirements of Rule 10b-10 under the Securities Exchange Act of 1934 (the "Exchange Act"). Omgeo also seeks assurances to permit such trade information to satisfy the record-keeping requirements of Rule 204-2(a)(7) and (b)(3) under the Investment Advisers Act of 1940 (the "Advisers Act").

Omgeo CTM is a trade management service that will be available throughout the world for domestic and cross-border trades in most types of securities and financial assets. Omgeo CTM

¹ The investment manager is the party who placed an order with the broker-dealer. The investment manager is often an investment adviser to the beneficial owner of the securities that are the subject of the trade but may in some cases be the beneficial owner or an affiliate of the beneficial owner. The beneficial owner, who is referred to below as the "account," is usually a pension or retirement fund, a mutual fund, a hedge fund or other institutional investor.

is designed to replace the sequential process for electronic trade confirmation ("ETC") that is widely used today with a more flexible and streamlined process to produce the same result: an agreed upon trade that is ready for settlement.²

Omgeo CTM performs central matching of trade data, continuous enrichment of settlement instructions from centralized settlement information sources and automated settlement notification to custodians and other settlement agents.³ Its clients are broker-dealers, investment managers and custodians.

Omgeo

Omgeo is a Delaware limited liability company that is a joint venture between The Depository Trust & Clearing Corporation ("DTCC") and certain subsidiaries of The Thomson Corporation ("Thomson").⁴ Omgeo combines in a single business the TradeSuite service formerly operated by DTCC's subsidiary, The Depository Trust Company ("DTC"), with the post-trade pre-settlement services formerly operated by Thomson. Omgeo CTM and other Omgeo services will help Omgeo's clients achieve straight through processing of their trades.

ETC Services

In using ETC services such as Omgeo TradeSuite and Omgeo OASYS Global, a broker-dealer and investment manager send messages to each other in a fixed sequence. Each party must wait until it receives a message from the other party before sending the next message. After the investment manager has placed an order (which is typically of a block size) with the broker-dealer and the broker-dealer has executed the order, the broker-dealer sends the investment

² It is Omgeo's intention that Omgeo CTM will meet all of the recommendations for the Institutional Transaction Processing Model (the "ITPC Model") published in May 2002 by the Institutional Transaction Processing Committee of the Securities Industry Association ("SIA"), one of the predecessor organizations of the Securities Industry and Financial Markets Association, as supplemented by the Institutional Matching User Requirements published in August 2003 by the SIA.

³ Continuous enrichment of settlement instructions is the process by which settlement instructions in the Omgeo ALERT database of standing settlement instructions are automatically added to the trade data entered into Omgeo CTM by broker-dealers and investment managers. This process, which is optional, eliminates the need to manually enter settlement instructions into the trade data. The information required by Rule 10b-10 is not contained in the Omgeo ALERT database.

⁴ The Commission approved the joint venture in 2001. Exchange Act Release No. 44189, April 17, 2001, 66 FR 20502, April 23, 2001 (File No. SR-DTC-00-10). It also granted an exemption from registration as a clearing agency to Omgeo Matching Services - US, LLC (formerly named GJV Matching Services - US, LLC), which is a wholly owned subsidiary of Omgeo. Exchange Act Release No. 44188, April 17, 2001 (File No. 600-32). Omgeo provides through Omgeo Matching Services - US, LLC any services that would require registration with the Commission as a clearing agency, an exemption from such registration, or designation as a "Qualified Vendor" as defined in New York Stock Exchange Rule 387(a)(5) and in similar rules of other stock exchanges and self-regulatory organizations.

manager a notice of execution (“NOE” or “final NOE”) summarizing the trades that were done to complete the order. After receiving the NOE, the investment manager sends the broker-dealer a message containing an allocation of the securities purchased or sold in the order to each of the accounts for which the order was placed.⁵

After receipt of the allocations, the broker-dealer sends contract details to the ETC service for each account. If the parties are using an ETC service’s central matching procedure (such as Omgeo TradeMatch) to match their trades, the ETC service determines whether the contract details from the broker-dealer match the allocations from the investment manager. If they match, the ETC service provides one or more matched electronic confirmations to the investment manager. If the broker-dealer and investment manager are not using an ETC service’s central matching procedure to match trades, the ETC service sends electronic confirmations for each account to the investment manager. The investment manager then sends the ETC service an affirmation message for each electronic confirmation, and the ETC service forwards the affirmations to the broker-dealer.

Omgeo CTM

Trade Entry and Validation

In contrast to ETC services, Omgeo CTM offers a more flexible process that allows each party to enter its information about a trade into Omgeo CTM whenever that party is ready to do so and in whatever order it wishes to enter the information.⁶ The parties can enter trade information independently of one another, and either party can initiate the trade entry process.⁷ The parties enter trade data that Omgeo CTM requires for matching as well as trade data that an investment manager has the option to select for matching.⁸

⁵ A trade which is of a block size may be for a single account but is often for two or more accounts.

⁶ In the United States, Omgeo CTM is currently available for cross-border trades and will be available later for domestic trades. Omgeo CTM will be linked in the future to the DTC settlement system, in a manner similar to the current link between Omgeo TradeSuite and the DTC settlement system, so that trades involving DTC-eligible securities that are matched in Omgeo CTM will be sent automatically to DTC for settlement.

⁷ Clients can communicate with Omgeo CTM through a message-based interface, a file transfer-based interface or a browser-based interface or through a combination of those interfaces. Investment manager clients can also communicate with Omgeo CTM through the new Omgeo Connect service, which is a web-based user interface designed to give investment managers a single point of access to multiple service providers and trade counterparties. Omgeo CTM will adhere to securities industry messaging standards such as ISO 15022, FIX and ISITC formats. In addition, Omgeo operates as a “securities market infrastructure” of the Society for Worldwide Interbank Financial Telecommunication (“S.W.I.F.T.”), which enables Omgeo CTM to send and receive S.W.I.F.T. securities messages.

⁸ The mandatory trade data for matching are listed in footnote 9 below. The trade data that the investment manager may select for matching include, for equity and debt securities, the unit price of the securities, the settlement date, commissions, the total quantity of securities allocated, the total cash

Omgeo CTM validates the trade data entered by the parties by ascertaining that all required information has been entered by the parties and by comparing the security descriptions and identities of the parties in the information entered by the parties. The broker-dealer and investment manager may enter different identifier methodologies for the security and the counterparty. Omgeo CTM has a cross-reference capability, based on standard directories of security identifiers and trading party identifiers, that can translate each party's identifier to the identifier used by the other party for the security or the counterparty.

Central Matching

Omgeo CTM matches trade data at the block level (called a "trade level" match) and at the allocation level (called a "trade detail" match). In performing the trade level match, Omgeo

payment for the block and the net cash payment for each allocation. For debt securities, the optional matching fields also include the maturity date, the dated date, the coupon rate, the number of days for which interest accrued, the total accrued interest and the yield.

After placing an order (which, as with ETC services, is typically of a block size) with a broker-dealer, the investment manager can send Omgeo CTM information about the order (called trade level information), information about the way in which the securities purchased or sold in a block are to be allocated (called trade details) or both types of information, without waiting to receive any message from the broker-dealer. The trade level information includes the quantity of securities in the block, the unit price of the securities, the total cash payment for the block, the settlement date, the security identifier, commissions, the yield, the number of days for which interest accrued, the total accrued interest, the coupon rate, the dated date and the maturity date. If an investment manager has not sent in trade level information (instead choosing to send only trade details), Omgeo CTM creates a block from the investment manager's trade details in order to match the trade at the block level. Omgeo CTM creates a block by combining the trade details to produce trade level information.

After executing a block trade, the broker-dealer can send Omgeo CTM trade level information, which serves as an NOE, and trade details. Trade details sent by either party are available to the other party in real time through an inquiry function in Omgeo CTM. Once each party has sent its trade details to Omgeo CTM, no further action by either of them is necessary, unless the match is not successfully completed.

Currently, Omgeo CTM offers broker-dealers only one trade entry process, which is referred to in the ITPC Model as Level Two matching. Under this two-step process, a broker-dealer sends Omgeo CTM an NOE without including applicable charges (e.g., commissions, fees and taxes). After the investment manager enters its allocation instructions, the broker-dealer sends a second message containing applicable charges and the broker-dealer's internal account number for each allocation.

In the future, Omgeo CTM may offer a second trade entry process, which is referred to in the ITPC Model as Level One matching. Under this one step process, a broker-dealer could send Omgeo CTM an NOE that would include all charges applicable to the block. A broker-dealer could send this NOE before the investment manager enters its allocation instructions. After receiving an investment manager's allocation instructions (which may include the way in which applicable charges are to be allocated), Omgeo CTM would add the broker-dealer's internal account number for each allocation by accessing the Omgeo ALERT database referred to in footnote 3 above. Omgeo may offer Level One matching at a later date to be determined through discussions with Omgeo CTM clients.

CTM compares certain mandatory fields that must match.⁹ Omgeo CTM performs the trade level match by comparing the trade data in the final NOE from the broker-dealer with the trade level information sent by the investment manager (or in the block created by Omgeo CTM from the investment manager's trade details).

Omgeo CTM then performs the trade detail match by comparing the allocations received from the investment manager with the broker-dealer's second message (which would contain, among other things, applicable fees).¹⁰ In performing the trade detail match, Omgeo CTM matches the account identifier field and any of several optional matching fields (e.g., commissions) determined by the investment manager for matching at the allocation level. These fields use the same tolerance rules as are used in the trade level match.¹¹

During its processing operations, Omgeo CTM compiles in a central database current information about the match status of each component of a trade. The trade components are the trade level information and the trade details. The same database contains the information about the trade components that the parties sent to Omgeo CTM, including the information required by Rule 10b-10 that the broker-dealer sent to Omgeo CTM with the broker-dealer's trade details.¹² If the trade details match, Omgeo CTM indicates this fact to the investment manager and to the broker-dealer by reporting to them a matched status for each of the trade components,

⁹ These mandatory matching fields are: (1) the quantity of securities in the block (i.e., the entire quantity of the order), (2) the trade date, (3) the executing party (i.e., the broker-dealer), (4) the transaction type (i.e., buy or sell), (5) the instructing party (i.e., the investment manager), and (6) the security identifier. Trade level matching can also be performed on additional, optional fields determined by the investment manager and can use tolerances set by the investment manager. A tolerance can be an exact match, a variation by percentage, a variation by percentage with a maximum absolute value or a range by absolute amount. The match will not be completed unless the trade data submitted by the broker-dealer are within the tolerances set by the investment manager.

¹⁰ If Omgeo CTM introduces Level One matching and the broker-dealer chooses to use it, Omgeo CTM would match the trade details by comparing the investment manager's allocations with the final NOE (which would contain applicable fees) received from the broker-dealer.

¹¹ If the broker-dealer's trade data differ from the investment manager's trade data for an optional field but are within the tolerance set by the investment manager, the matching process will proceed using the broker-dealer's trade data for that field. Matching tolerances will never override or change the trade information that is sent to Omgeo CTM by the broker-dealer and that is provided to the investment manager.

¹² Through a bridge between Omgeo CTM and Omgeo OASYS Global, an investment manager using Omgeo CTM is able to communicate with a broker-dealer using Omgeo OASYS Global. In that case, the broker-dealer receives the same messages that it receives when both parties are using Omgeo OASYS Global. All data submitted or received by the broker-dealer are the same as if it were using Omgeo CTM, although some data field labels are different. For example, data indicating local taxes are contained in a field labeled "FEES" in Omgeo OASYS Global and in a field labeled "LOCL" in Omgeo CTM. Omgeo will provide to the Commission staff, whenever requested, mapping documentation that indicates how the data fields in Omgeo CTM messages correspond to the data fields in Omgeo OASYS Global messages.

and the trade is ready for settlement. The information in that database about the trade components, including the information required by Rule 10b-10, is referred to below as "Trade Components Information."

If either party failed to enter information in a mandatory field, an unmatched status is reported to that party, and that party can then enter the required information. If the mandatory fields do not match, an unmatched status is reported to both parties. If all required matching fields match but optional fields do not match, a mismatched status is reported to both parties. Information about an unmatched status, a mismatched status or a matched status is referred to below as "Status Information."¹³

If either the trade level match or the trade detail match is not successfully completed, Omgeo CTM identifies for the broker-dealer and the investment manager which items in their information did not match. A trade that has not reached matched status is not ready for settlement. At their option, the parties can communicate through Omgeo CTM to resolve the discrepancies in their information. They can then submit amended information to Omgeo CTM so that the match is successfully completed and a matched status is reported to each of the parties or they can cancel the trade.

As noted above, once the broker-dealer or the investment manager has sent its trade details to Omgeo CTM, no further action by that party is necessary, unless the match is not successfully completed. Thus, Omgeo CTM enables the parties to conduct exception-only processing; they need to take action only when an exception occurs. In order to manage this exception-only processing, the parties will need to inquire about the match status of a trade so that they will know whether a trade is ready for settlement or an exception has occurred which must be resolved in order to avoid a failed trade.

Inquiries through a browser or an InfoRequest message

The parties can inquire about the match status of a trade through a browser-based interface to Omgeo CTM or by sending an InfoRequest message to Omgeo CTM. In response to either method of inquiry, Omgeo CTM provides the inquiring party with Status Information and Trade Components Information, including the information required by Rule 10b-10. After completion of the enhancements to the browser-based interface discussed below, a broker-dealer or an investment manager will receive the same information from Omgeo CTM regardless of the method of inquiry that the broker-dealer or investment manager uses.

¹³ The Status Information and the Trade Components Information are available to Omgeo CTM clients in real time through inquiry functions. Information intended for a particular Omgeo CTM client can be reviewed only by that client (or by an entity, such as a service bureau, authorized by the client). A custodian cannot access the Status Information or the Trade Components Information (unless the custodian, which may be acting as a service bureau, has been authorized by a client to access the information).

An Omgeo CTM client sends Omgeo a browser inquiry through a personal computer. In response to the inquiry, Omgeo CTM displays Status Information and Trade Components Information on the inquiring party's computer screen. The inquiring party will be able to print out or download the information displayed on the computer screen.¹⁴

In contrast, an InfoRequest message is sent from a host computer system and the response from Omgeo CTM is received by that host computer system. This method of communicating with Omgeo CTM is used by large Omgeo CTM clients which have mainframe computers and permits the transfer of large volumes of information. The InfoRequest message requests from Omgeo CTM either an InfoResponse message or an InfoSettlementResponse message, which are machine-readable files that can be downloaded and printed.

An InfoResponse message contains Status Information and the Trade Components Information that was entered by either party to the trade. A broker-dealer or investment manager might request an InfoResponse message when it does not recognize a trade in which it is shown as a party. An InfoSettlementResponse message contains Status Information and the Trade Components Information that was entered by both parties to the trade.

A party making a browser inquiry can use search functions in Omgeo CTM to request Status Information and Trade Components Information for each of its trades meeting certain criteria,

¹⁴ Except as discussed below, the Trade Components Information, including the information required by Rule 10b-10, is displayed in three separate screens on the inquiring party's computer in response to a browser inquiry regarding any type of security or financial asset for which Omgeo CTM can be used.

Six fields of the Trade Components Information (and the corresponding Rule 10b-10 information) are not currently included in the Trade Components Information that is displayed in the three computer screens. Thus, the information in those six fields is not currently available through Omgeo CTM's browser inquiry. As discussed in footnote 24 below, other information required by Rule 10b-10 is not currently available in specific fields through either the browser inquiry or the InfoRequest message, although this information is available, through both inquiry methods, in the additional text field of the Trade Components Information.

Those six fields are the field for the capacity in which the broker-dealer is acting (e.g., as agent for the customer or as a principal), the field for the characterization of the yield at which a transaction in a debt security was effected (e.g., current yield, yield to maturity or yield to call), three fields of information regarding a transaction in a debt security effected at yield to call (the type of call, the call date and the call price), and the field for a statement that a debt security, other than a government security, is unrated. The six fields (and the corresponding Rule 10b-10 information) are included in the information provided in response to an InfoRequest message. Omgeo will add the six fields to the Trade Components Information that is displayed in the computer screens in response to a browser inquiry. Omgeo anticipates adding the fields by the end of the first quarter of 2007.

Omgeo will enhance the capability of the browser-based interface to enable the inquiring party to print out or download all of the Trade Components Information displayed in the three computer screens discussed above by means of a single click instruction. Such a request currently requires one click instruction to print out each computer screen. Omgeo anticipates completing this enhancement by the end of the first quarter of 2007.

such as a range of trade dates or a range of settlement dates. A party could program its host computer system to send, at a pre-determined interval (e.g., every five minutes), a request for an InfoSettlementResponse message from Omgeo CTM for each of its trades that reach matched status. Such a request by an investment manager would ensure that Omgeo CTM provides the investment manager with the information required by Rule 10b-10 for all transactions that occurred over the specified time period. While the two methods of communicating with Omgeo CTM differ with regard to the means of communication, the information that will be communicated pursuant to both methods is identical and will include all of the information needed to satisfy the requirements of Rule 10b-10.

Thus, as discussed below, when an investment manager inquires through the browser or requests either an InfoResponse message or an InfoSettlementResponse message, the investment manager will have access to the information required by Rule 10b-10, which the broker-dealer sent to Omgeo CTM with the broker-dealer's trade details and which is included in the Trade Components Information.

Settlement Notification

Omgeo CTM will offer an optional, automated settlement notification process. Either party to a trade could have Omgeo CTM send settlement notifications to that party's settlement agent, such as a clearing broker, custodian or depository, when the trade detail match is successfully completed.¹⁵

Security and Record Retention in Omgeo CTM

Omgeo CTM has a multi-tiered security architecture for connectivity and firewall protection. A security module will enable Omgeo CTM clients to customize and define roles and responsibilities for their employees. All trade information submitted by Omgeo CTM clients and all Trade Components Information provided by Omgeo CTM will be stored electronically by Omgeo CTM for 10 years. All records for the 90 days prior to the current date will be immediately retrievable electronically by Omgeo CTM clients. Records from prior periods will be stored off-site under an arrangement that will allow them to be retrievable electronically within 24 hours. Omgeo's records will be available as a back-up if an Omgeo CTM client's own records are not available.

¹⁵ Omgeo CTM could supplement those notifications with settlement information stored in the Omgeo ALERT database by the executing broker or custodian. Such settlement information could include the internal account number at the settlement agent, the participant account number at a central depository, the clearing agent's S.W.I.F.T. bank identifier code and the executing broker's S.W.I.F.T. bank identifier code.

Third Party Interaction Feature

Omgeo plans to add a third party interaction feature to Omgeo CTM. This feature will allow either the broker-dealer or the investment manager to designate a third party who will have access to the Trade Components Information for a trade processed by Omgeo CTM. The third party may be the account in a trade or a representative or adviser of the account. The third party will be able to review the Trade Components Information but will not be able to change that information or enter any other information.¹⁶ Thus, the third party will have access to the information required by Rule 10b-10, which the broker-dealer sent to Omgeo CTM with the broker-dealer's trade details and which is included in the Trade Components Information. Omgeo charges for use of features that are available in Omgeo CTM.

Rule 10b-10

Rule 10b-10 under the Exchange Act requires a broker-dealer to provide its customer, at or before completion of a transaction, certain information relating to that transaction.¹⁷ The Commission staff has issued no-action letters with respect to confirmations provided through the TradeSuite service then operated by DTC and the OASYS Global service then operated by Thomson Financial Services, Inc. ("TFS"). Omgeo believes that the current request for no-action relief under Rule 10b-10 is consistent with the relief granted in those prior no-action letters.

Prior Rule 10b-10 No-Action Letters

In 1983, the Commission staff issued no-action relief to DTC under Rule 10b-10, among other rules.¹⁸ This relief permitted DTC, in connection with its operation of the Institutional Delivery ("ID") System, to provide confirmations within the meaning of Rule 10b-10 to the institutional customers of broker-dealers using that system ("ID Brokers") in one of a number of formats, including via computer transmission, without the broker-dealers sending duplicate confirmations.¹⁹ In that letter, the Commission staff stated that "because a broker-dealer cannot

¹⁶ The third party will be able to communicate with Omgeo CTM through any of the interfaces described in footnote 7 above. The third party will have access to the information stored electronically by Omgeo CTM for the current and prior periods described above under "Security and Record Retention in Omgeo CTM."

¹⁷ For example, Rule 10b-10(a)(1) requires that a broker-dealer disclose the date and time of the transaction and the identity, price, and number of shares or units purchased or sold.

¹⁸ Letter from Edward A. Kwalwasser, Associate Director, Division of Market Regulation, Commission, to Edward J. McGuire, Jr., Secretary, DTC (January 31, 1983) ("1983 DTC Letter").

¹⁹ The ID System is now called the TradeSuite service, which DTC transferred to Omgeo. Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (April 17, 2001) ("2001 Omgeo Letter").

delegate its responsibilities under the federal securities laws to a third party, ID Brokers ultimately will be responsible for compliance with Rule 10b-10....”²⁰

In 1993, the Commission staff issued no-action relief to TFS under Rule 10b-10, among other rules.²¹ This relief permitted broker-dealers using the OASYS Global service to rely on a type of electronic message (called a “contract confirmation message” or “CCM”) issued through that service to its institutional clients to satisfy their obligations under Rule 10b-10. The CCM, which contains all required Rule 10b-10 information, is sent by a broker-dealer to the institutional client to confirm the final details of a transaction. Upon receipt of the CCM, the institutional client responds through the system, either affirming or rejecting the trade. An affirmed trade can proceed to settlement. If the institution rejects a trade it can continue to communicate with the broker-dealer until the terms are agreed to and the trade is affirmed. In granting the requested relief under Rule 10b-10, the staff relied on the fact that: (1) system participants will agree between themselves to use CCMs instead of hard-copy confirms; (2) CCMs can be printed or downloaded by the participants; (3) the recipient of a CCM must respond through the system affirming or rejecting the trade; (4) CCMs will not be automatically deleted by the system; and (5) the use of the system by the participants ensures that both parties to a transaction have the capacity to receive CCMs.²²

Rule 10b-10 Reporting through Omgeo CTM

Omgeo CTM is designed to replace ETC services such as Omgeo TradeSuite and Omgeo OASYS Global. Omgeo believes that the desire for straight through processing, rising volumes of financial transactions and shortening settlement cycles will increasingly lead broker-dealers, investment managers and custodians to use the more flexible and efficient central matching service offered by Omgeo CTM.

Currently, the confirmations and CCMs provided by Omgeo TradeSuite and Omgeo OASYS Global, respectively, contain all of the information required by Rule 10b-10. In Omgeo CTM, the Trade Components Information that is available with Status Information will replace those confirmations and CCMs.²³ After the broker-dealer sends its trade details to Omgeo CTM, the Trade Components Information includes all required Rule 10b-10 information, regardless of

²⁰ 1983 DTC Letter.

²¹ Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to Mari-Anne Pisarri, Pickard and Djinis (October 8, 1993) (“1993 TFS Letter”).

²² The Commission staff confirmed that the transfers of the TradeSuite service and OASYS Global to Omgeo do not, by themselves, affect the staff’s no-action positions in the 1983 DTC Letter and the 1993 TFS Letter. 2001 Omgeo Letter and Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, Commission, to Carl H. Urist, General Counsel, Omgeo (December 10, 2002).

²³ For a discussion of Status Information, see supra, text accompanying footnote 13.

whether the trade has matched, unmatched or mismatched status. As noted above, an investment manager using Omgeo CTM has access to the Trade Components Information when the investment manager inquires about the match status of a trade. For almost every trade processed by Omgeo CTM, a matched status will be reported to the parties. In the rare cases where a trade is not finally matched in Omgeo CTM, one of the other types of Status Information will be the last Status Information reported. If the broker-dealer has sent its trade details to Omgeo CTM, the Trade Components Information available with that Status Information will include the information required by Rule 10b-10.²⁴ Thus, the Trade Components Information available to an investment manager in Omgeo CTM through a browser inquiry or by requesting an InfoResponse message or an InfoSettlementResponse message is the same as the information provided by the electronic confirmations and CCMs of the ETC services discussed in the 1983 DTC Letter and in the 1993 TFS Letter, respectively.

Moreover, as with the electronic confirmations and CCMs of the ETC services, Omgeo CTM clients will be able to print or download the Trade Components Information that they receive through browser inquiries or through InfoResponse messages and InfoSettlementResponse messages. In addition, those messages and the Trade Components Information, which includes the information required by Rule 10b-10, are not automatically deleted by Omgeo CTM. Those

²⁴ Specific fields for certain statements that Rule 10b-10 requires the broker-dealer to make are not currently available in Omgeo CTM. Those statements are (1) the statement under paragraph (a)(2) of Rule 10b-10 regarding whether the broker-dealer is a market maker in the security; (2) the statement under paragraph (a)(2)(i)(A) regarding the name of the person from whom the security was purchased or to whom it was sold for the customer or the fact that such information will be furnished upon written request of the customer; (3) the statements under paragraph (a)(2)(i)(C) regarding payment for order flow for transactions in certain types of securities; (4) the statement under paragraph (a)(2)(i)(D) regarding the source and amount of any other remuneration received or to be received by the broker-dealer; (5) the statement under paragraph (a)(2)(ii)(A) regarding the difference between the price to the customer and the broker-dealer's contemporaneous purchase or sale price; (6) the statement under paragraph (a)(2)(ii)(B) regarding the reported trade price and the price to the customer; (7) the statement under paragraph (a)(3) regarding whether the customer has paid an odd-lot differential or equivalent fee; (8) the statement under paragraph (a)(4) regarding a debt security subject to redemption before maturity; (9) the statement under paragraph (a)(6)(iii) regarding the yield to maturity and the represented yield; (10) the statements under paragraph (a)(7) regarding asset-backed securities; and (11) the statement under paragraph (a)(9) regarding Securities Investor Protection Corporation membership.

Omgeo will add specific fields in which the broker-dealer can make each of those statements. Omgeo anticipates adding the fields by the end of the second quarter of 2007.

Until specific fields for those statements have been added to Omgeo CTM, Omgeo anticipates that the broker-dealer will make those statements, when applicable, in the additional text field of the Trade Components Information. All information contained in the additional text field is available to an investment manager through a browser inquiry and through a request for an InfoResponse message or an InfoSettlementResponse message. Those statements will also appear in the additional text field of the Trade Components Information when an investment manager using Omgeo CTM communicates with a broker-dealer using Omgeo OASYS Global, as described in footnote 12 above.

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messages and the Trade Components Information are among the information that is stored electronically by Omgeo CTM for 10 years.

Omgeo believes that the disclosure Omgeo CTM clients receive for each of their trades in the Trade Components Information through a browser inquiry or by requesting an InfoResponse message or an InfoSettlementResponse message, regardless of the trade's match status, ensures that Omgeo CTM clients receive disclosure comparable to that which they currently receive pursuant to the 1983 DTC Letter and the 1993 TFS Letter. In addition, broker-dealers and investment managers using Omgeo CTM can make the Trade Components Information available to the account in a trade through the third party interaction feature described above.

All Omgeo CTM clients have continual access to the Omgeo CTM system and are able to view, on the next business day after trade date (T+1), information on trades effected in their Omgeo CTM accounts, including the transaction date, the type of transaction (e.g., buy or sell), the security, the execution prices and the quantity.

Request for Relief Under Rule 10b-10

After completion of the enhancements to Omgeo CTM's browser-based interface discussed in footnote 14 above, all of the Trade Components Information (and the corresponding Rule 10b-10 information) will be available to an investment manager through a browser inquiry or by a request for an InfoResponse message or an InfoSettlementResponse message. Until the addition of certain specific fields to Omgeo CTM, as discussed in footnote 24 above, all of the Rule 10b-10 information for those fields can be provided by a broker-dealer to an investment manager in the additional text field of the Trade Components Information.

Omgeo respectfully requests the staff to advise Omgeo that, after completion of the enhancements to Omgeo CTM's browser-based interface discussed in footnote 14 above, the staff would not recommend enforcement action to the Commission against a broker-dealer who relies on Omgeo CTM to provide the broker-dealer's investment managers with transaction confirmations through a browser inquiry or by a request for an InfoResponse message or an InfoSettlementResponse message where the Trade Components Information provided pursuant to such inquiry or request includes all required Rule 10b-10 information.

A broker-dealer relying on the no-action relief requested in this letter would be subject to the following two conditions.²⁵ First, the broker-dealer would, on request, provide the Rule 10b-10 information for trades to an account. The Rule 10b-10 information would be provided in a manner agreed upon by the broker-dealer and the account and may be provided only when requested or on a regular basis. Second, until such time as the third party interaction feature described above is available in Omgeo CTM, the broker-dealer would use Omgeo CTM to

²⁵ After consultation with the SIA, Omgeo believes that these two conditions would be acceptable to broker-dealers.

satisfy the requirements of Rule 10b-10 only for trades in which payment for the securities purchased or delivery of the securities sold is made by the account or its custodian against delivery of the securities or payment for the securities by the broker-dealer. (Such trades are commonly referred to as 'delivery versus payment/receive versus payment trades.') After the third party interaction feature is available in Omgeo CTM, the second condition would not apply, regardless of whether the account in a trade made use of that feature.

If the Commission staff issues the no-action relief requested above, the Omgeo CTM client agreement will provide that if the Trade Components Information includes all required Rule 10b-10 information, the Trade Components Information may be used to satisfy the delivery requirements of Rule 10b-10.

Recordkeeping Requirements

Recordkeeping by Broker-Dealers

Section 17 of the Exchange Act and Rule 17a-3(a)(8) thereunder require broker-dealers to make copies of confirmations of all purchases and sales of securities. As stated above, in Omgeo CTM, the Trade Components Information that is available with Status Information will replace the Omgeo TradeSuite confirmations and Omgeo OASYS Global CCMs.²⁶

A broker-dealer – like an investment manager – can electronically request and receive from Omgeo CTM the Trade Components Information that is available with Status Information.²⁷ The Trade Components Information received by the broker-dealer in response to the request would include the information required by Rule 10b-10.²⁸ Therefore, Omgeo believes that a broker-dealer would satisfy the requirements of Rule 17a-3(a)(8) by retaining the Trade Components Information, including the Rule 10b-10 information, received by the broker-dealer

²⁶ See "Rule 10b-10 Reporting through Omgeo CTM" above. The 1983 DTC Letter stated that the Commission staff would not recommend enforcement action if, instead of retaining a confirmation provided by the TradeSuite services, a broker-dealer retained, in compliance with Rule 17a-4, the trade information that it submitted to the TradeSuite services in one of the media listed in the letter. In the 1993 TFS Letter, the Commission staff declined to give assurance that it would not recommend enforcement action if broker-dealers relied on electronic storage of the contract confirmation messages provided by OASYS Global to satisfy the requirements of Rules 17a-3 and 17a-4. In this letter, Omgeo is not seeking no-action relief from the Commission staff with respect to the requirements of Rules 17a-3 and 17a-4, generally, or Rule 17a-3(a)(8), specifically. Omgeo understands that the Commission staff will not provide no-action relief to Omgeo with respect to those provisions.

²⁷ See "Request for Relief Under Rule 10b-10" above.

²⁸ A broker-dealer would obtain this information through either a browser inquiry or by a request for an InfoResponse message or an InfoSettlementResponse message. As discussed above, when a broker-dealer uses Omgeo OASYS Global to communicate with investment managers using Omgeo CTM, the broker-dealer receives, through a bridge between the two services, the same data from Omgeo CTM as if the broker-dealer were using Omgeo CTM.

from Omgeo CTM pursuant to the broker-dealer's browser inquiry or request for an InfoResponse message or an InfoSettlementResponse message.²⁹

Recordkeeping by Investment Managers

Section 204 of the Advisers Act and Rule 204-2(a)(7) thereunder require investment advisers to maintain originals of all written communications received which relate to the receipt, disbursement or delivery of funds or securities or the placing or execution of an order to purchase or sell any security. Rule 204-2(b)(3) also requires investment advisers who have custody or possession of clients' securities or funds to make and keep copies of confirmations of all transactions effected by or for the account of any such client. In 1992 DTC received a no-action letter from the Commission staff which permitted use of the TradeSuite services to satisfy the confirmation requirements of Rule 204-2(a)(7) and (b)(3).³⁰

An investment manager can electronically request and receive from Omgeo CTM the Trade Components Information that is available with Status Information and store the Trade Components Information in the investment manager's computer system. The Trade Components Information received by the investment manager will include the information required by Rule 10b-10. By downloading and storing the Trade Components Information in its computer system, the investment manager will be able to update its internal records with respect to the trade.

For the purposes of Rule 204-2(a)(7) and (b)(3), storage of the Trade Components Information will serve the same function as storage of the ETC services' confirmations and contract confirmation messages. Accordingly, Omgeo believes that the staff's views in the 1992 DTC Letter and the 1993 TFS Letter regarding use of the ETC services' confirmations and contract confirmation messages to satisfy the requirements of Rule 204-2(a)(7) and (b)(3) should also

²⁹ The broker-dealer would retain this information in compliance with Rule 17a-4. Rule 17a-4(b)(1) under the Exchange Act requires broker-dealers to preserve copies of confirmations, and Rule 17a-4(f) permits the copies to be preserved on "micrographic media" or "electronic storage media" (as those terms are defined in Rule 17a-4).

³⁰ Letter from Eli Nathans, Special Counsel, Division of Investment Management, Commission, to Richard B. Nesson, General Counsel, DTC (September 4, 1992) ("1992 DTC Letter"). The 1993 TFS Letter gave similar no-action assurances for investment advisers with regard to use of OASYS Global to satisfy the confirmation requirements of Rule 204-2. The 1993 TFS Letter also permitted registered investment companies to retain contract confirmation messages provided by OASYS Global to satisfy certain recordkeeping requirements of Rule 31a-1 under the Investment Company Act of 1940. The Commission staff particularly based its assurances on the representation that the contract confirmation messages of OASYS Global would contain all the information required by Rule 10b-10.

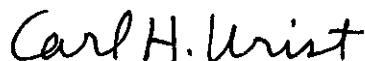
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apply to storage of the Trade Components Information provided by Omgeo CTM to satisfy those requirements.³¹

Omgeo therefore respectfully requests the staff to advise Omgeo that the staff would not recommend enforcement action to the Commission under Rule 204-2(a)(7) and (b)(3) of the Advisers Act if, without requiring a broker-dealer to send a separate confirmation, an investment manager who is registered with the Commission as an investment adviser treats printed or downloaded Trade Components Information as (i) an original communication for purposes of Rule 204-2(a)(7) and (ii) a confirmation for purposes of Rule 204-2(b)(3).

If you have any questions about this matter, please call me.

Very truly yours,



Carl H. Urist

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³¹ Omgeo notes that the Commission has expanded the ability of investment advisers to use electronic storage media to maintain and preserve records. See Securities and Exchange Commission Release Nos. IC-24991; IA-1945; File No. S7-06-01; 66 FR 29224 (May 30, 2001).