EXHIBIT S-1

MARKITSERV LLC REQUEST FOR EXEMPTION

(August 9, 2024; revised Dec. 2, 2024)

I. INTRODUCTION AND REQUEST FOR EXEMPTION

MarkitServ LLC ("MarkitServ") provides its post-trade, pre-settlement matching service called TradeServ to financial institutions active in the over-the-counter ("OTC") and on venue markets for credit derivatives, including credit default swaps that are classified as security-based swaps under the definition of that term in the Securities Exchange Act of 1934, as amended ("Act"). TradeServ also provides connectivity to certain clearing agencies that provide centralized clearing of credit derivative transactions. TradeServ is an integral element of the credit derivatives markets, facilitating prompt and efficient post-trade confirmation and settlement of OTC credit default swap transactions, for over 19 years.

The functions that MarkitServ performs via TradeServ constitute non-central counterparty clearing functions that bring MarkitServ within the Act's "clearing agency" definition and but for an exemption MarkitServ would have to register as a clearing agency under the Act with the Securities and Exchange Commission ("Commission" or "SEC"). MarkitServ currently relies upon a class exemption issued by the Commission in 2011 from clearing agency registration to offer TradeServ to market participants. MarkitServ is filing this request for exemption so that it may seamlessly, without disruption, continue to offer TradeServ to market participants following sunsetting of the class exemption as announced by the Commission late last year.

Specifically, MarkitServ requests the Commission to grant an exemptive order pursuant to which MarkitServ may provide matching services for security-based swaps that encompasses the activities described herein and in other exhibits to this Form CA-1 application (whether under the TradeServ name or another name), as well as any supplemental services (such as Osttra Trade Manager, described below) or enhancements to the existing services that are within the ambit of trade matching services and any expansion of the services to security-based swaps beyond credit default swaps.

Consistent with other exemptive orders granted by the Commission to other providers of securities matching services, MarkitServ agrees it will undertake the following if the Commission grants the exemption: (1) provide the Commission with information on any material changes to the clearing agency services that are the subject of the exemption; (2) allow the Commission to inspect its facilities where such clearing agency functions are performed and where related records are maintained; and (3) make periodic disclosures to the Commission regarding its operations as required or requested by the Commission.[1]

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[1] *See e.g., Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption from Registration as a Clearing Agency*, Release No. 34-76514 (November 24, 2015), 80 FR 75388 at 75390 (December 1, 2015) ("Bloomberg Order").

II. PROCEDURAL BACKGROUND AND LEGAL BASIS FOR THE REQUEST

The definition of the term "clearing agency" in Section 3(a)(23)(A) of the Act states:

> The term ''clearing agency'' means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.

If a person conducts activities within the scope of this definition, the person must register as a clearing agency with the Commission under Section 17A of the Act and related Commission rules, absent an exclusion or exemption.

As interpreted by the Commission, the clearing agency definition covers persons that act as central counterparties ("CCPs") for securities transactions ("covered clearing agencies" under SEC Rule 17ad-22) as well as persons offering certain post-trades services deemed to constitute non-CCP clearing agency functions. In 1998, the Commission issued an interpretation advising that matching services for securities transactions could constitute clearing agency functions depending upon the specific facts and circumstances, bringing the person offering such services within the clearing agency definition.[2]

The Commission reiterated that view in 2011, when it issued a class exemption from clearing agency registration in connection with its rulemaking activities to implement amendments to the Act made by the Dodd-Frank Wall Street Reform and Consumer Protection of 2010 ("Dodd-Frank Act") ("Class Exemption").[3] Those amendments established a comprehensive regime for regulating security-based swaps. Among other changes, they added "security-based swap" as a defined term to the Act and expanded the Act's definition of "security" to include security-based swaps. Thus, the Act's clearing agency definition and registration requirements for clearing agencies now applied to persons that were offering post-trade settlement services to the security-based swaps markets, such as MarkitServ, which many market participants use. The Commission

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[2] *Confirmation and Affirmation of Securities Trades; Matching*, Release No. 34-39829, 63 FR 17943 (April 13, 1998) ("Matching Release").

[3] *Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions From Clearing Agency Registration Requirements Under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps*, 76 FR 39963 (July 7, 2011) (stating that collateral management services, trade matching services and tear up and compression services would qualify as clearing agency functions and trigger registration obligations.).

issued the Class Exemption, which is specific to security-based swaps activities, to allow such firms to continue offering their services as the Commission continued its myriad rulemaking initiatives. The Class Exemption covered three categories of services offered to the OTC markets for security-based swaps that the Commission determined could constitute non-CCP clearing agency functions, including trade matching services of the type MarkitServ offers via TradeServ.[4]

MarkitServ filed the requisite notice with the Commission to offer post-trade matching services pursuant to the Class Exemption.[5] When the Commission adopted Regulation SE governing security-based swap execution facilities it announced in the adopting release that it is sunsetting the Class Exemption.[6] It is our understanding that the Class Exemption expires on August 12, 2024, but that MarkitServ may continue to rely upon the Class Exemption after that date by submitting this application for exemption from clearing agency registration on Form CA-1 on or before August 12. We further understand that if Commission staff deems this application complete on or before October 11, 2024, the Class Exemption will continue to be available to MarkitServ pending the Commission's review of the application and for 30 days following any final Commission determination to grant or deny the application.

Section 17A(b)(1) of the Act authorizes the Commission to exempt a person from registration as a clearing agency if the Commission determines that such exemption is consistent with the public interest, the protection of investors, and the policy goals of Section 17A. For reasons explained below, we believe granting the exemption will further each of those objectives, in that an exemption will allow MarkitServ to continue offering invaluable services that facilitate prompt and efficient confirmation of transactions in security-based swaps and thereby reduce risk in those markets. Such relief would also be consistent with exemptive relief that the Commission has granted to other firms to allow them to trade matching services for securities transactions.[7]

III. BACKGROUND ON MARKITSERV AND THE CREDIT DERIVATIVES MARKETS

A. OVERVIEW

For many years, MarkitServ has provided matching services to financial institutions with respect to their transactions in credit default swaps, including credit default swaps that are security-based swaps ("SBSs") under the statutory definition. TradeServ is an industry-wide network that enables financial institutions to perform timely, efficient, electronic legal confirmation of their credit derivative transactions, including instruments that are securities, specifically security-based swaps. TradeServ's clients include security-based swap dealers, inter-dealer brokers, prime brokers, and

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[4] The relief under the Class Exemption is available with respect to collateral management services, trade matching services, tear-up / compression services order), and with "substantially similar services for security based swaps." 76 FR at 39964.

[5] MarkitServ and its affiliate, MarkitServ Ltd, filed a joint notice letter with the Commission dated August 11, 2011, to operate pursuant to the Class Exemption. By letter dated August 20, 2021, the two MarkitServ entities jointly notified the Commission of a change in control.

[6] *Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities*, 88 FR 87156, at 87229 (Dec. 15, 2023).

[7] *See Bloomberg Order* and *Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency*, 66 FR 20494 (April 23, 2001) ("Omgeo Release").

institutional buy-side firms. TradeServ provides these institutions the ability to exchange transaction data, match and confirm OTC credit derivative transactions, generate same-day legal confirmations, achieve straight-through processing to central clearing parties, submit post-trade events (*i.e.*, amendment, termination, novation, credit event, and exercise), and comply with regulatory swap reporting obligations.

Global financial markets continue to experience growth in the use of OTC derivative transactions.[8] The value of notional outstanding OTC derivatives has steadily climbed for the last decade, and grew 8% overall in 2023, to well over $667 trillion notional outstanding at the end of December 2023.[9] The Commission has long acknowledged the importance of post-trade processing, matching and reconciliation services in ensuring an efficient and reliable marketplace.[10] Within the OTC security-based swap ("SBS") market, the Commission has especially acknowledged the importance of matching services, such as TradeServ, as a necessary element to timely and accurate confirmation of SBS transactions, and their efficient processing and documentation,[11] as have other federal agencies.[12]

Before DTCC began offering Deriv/SERV in 2003, market participants confirmed their OTC derivatives via an exchange of paperwork or faxes. By introducing Deriv/SERV, DTCC brought much needed automation to this process, providing a centralized record upon which both counterparties to a transaction could quickly and efficiently agree upon the terms electronically. Illustrating the value the marketplace puts on this service, the trade details for approximately 98% of OTC credit derivatives are currently captured by TradeServ. The DTCC Deriv/SERV service was transferred into MarkitServ upon the creation of the joint venture with Markit in 2007. Deriv/SERV's credit confirmation platform was renamed DSMatch. Subsequently the legacy mainframe platform DSMatch was retired and the replacement platform TradeServ went live in October 2022.

B. DESCRIPTION OF TRADESERV AND OSTTRA TRADE MANAGER

The TradeServ service is an industry wide network that enables service subscribers ("Users") to perform electronic legal confirmation of their credit derivative transactions. TradeServ supports the confirmation of a variety of credit derivatives, including single name, index, tranche and

[8] OTC Derivatives Statistics at End-December 2023, Bank for International Settlements, May 16, 2024, available at https://www.bis.org/publ/otc_hy2405.pdf.

[9] *Id*. Due to seasonal factors, the growth experienced a see-saw patter in that notional outstanding grew by 15% for the first half of 2023, and the contracted, for a year over year growth of 8%. *Id*. At the end of June 2023, the notional value of outstanding OTC derivatives reached $715 trillion. OTC Derivatives Statistics at End-June 2023 (Nov. 16, 2023).

[10] *See Omgeo Order*.

[11] *Trade Acknowledgment and Verification of Security-Based Swap Transactions*, Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) ("Trade Acknowledgement Proposing Release").

[12] Based on media reports, in October 2005 the Federal Reserve Bank of New York received pledges from major credit dealer banks to reduce substantially the number of confirmations that were outstanding more than 30 days. *See* https://www.finextra.com/newsarticle/14926/credit-derivatives-dealers-meet-fed-targets.

swaption transactions. MarkitServ does not act in any manner as a central counterparty.[13] It does not guarantee trades, maintain credit exposure to any TradeServ Users, provide margin, hold User assets, or act as a custodian. TradeServ's offering is limited to automated, electronic post-trade, pre-settlement functionality incorporating only:

(i) trade matching;
(ii) delivery of electronic legal confirmations; and
(iii) processing of post-trade life-cycle events.

TRADE MATCHING AND LEGAL CONFIRMATIONS

Through TradeServ Users are able to verify economic terms and perform electronic legal confirmation of their credit derivative transactions. TradeServ supports the confirmation of a variety of credit derivatives, including single name, index, tranche and "swaption" transactions. TradeServ removes the need for paper legal confirmation and moves this process to an electronic workflow where counterparties can agree all economic fields relating to their OTC SBS transactions.

After executing a trade outside of the MarkitServ infrastructure, one party to a trade (party A) will submit the details of the OTC credit derivative transaction, either via the TradeServ online user interface ("UI"), CSV upload or FpML via MQ connection. Users can submit all applicable fields or only submit a subset and the TradeServ platform will enrich any fields not submitted based on industry agreed standards that are published in the online client documentation portal.

The other participant to the transaction (party B) can either submit trade details for their side of the credit derivative transaction, either via the TradeServ online user interface (UI), CSV upload or FpML via MQ connection or they can view the transaction details then agree or dispute in the UI. If they agree, users can affirm the transaction via a button on the UI or if both parties have submitted matching trade details, the trade is then considered legally confirmed. If a user disagrees with any of the details in the transaction, they will contact their counterparty (outside of the platform) to discuss what the correct details should be, with the party in the wrong making any necessary amendments.

RELATED OSTTRA TRADE MANAGER SERVICE

MarkitServ offers Osttra Trade Manager ("Trade Manager") as a value added, optional service available to buy-side Subscribers. The service allows a Subscriber to view and manage in one place its trade matching and confirmation processing workflows across multiple asset classes and across the TradeServ and MarkitWire confirmation services[14] and paper confirmations. Trade Manager connects to TradeServ as an interface mechanism to enable the Subscriber to submit records into TradeServ for matching and confirmation and receive responses in return. The interface mechanism between Trade Manager and MarkitWire operates a bit differently, in that it allows the Subscriber to match (affirm) a subset of trade details within Trade Manager which are then

[13] SEC Rule 17ad-22 defines a central counter party as "a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.

[14] MarkitWire is offered by MarkitServ's affiliate, MarkitServ Ltd, which has filed its own Form CA-1 request for exemptive relief from clearing agency registration.

communicated into the MarkitWire affirmation process;[15] the Subscriber is also connected to the MarkitWire matching process. Whether the interface is with TradeServ or MarkitWire, the matching/confirmation process is conducted within TradeServ or MarkitWire.

BACKLOAD CONNECTIVITY FOR CLEARING CREDIT DEFAULT DERIVATIVES

MarkitServ also offers a backload to clear process via the TradeServ platform for credit derivative transactions. Users of the service submit details of the previously bi-laterally confirmed credit default transactions they intend to submit for centralized clearing, and TradeServ routes the trade details to a CCP (ICE Clear Credit or LCH Clearnet SA). (Users will indicate on the transaction the CCP to which the transaction should be sent.)

PROCESSING OF POST-TRADE LIFE-CYCLE EVENTS

TradeServ promotes efficiency in settlement and clearing throughout the life-cycle of a credit derivative transaction. Through TradeServ, SBS market participants are not only able to automatically verify the complex economic terms agreed to by counterparties, but Users are able to submit a variety of post trade events as applicable over the life-cycle of a transaction, these events can include: (i) amendment; (ii) partial termination; (iii) full termination; (iv) novation; (v) credit Event; and (vi) exercise.

Confirmed trades are stored on the platform for at least seven years after termination or expiry with Users able to update or remove the transaction details at any time. In practice, most firms will leave trade records on the platform after expiry or maturity.

TradeServ provides connectivity for the industry to DTCC's Trade Information Warehouse (TIW). Confirmed trades and trade updates are sent to the TIW where DTCC maintain the positions on behalf of the industry. When DTCC process Credit Events, these updates are submitted back to TradeServ. Clearing houses will also submit cleared trade records into TradeServ to facilitate submission down to the DTCC TIW.

SUPPORT FOR REGULATORY REPORTING REQUIREMENTS

TradeServ also offers the ability for trades to be reported to a Trade Repository. Currently the platform offers connectivity to the DTCC's Global Trade Repository and users of the TradeServ platform can opt-in to have their transactions reported in an industry agreed format for regimes such as ESMA, ASIC and MAS. We do not consider this feature to be a clearing agency function within the clearing agency definition, but it is a valuable adjacent service that illustrates MarkitServ's key role in the functioning of the OTC SBS markets.

IV. GRANTING THE EXEMPTION WILL FURTHER THE PUBLIC INTEREST, THE PROTECTION OF INVESTORS, AND OTHER POLICY GOALS OF THE ACT

[15] For the affirmation flow, the counterparty submits its trade into MarkitWire as normal, which is sent into Trade Manager where the buyside Subscriber's file is uploaded and where matching for a subset of fields occurs. If there is a match, Trade Manager sends an affirmation message back to MarkitWire on behalf of the buyside Subscriber to complete the affirmation process within MarkitWire.

A. OVERVIEW

As noted, Section 17A(b)(1) provides that the Commission may exempt a person from registering as a clearing agency if the Commission determines that granting the exemption is consistent with the public interest, the protection of investors, and the policy goals of Section 17A. The Commission has granted exemptive relief to certain providers of matching services for securities transactions pursuant to this authority, balancing the need for regulation against the promotion of efficient markets and the burden of unnecessary costs.[16] In granting previous exemptive relief, the Commission has emphasized its view that it is unnecessary for an entity that limits its clearing agency functions to matching services to be subject to the full range of clearing agency regulations.[17]

In support of prior exemptions, the Commission cited that the relief was consistent with the following policy goals reflected in Section 17A:

(i) prompt and accurate clearance and settlement of securities transactions, and the safeguarding of securities and funds;[18]
(ii) facilitating development and expansion of support services to reduce risk;[19] and
(iii) reducing unnecessary costs.[20]

B. REASONS FOR GRANTING THE EXEMPTION

For close to two decades, TradeServ has furthered the policy goals of 17A by providing credit derivative market participants with services designed to decrease costs, increase the speed and accuracy of the confirmation and matching process, and reduce risk and potential error through the minimization of manual interaction associated with post-trade/pre-settlement processes.

PROMPT AND ACCURATE CONFIRMATIONS FACILITATE SETTLEMENT OF TRADES AND RISK REDUCTION

Section 17A of the Act directs the Commission to facilitate a system for prompt clearing and settlement of securities transactions, and the Congressional findings in Section 17A state that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions.[21] Further, the Commission has consistently found that exemption from clearing agency registration is appropriate where it promotes a safe and efficient clearance and settlement system.[22]

Unlike transactions in equity securities which settle promptly, OTC SBS transactions typically are open for a longer time horizon where settlement occurs on one or more scheduled settlement

[16] Matching Release, 63 FR 17943 at 17947.

[17] *See* Bloomberg Order at 75390-91.

[18] Omgeo Release at 20497

[19] *Id*. *See also* Bloomberg Order at 75402

[20] *Id*.

[21] Bloomberg Order at 75391.

[22] *Id. See also* Omgeo Order at 20498.

payment dates or upon the occurrence of a credit event. Efficient and prompt legal confirmation of OTC, non-centrally cleared SBS transactions furthers the policies of Section 17A by allowing counterparties to quickly confirm economic terms of their transactions, enabling them to move quickly to implement any credit support terms involving the exchange of initial margin and/or variation mark-to-market payments on their open positions, providing financial integrity supporting performance of settlement obligations. For centrally cleared SBS transactions, connectivity between matching platforms and CCP clearing agencies facilitates straight through processing of cleared transactions, also furthering the policy objectives of Section 17A.

The Commission's recognition of the importance of a reliable and effective confirmation process in the SBS market, and its role in promoting an efficient settlement process, is made clear in the Commission's rules addressing SBS transactions. In addition to the standards and policies detailed under Section 17A, the Commission specifically sought to promote the efficient operation of the SBS market, consistent with the policy objectives of the Dodd-Frank Act amendment, in particular the policies reflected in Section 15F of the Act, to facilitate market participant's management of their SBS-related risk.[23] To this end, the SEC adopted Rule 15Fi-2, requiring security-based swap dealers to (i) provide prompt trade acknowledgments to counterparties in an electronic format that provides reasonable assurance of delivery and record of transmittal, and discloses all terms of the SBS transaction, (ii) establish policies and procedures reasonably designed to obtain prompt verification of such trade acknowledgements, and (iii) promptly obtain verification of the accuracy of the terms of trade acknowledgements from their counterparties.[24] The regulatory obligations of 15Fi-2 are intended, in part, to reduce the risks associated with inefficient post-trade matching processes within the SBS market by improving operational performance, increasing automation, and promoting timely confirmation of trades.[25]

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[23] Trade Acknowledgment Proposing Release.

[24] SEC Rule 15fi-2(a).

[25] *Id*. *See also* Trade Acknowledgement Proposing Release at 3861, stating:

> In the past few years, market participants and regulators have paid particular attention to the timely confirmation of SBS transactions. The Government Accountability Office has found that, since 2002, the trading volume of SBS such as credit derivatives has expanded rapidly, causing stresses on the operational infrastructure of market participants, which in turn caused the participants' back office systems to fail for a period of time to confirm the increased volume of trades. The GAO viewed the lack of automation and the purported assignment of positions by transferring parties to third parties without notice to their counterparties as the primary factors contributing to this backlog. The GAO found that if new transactions are left unconfirmed, there is no definitive written record of the contract terms. Thus, in the event of a dispute, the terms of the agreement must be reconstructed from other evidence, such as e-mail trails or recorded trader conversations. The GAO noted that this process is cumbersome and may not be wholly accurate. Moreover, if purported transfers of SBS transactions are made without giving notice to the remaining parties and obtaining their consent, disputes may arise as to which parties are entitled to the benefits and subject to the burdens of the transaction. The GAO found that these circumstances created significant legal and operational risk for market participants. These risks, as well as other operational issues associated with the over-the-counter derivatives market, have been the focus of reports and recommendations by the President's Working Group, and of ongoing efforts led by the Federal Reserve Bank of New York (''FRBNY'') to enhance operational capacity in the over-the-counter derivatives market and improve operational performance, by increasing automation, promoting timely confirmation of

Providing MarkitServ an exemption would further the policy goals of both Section 17A and Section 15F. For twenty years, TradeServ has provided financial institutions post-trade matching services for their OTC, bilaterally negotiated and on venue derivative transactions. The services are designed for the express purpose of helping SBS market participants quickly verify and accept the terms of their transactions and comply with their regulatory obligations. Through the TradeServ application, Users can streamline the post-trade matching process and enhance the accuracy and completeness of a transactions economic terms resulting in prompt and accurate clearance and settlement of trades. TradeServ delivers significant gains in operational efficiency by using structured electronic messages to automate steps within a transaction's life-cycle, including the simplification of all deal routing and the elimination of traditional confirmations.

Further, given the nature of OTC SBS transactions an exemption for services providers, such as MarkitServ, providing matching services is as appropriate as in previous SEC exemptive relief. The complexity of economic factors contained within SBS transactions, and the bespoke, bi-laterally negotiated nature of OTC SBS transactions supports the need for SBS market participants to utilize a matching service to help ensure accurate and effective post-trade processing. The Commission adopted Rule 15Fi-2 to promote the policy goals of Section 15F(i) of the Exchange Act, namely to (i) promote the efficient operation of the SBS market, (ii) facilitate market participants' management of their SBS-related risk, and (iii) avoid documentary issues (e.g. errors, backlogs, and absence of confirmed terms).[26]

SBS transactions that are not reduced to mutually agreed terms in writing can lead to legal and operational risk for market participants.[27] Thus, the need for post-trade matching facilities is an apparent and necessary service in the life-cycle of SBS transactions. The SEC contemplated the use of such services in drafting Rule 15Fi, believing it would promote the principles of Exchange Act Section 15F(i), and actively encouraged SBS market participants to leverage these services.[28]

Market participants' use of the TradeServ platform to match and confirm the trade details for credit derivatives transactions they intend to submit to a CCP for centralized clearing provides for straight through processing of centrally cleared SBS transactions, also facilitating the goals of Section 17A as well as goals reflected in the Dodd-Frank Act amendments to the Act.

> trades, and ending practices such as the purported unilateral transferring of SBS transactions. (footnotes excluded).

[26] SEC Release No. 34–78011 at 39809 (June 17, 2016), where the Commission specifically stated:

> The proposed rule [15Fi-2] was intended to help avoid a recurrence of documentation backlogs that had persisted in the industry prior to the adoption of the Dodd-Frank Act, and to help address concerns expressed by the Government Accountability Office regarding the documentation of credit derivatives. In particular, the proposed rule was intended to reduce the risk a court may have to supply contract terms upon which there was no previous agreement. Furthermore, unconfirmed trades could allow errors to go undetected that might subsequently lead to losses and other problems, such as an SBS Entity's inaccurately measuring and managing its risk exposures.9 Such operational risks have the potential to contribute to broader market problems (footnotes removed).

[27] SEC Release No. 34–78011 at 39809 (June 17, 2016).

[28] *Proposing Release* at 3862.

REDUCTION IN UNNECESSARY COSTS

Congressional findings upon adoption of Section 17A state that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions. In granting exemptions from clearing agency registration, the Commission has considered whether an applicant would improve or decrease the efficiency of the U.S. clearing and settlement system (particularly processing efficiencies) and whether an exemption would lead to unnecessary costs.[29] Granting MarkitServ's exemption request would be consistent with the purposes of Section 17A, particularly in promoting efficiency and limiting costs.

Requiring entities, such as MarkitServ to register as a clearing agency, and requiring them to comply with the full obligations thereunder would increase MarkitServ's costs to provide its invaluable services, without any attendant benefit. MarkitServ does not hold any customer assets, manage or direct any customer collateral, manage margin requirements, or match executions. Requiring MarkitServ to satisfy regulatory obligations directed at these activities would serve only to increase the operating costs of the applicant, and thus the costs on market participants. Moreover, certain obligations imposed on registered clearing agencies are incompatible with the MarkitServ's operations as a non-CCP clearing agency, notably requirements to have a rulebook, perform self-regulatory oversight over "participants" and submit "rules" and "rule changes" to the Commission pursuant to the requirements of Section 19(b) of the Act.

Compliance with all clearing agency regulatory obligations would be financially unfeasible for MarkitServ, and would deprive the U.S. OTC SBS market of a service provider that currently provides matching services to a large majority of the market. As noted, before the existence of TradeServ in 2009, all OTC derivatives transactions were manually confirmed via exchange of physical paperwork or faxes. The introduction of these services allowed for an automated process, with a centralized record which both parties could agree upon. Currently, approximately 98% of OTC credit derivatives are captured by TradeServ. Should an exemption be refused and no immediate alternative in place, the market would need to revert to manual confirmations again. This may lead to market disruption until an alternative solution could be found. The market would also lose the central, reliable record which could cause delays in processing, clearing, reporting or settling of transactions.

TRADESERV'S SYSTEMS AND CONTROLS EVIDENCE ITS CAPACITY TO PROMOTE THE PUBLIC INTEREST

TradeServ has developed various systems and controls, as well as implemented policies and procedures reasonably designed to reduce operational risk, and the prompt clearance and settlement of transactions. (As noted, MarkitServ does not hold, control, manage, or custody any customer funds or securities.)

V. CONCLUSION

For the foregoing reasons, MarkitServ requests the Commission to grant an exemptive order pursuant to which MarkitServ may offer its current services to market participants for SBS transactions as described above and in other exhibits to this Form CA-1 application, including any

[29] Bloomberg Order at 75391-97.

enhancements to the existing services that are within the scope of trade matching services or any expansion of the services to SBS beyond credit default swaps (whether under the TradeServ name or another name). Granting the exemption would be consistent with the public interest and previous Commission relief and would further the policy goals of Section 17A as well as policy goals embodied in the Dodd-Frank Act amendments to the Act with respect to the SBS markets. If the Commission has any further questions, comments, or requires additional information, please do not hesitate to contact MarkitServ.