

SECURITIES AND EXCHANGE COMMISSION
Release No. 34-74394; File No. 600-33

February 27, 2015

Self-Regulatory Organizations; Bloomberg STP LLC; Notice of Filing of Application for Exemption from Registration as a Clearing Agency

I. Introduction

On March 15, 2013, Bloomberg STP LLC (“BSTP”) filed with the Securities and Exchange Commission (“Commission”) an application on Form CA-1 for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17Ab2-1 thereunder. BSTP amended its application on May 7, 9, and 10, July 11, August 8, September 18, and November 21, 2013, December 19, 2014, and January 22, 2015. BSTP is requesting an exemption from clearing agency registration in connection with its proposal to offer an electronic trade confirmation (“ETC”) service and a matching service. The Commission is publishing this notice in order to solicit comments from interested persons on the exemption request.¹ The Commission will consider any comments it receives in making its determination whether to grant BSTP’s request for an exemption from clearing agency registration.

II. Background

A. BSTP Organization

BSTP is a limited liability company organized under the laws of the State of Delaware, and is wholly-owned by Bloomberg L.P. (“BLP”). BLP is a global business and financial

¹ The descriptions set forth in this notice regarding the structure and operations of BSTP have been largely derived from information contained in BSTP’s amended Form CA-1 application and publicly available sources. The application and non-confidential exhibits thereto are available on the Commission’s website.

information and news company that is headquartered in New York, with offices around the world. BLP's principal product is the BLOOMBERG PROFESSIONAL service, which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies and other business and financial professionals worldwide.²

BSTP proposes to provide ETC and matching services for fixed-income and equity trades as described in its Form CA-1 application. An overview of BSTP's proposed matching service is presented in Part III below. BSTP will enter into a Software License Agreement and a License and Services Agreement with its parent, BLP. Under the terms and conditions of such agreements, BLP will provide BSTP with software, hardware, administrative, operational and other support services. BSTP has established a Board of Directors to oversee its operations, and intends to establish an Advisory Board consisting of industry members and users of the matching service, including representatives from sell-side firms, buy-side institutions and custodians.³ The mission of the Advisory Board of BSTP is to provide advice and recommendations to the Board of Directors of BSTP that will assist BSTP in fulfilling the policy goals of the Exchange Act in a manner that meets all applicable legal requirements and serves the interests of users of the confirmation matching service and the public at large.⁴

B. Matching as a Clearing Agency Function

On April 6, 1998, the Commission issued an interpretive release regarding matching

² See Exhibit C for a graphic description of the BSTP's organizational structure.

³ See Exhibit S at 8–12.

⁴ See Exhibit S at 11–12.

services⁵ (the “Matching Release”).⁶ In the Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the “comparison of data respecting the terms of settlement of securities transactions,” within the meaning of Section 3(a)(23)(A) of the Exchange Act.⁷ Therefore, any person providing independent matching services must either register with the Commission as a clearing agency or obtain an exemption from registration pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder.⁸ In 2001, the Commission granted an exemption from registration as a clearing agency to Omgeo, a subsidiary of The Depository Trust and Clearing Corporation (“DTCC”) and Thomson Financial, to conduct ETC and matching services.⁹ BSTP has applied for a similar exemption from

⁵ The term “matching service” as used here means an electronic service to centrally match trade information between a broker-dealer and its institutional customer.

⁶ See Confirmation and Affirmation of Securities Trades; Matching, Exchange Act Release No. 34-39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998).

⁷ In addition, on July 1, 2011, the Commission published a conditional temporary exemption from clearing agency registration for entities that perform for security-based swap transactions certain post-trade processing services, including matching services. See Exchange Act Release No. 34-64796 (Jul. 1, 2011), 76 FR 39963 (Jul. 7, 2011) (providing an exemption from registration under Section 17A(b) of the Exchange Act, and stating that “[t]he Commission is using its authority under section 36 of the Exchange Act to provide a conditional temporary exemption, until the compliance date for the final rules relating to registration of clearing agencies that clear security-based swaps pursuant to sections 17A(i) and (j) of the Exchange Act, from the registration requirement in section 17A(b)(1) of the Exchange Act to any clearing agency that may be required to register with the Commission solely as a result of providing Collateral Management Services, Trade Matching Services, Tear Up and Compression Services, and/or substantially similar services for security-based swaps”). The order facilitated the Commission’s identification of entities that operate in that area and that accordingly may fall within the clearing agency definition.

⁸ See 15 U.S.C. 78q-1 and 17 CFR 240.17Ab2-1.

⁹ See Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, Exchange Act Release No. 34-44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001) (“Omgeo Exemptive Order”). On July 24, 2013, DTCC announced

registration as a clearing agency to provide ETC and matching services.

III. BSTP's Proposed Matching Service

BSTP's proposed matching service for fixed-income and equity trades will compare post-trade information from a broker-dealer and the broker-dealer's institutional customer and reconcile such information to generate an affirmed confirmation. It will operate as follows¹⁰:

1. A customer routes an order to its firm.
2. The firm executes the order and then sends a notice of execution ("NOE") to the customer.
3. For voice executed trades, the customer affirms to the firm the trade details contained in the NOE. For trades executed electronically, the electronic trading platform records the trade in the blotters of the customer and the firm.
4. The customer sends to the matching service, the firm, and the customer's custodian allocation information for the trade.
5. The firm then submits to the matching service trade data corresponding to each allocation, including settlement instructions and, as applicable, commissions, taxes, and fees.
6. The matching service next compares the customer's allocation information (containing multiple fields of data)¹¹ with the firm's trade data to determine whether

that it had entered into an agreement with Thomson Financial to acquire full ownership of Omgeo.

¹⁰ BSTP provides an additional matching workflow in which custodians send matched confirmations to the matching service and the matching service submits such matched confirmations as affirmed confirmations to The Depository Trust Company ("DTC").

¹¹ According to its application, BSTP notes that it will follow DTC's format for delivering matched confirmations to DTC. Further, BSTP will obtain a control number from DTC for each

the information contained in each field matches. If all required fields match, the matching service generates a matched confirmation and sends it to the firm, the customer, and other entities designated by the customer (e.g., the customer's custodian). The matching service will typically perform this step in less than one second.

7. After the matching service creates the matched confirmation, the matching service submits it to DTC as an "affirmed confirmation."¹² From there, the trade goes into DTC's settlement process.

According to BSTP, a customer will be eligible to use the matching service once its broker-dealer and, as applicable, its fund service provider have enabled the customer to use the matching service. A customer may also subscribe to the matching service directly. BSTP will make available to matching service users an interactive reporting tool that will display matching statistics, and users will be able to access specific details regarding matched and unmatched allocations filtered by counterparty, investment type, and status.

Other than the matching service, BSTP states it will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act, such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.¹³

trade record, cross-reference such control number to the confirmation and subsequent affirmation of the trade, and include such control number when delivering the affirmation of the trade to the depository at DTC. See Exhibit S at 12.

¹² BSTP notes that its proposed confirmation matching process eliminates multiple steps in the manual workflow, such as DTC's producing a confirmation for the institution to review and the institution's reviewing and affirming the confirmation.

¹³ See Exhibit J at 9.

IV. BSTP's Request for an Exemption

A. Introduction

BSTP believes its proposed matching service would improve reliability and stability in the post-trade processing of securities transactions. According to BSTP, the matching service will offer tangible benefits to the securities industry by: (i) adding choice and redundancy and eliminating a single point of dependency, thereby increasing the reliability and stability of matching service support available to market participants; (ii) decreasing overall costs to market participants; and (iii) by introducing competition, increasing the potential for development of new and enhanced functionality.¹⁴

BSTP believes that the proposed matching service will increase the speed and accuracy of confirmation matching, as the proposed matching service will be “seamlessly integrated with other tools used by the financial industry, including the Bloomberg Professional service, BLP’s and third-party order management systems, electronic trading functionality and other post-trade functionality.”¹⁵ BSTP states that these synergies will help to improve the speed, accuracy and reliability of the post-trade environment by reducing the number of required connections and therefore the potential for error in the matching process. As a result, the speed of confirmation matching is improved and the accuracy of allocations processing is enhanced, resulting in prompt and accurate clearance and settlement of trades.

¹⁴ See Exhibit J at 10.

¹⁵ As BSTP’s application notes, a Bloomberg Professional service subscription includes a post-trade trade affirmation function known as “VCON,” which is used by a substantial number of buy-side and sell-side firms. VCON allows an institution and its broker-dealer that agree to a trade over the telephone, by e-mail, or otherwise to reconcile the economics of the trade in a thorough manner. In response to requests from multiple buy-side and sell-side customers, Bloomberg decided to enhance its existing VCON function by adding a confirmation matching service for DTC-eligible securities. See Exhibit S at 7–8.

BSTP believes that the market will benefit from the availability of functions to be provided by BSTP along with the existing functions provided by BLP that together will allow professional investors to analyze potential trades, route an order to a broker, receive an execution notice from the broker, enter trade details and allocations, receive a matched confirmation, and send an affirmed confirmation to the depository at DTC using the same provider. By making available a confirmation matching service accessible via the Bloomberg Professional service, which is commonly also used for electronic trading and post-trade processing, BSTP states that its proposed matching service will afford the securities industry the opportunity to use complementary services from start to finish.

BSTP states that it will devote resources to helping users and potential users of the matching service further the goal of straight-through-processing, compressed settlement cycles and, ultimately, a reduction of risk throughout the financial markets. In sum, BSTP believes that its matching service will increase overall matching capacity in the market, eliminate a single point of dependency, and introduce price competition to the market, which will reduce costs to market participants.

B. Conditions to Exemption from Registration

BSTP represents in its Form CA-1 that it would comply with the list of conditions found below regarding its operations and interoperability with other matching providers.¹⁶ The

¹⁶ See Exhibit S at 13–19. On November 19, 2014, the Commission adopted Regulation Systems Compliance and Integrity (“Reg SCI”), which would require “SCI entities” to comply with requirements for policies and procedures with respect to their automated systems that support the performance of their regulated activities. See Exchange Act Release No. 34-73639 (Nov. 19, 2014), 79 FR 72251, 72271 (Dec. 5, 2014). Rule 1000(a) of Reg SCI would define an “SCI entity” to include, among other things, a registered clearing agency and an exempt clearing agency subject to the Commission’s Automation Review Policies (“ARP”). In particular, the term “exempt clearing agency subject to ARP” includes “an entity that has received from the

Commission preliminarily believes that the conditions are important tools to facilitate effective systems interoperability. By establishing a framework that allows the customers of multiple service providers to conduct transactions without having to join each matching provider, the Commission preliminarily believes that the interoperability conditions help facilitate the linking of clearance and settlement facilities.¹⁷

C.1. Operational Conditions

(1) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with an audit report that addresses all the areas discussed in the Commission’s Automation Review Policies (“ARP”).¹⁸

(2) BSTP shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARP. BSTP shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

Commission an exemption from registration as a clearing agency under Section 17A of the Exchange Act, and whose exemption contains conditions that relate to the Commission’s [ARP] Policies, or any Commission regulation that supersedes or replaces such policies.” The Commission notes that the below conditions would meet the definition described in Rule 1000(a) of Reg SCI, requiring an exempt clearing agency subject to ARP to meet the applicable requirements set forth in Reg SCI.

¹⁷ See 15 U.S.C. 78q-1(a)(1)(D).

¹⁸ See Exchange Act Release Nos. 34-27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (“ARP I”), and 34-29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) (“ARP II”); see also Memorandum from the Securities and Exchange Commission Division of Market Regulation to SROs and NASDAQ (June 1, 2001) (“Guidance for Systems Outages and System Change Notifications”), available at <http://www.sec.gov/divisions/marketreg/sro-guidance-for-systems-outage-06-01-2001.pdf>.

(3) BSTP shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, BSTP shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes, BSTP shall report the systems outage within a reasonable time after the outage has been resolved.

(4) BSTP shall provide the Commission with 20 business days advance notice of any material changes that BSTP makes to the matching service. These changes will not require the Commission's approval before they are implemented.

(5) BSTP shall respond and require its service providers (including BLP) to respond to requests from the Commission for additional information relating to the matching service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and the ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions in any exemptive order issued by the Commission with respect to BSTP's matching service and the ETC service.

(6) BSTP shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC service.¹⁹

(7) BSTP shall preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports

¹⁹ DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule for BSTP.

regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. BSTP shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) BSTP shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted in an exemption issued by the Commission.

(9) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with copies of the service agreement between BLP and BSTP and shall notify the Commission of any material changes to the service agreement.

C.2. Interoperability Conditions

(1) BSTP shall develop, in a timely and efficient manner, fair and reasonable linkages between BSTP's matching service and other matching services that are registered with the Commission or that receive or have received from the Commission an exemption from clearing agency registration that, at a minimum, allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate effective interfaces with other matching services.

(2) BSTP shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to BSTP ("end-user representative") to gain a single point of access to BSTP and other matching services. Such interfaces must link with each other matching service so that an end-user client of one matching service can communicate with all end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to BSTP is necessary to develop, build, and operate links or interfaces to BSTP's matching service, as described in these conditions, BSTP shall license such intellectual property to other matching services seeking linkage to BSTP on fair and reasonable terms for use in such links or interfaces.

(4) BSTP shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,²⁰ which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, BSTP will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from BSTP's matching service.

(5) BSTP shall support industry standards in each of the following categories: communication protocols (e.g., TCP/IP, SNA); message and file transfer protocols and software (e.g., FIX, WebSphere MQ, SWIFT); message format standards (e.g., FIX); and message languages and metadata (e.g., XML). However, BSTP need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, BSTP shall make publicly known those standards supported by BSTP's matching service. To the extent that BSTP decides to support other industry standards, including new and modified standards, BSTP shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with BSTP's system shall be performed by BSTP without any significant delay or service degradation of the linked parties' services.

²⁰ 15 U.S.C. §78q-1(a)(2)(A)(ii).

(6) BSTP shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, BSTP shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services (“interface”). BSTP shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,²¹ BSTP and the requesting other matching service shall conclude negotiations and reach a binding agreement to develop and build an interface within 120 calendar days of BSTP’s receipt of the written request. This 120-day period may be extended upon the written agreement of both BSTP and the other matching service engaged in negotiations. For each other matching service with whom BSTP reaches a binding agreement to develop and build an interface, BSTP shall begin operating such interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service. For each interface and within the same time BSTP must negotiate and begin operating each interface, BSTP and the other matching service shall agree to “commercial rules” for coordinating the provision of matching services through their respective interfaces, including commercial rules: (A) allocating responsibility for performing matching services; and (B) allocating liability for service failures. BSTP shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take

²¹ The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this paragraph.

input from such participants into account in agreeing to commercial rules. At a minimum, each interface shall enable BSTP and the other matching service to transfer between them all trade and account information necessary to fulfill their respective matching responsibilities as set forth in their commercial rules (“trade and account information”). Absent an adequate business or technological justification, BSTP shall develop and operate each interface without imposing conditions that negatively impact the other matching service’s ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the other matching service’s ability to compete effectively against BSTP.

(7) In order to facilitate fair and reasonable linkages between BSTP and other matching services, BSTP shall publish or make available to any other matching service the specifications for any interface and its corresponding commercial rules that are in operation within 20 days of receiving a request for such specifications and commercial rules. Such specifications shall contain all the information necessary to enable any other matching services not already linked to BSTP through an interface to establish a linkage with BSTP through an interface or a substantially similar interface. BSTP shall link to any other matching service, if the other matching service so opts, through an interface substantially similar to any interface and its corresponding commercial rules that BSTP is currently operating. BSTP shall begin operating such substantially similar interface and commercial rules with the other matching service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service that plans to use that link.

(8) BSTP and respective other matching services shall bear their own costs of building and maintaining an interface, unless otherwise negotiated by the parties.

(9) BSTP shall provide to all other matching services and end-user representatives that maintain linkages with BSTP sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to BSTP through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

(10) BSTP and each other matching service shall negotiate fair and reasonable charges and terms of payment for the use of their interface with respect to the sharing of trade and account information (“interface charges”). In any fee schedule adopted under conditions C.2(10), C.2(11), or C.2(12) herein, BSTP’s interface charges shall be equal to the interface charges of the respective other matching service.

(11) If BSTP and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, BSTP and the other matching service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel’s establishment of a fee schedule shall be binding on BSTP and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or BSTP and the other matching service mutually agree to renegotiate.

(12) (A) The following parameters shall be considered in determining fair and reasonable interface charges: (i) the variable cost incurred for forwarding trade and account information to other matching services; (ii) the average cost associated with the development of links to end-users and end-user representatives; and (iii) BSTP’s interface charges to other matching services. (B) The following factors shall not be considered in determining fair and reasonable interface

charges: (i) the respective cost incurred by BSTP or the other matching service in creating and maintaining interfaces; (ii) the value that BSTP or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to BSTP that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading BSTP's matching service; or (v) the cost of building, maintaining, or upgrading value added services to BSTP's matching service. (C) In any event, the interface charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with BSTP by other matching services.

(13) BSTP shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than BSTP charges its customers for use of its matching service when all counterparties are customers of BSTP. BSTP shall not charge customers any additional amount for forwarding to or receiving trade and account information from other matching services called for under applicable commercial rules.

(14) BSTP shall maintain its quality, capacity, and service levels in the interfaces with other matching services ("matching services linkages") without bias in performance relative to similar transactions processed completely within BSTP's service. BSTP shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade-by-trade basis for (A) completing its matching service when all counterparties are customers of BSTP; (B) completing its matching service when one or more counterparties are customers of other matching services; or (C) forwarding trade information to other matching services called for under applicable commercial rules. BSTP shall retain the data and records for a period not less than six years. Sufficient information shall be maintained to demonstrate that the requirements of condition C.2(15) below are being met.

BSTP and its service providers shall provide the Commission with reports regarding the time it takes BSTP to process trades and forward information under various circumstances within thirty days of the Commission's request for such reports. However, BSTP shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to BSTP.

(15) BSTP shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if BSTP receives trade and account information that BSTP is required to forward to other matching services under applicable commercial rules ("pass-through information") prior to receiving trade and account information from BSTP's customers necessary to provide matching services for a trade in which all parties are customers of BSTP ("intra-hub information"), BSTP shall forward the pass-through information to the designated other matching service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, BSTP shall process the intra-hub information before forwarding the pass-through information.

(16) BSTP shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or transmitting trade and account information to and receiving authorization responses from settlement agents on fair and reasonable terms to other matching services and end-user representatives. Such access shall permit other matching services and end-user representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents for use in their own matching services or end-user representatives' services. The links necessary for other matching services and end-

user representatives to access BSTP's databases, systems or methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents will comply with conditions C.2(3), C.2(5), C.2(9), C.2(14) and C.2(15) above.

(17) For the first five years from the date of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall provide the Commission with reports every six months sufficient to document BSTP's adherence to the obligations relating to interfaces set forth in conditions C.2(6) through C.2(13) and C.2(16) above. BSTP shall incorporate into such reports information including but not limited to: (A) all other matching services linked to BSTP; (B) the time, effort, and cost required to establish each link between BSTP and other matching services; (C) any proposed links between BSTP and other matching services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for interface charges; (E) any written complaint received from other matching services relating to its established or proposed links with BSTP; and (F) if BSTP failed to adhere to any of the obligations relating to interfaces set forth in conditions C.2(6) through C.2(13) and C.2(16) above, its explanation for such failure. The Commission shall treat information submitted in accordance with this condition as confidential, non-public information, subject to the provisions of applicable law. If any other matching service seeks to link with BSTP more than five years after issuance of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall notify the Commission of the other matching service's request to link with BSTP within ten days of receiving such request. In addition, BSTP shall provide reports to the Commission in accordance with this paragraph commencing six months after the initial request for linkage is made until one year after BSTP and the other

matching service begin operating their interface. The Commission reserves the right to request reports from BSTP at any time. BSTP shall provide the Commission with such updated reports within thirty days of the Commission's request.

(18) BSTP shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by BSTP for any end-user representative.

V. Statutory Standards

A. Statutory Process for Registering or Exempting Clearing Agencies

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission before performing any of the functions of a clearing agency.²² However, Section 17A(b)(1) also states that, upon its own motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt said clearing agency from any provisions of Section 17A or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

In the Matching Release, the Commission noted that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. The Matching Release stated that the Commission anticipated that an entity seeking an exemption from clearing agency registration for matching would be required to: (1) provide the Commission with information on its matching services and notice of material changes to its matching services; (2) establish an electronic link to a registered clearing agency

²² See 15 U.S.C. 78q-1(b) and 17 CFR 240.17Ab2-1.

that provides for the settlement of its matched trades; (3) allow the Commission to inspect its facilities and records; and (4) make periodic disclosures to the Commission regarding its operations.

In 2001, the Commission approved an application by Omgeo, then a joint venture between DTCC and Thomson Financial, for an exemption from registration as a clearing agency to provide matching services.²³ Omgeo's exemption from clearing agency registration was subject to conditions that were substantially similar to the conditions set forth in Part IV.C above.

B. BSTP's Compliance with Statutory Standards

BSTP's matching service would be the only clearing agency function that it would perform under an exemptive order. BSTP believes that the undertakings it has proposed as a condition of obtaining an exemption from clearing agency registration are consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

BSTP represents in its Form CA-1 that it will comply with all of the conditions described in Part IV.C above. Preliminarily, the Commission does not believe, however, that BSTP, in the absence of performing the functions of a clearing agency other than the matching service described here, raises the same concerns as an entity that performs a wider range of clearing agency functions. For example, BSTP would not be operating as a self-regulatory organization with the powers to enforce its rules against its members. Accordingly, the Commission preliminarily believes it may not be necessary to require BSTP to satisfy all of the standards for registrants under Section 17A of the Exchange Act because the proposed conditions should establish a sufficiently robust regulatory framework. Further, the Commission preliminarily

²³ See supra note 9.

believes that granting BSTP an exemption from registration as a clearing agency would be consistent with the Commission's past practice, and that additional matching service providers should promote innovation and reduce costs for investors.

In evaluating BSTP's application, the Commission intends to consider whether BSTP is so organized and has the capacity to be able to facilitate prompt and accurate matching services. Subject to the specific operational, interoperability and access conditions to which it has agreed, the Commission preliminarily believes this to be the case. In particular, BSTP has represented that the addition of a new matching service into a single provider market will not adversely affect current users of the existing matching service offered by Omgeo. BSTP states that the proposed matching service will ensure that users will have full flexibility to use the central matching service of their choice at any time, and will have the ability to choose whether or not to use the matching service or another service on a per-trade basis. BSTP represents that users will not be locked into using BSTP's matching service over any alternative, whether by contract, functionality or otherwise.²⁴ BSTP believes that market participants seek "interoperability" through the ability to connect to multiple providers and the resulting improvements to reliability and stability in the post-trade space that would flow from this type of service offering.

The Commission requests comment on whether the conditions are sufficient to promote the purposes of Section 17A of the Exchange Act and to allow the Commission to adequately monitor the effects of BSTP's proposed activities on the national system for the clearance and settlement of securities transactions. In addition, the Commission invites commenters to address whether granting BSTP an exemption from clearing agency registration would impose any

²⁴ See Exhibit J at 10.

burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 17A of the Exchange Act.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act. To the extent possible, commenters are requested to provide empirical data and other factual support for their views. In addition, the Commission seeks comment generally on the following issues:

1. In light of the passage of time since the adoption of the Omgeo Exemptive Order, developments in technology, and enhancements in market practices, are the proposed conditions to the exemptive order appropriate? Specifically, are all of the conditions designed to facilitate interoperability necessary? Could the Commission continue to promote the purposes of Section 17A of the Exchange Act by additional modification or elimination of some or all of the conditions? If so, which conditions should be modified or eliminated?
2. What, if any, effect will moving from a single provider to two or more providers have on the efficiency of the trade settlement process?
3. What, if any, impact will the introduction of a second provider have on pricing, quality of service, and innovation?
4. Will the introduction of one or more additional providers increase or reduce risk in the marketplace?
5. Does BSTP's application for exemption from registration help achieve the underlying policy objectives of the Exchange Act? Why or why not? In particular, please address

whether granting an exemption from registration does or does not further the goals of promoting investor protection and the integrity of the securities markets.

6. Are the proposed conditions to the exemptive order sufficient to promote the purposes of Section 17A of the Exchange Act and to allow the Commission to adequately monitor the effects of BSTP's proposed activities on the national system for the clearance and settlement of securities transactions? Why or why not?
7. Would the links and interfaces with other matching services as described in BSTP's application have a positive or negative effect on other matching services that are registered with the Commission or that receive from the Commission an exemption from clearing agency registration? Why or why not? Should the proposed condition to develop an interface with another matching service provider be made mandatory, rather than only upon request from another provider?
8. Would the links and interfaces with other matching services as described in BSTP's application have a positive or negative effect on end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement? Why or why not?

Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 600-33 on the subject line; or

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, N.E., Washington, DC 20549-1090. All submissions should refer to File Number 600-33.

To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/other.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the application that are filed with the Commission, and all written communications relating to the application between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal

identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 600-33 and should be submitted on or before [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²⁵

Jill M. Peterson
Assistant Secretary

²⁵ 17 CFR 200.30-3(a)(16).