

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 87136 / September 27, 2019

ADMINISTRATIVE PROCEEDING
File No. 3-19542

In the Matter of

**Omgeo Matching Services US,
LLC (n/k/a DTCC ITP
Matching (US) LLC),**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Omgeo Matching Services US, LLC (n/k/a DTCC ITP Matching (US) LLC) (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to Section 21C(a) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. These proceedings arise out of Respondent's failure to fully comply with certain conditions set forth in a Commission order exempting it from registration as a clearing agency for the period between October 2013 and March 2017. As a result, Respondent violated Section 17A(b)(1) of the Exchange Act, which provides that it shall be unlawful for any clearing agency, unless registered with the Commission or exempted from registration by the Commission, directly or indirectly, to make use of the mails or any means of instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security).

2. On September 21, 2000, Respondent's predecessor submitted an application to the Commission to provide a service to match trade information submitted by a broker-dealer (i.e., confirmation information) with the trade information submitted by an institutional customer (i.e., allocation instructions) to produce an affirmed confirmation.² On April 17, 2001, the Commission issued an order exempting Respondent from registration as a clearing agency, captioned Order Granting Exemption From Registration as a Clearing Agency, Rel. No. 34-44188 (April 17, 2001) (the "Exemptive Order"). The Exemptive Order contained nine specific operational conditions, among other conditions, that were designed to enable the Commission to monitor Respondent's risk management procedures, operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the fundamental goals of Section 17A of the Exchange Act. In doing so, the Commission took the view, as initially presented in the Matching Release, that the limited functions provided by Respondent did not require it to be subject to the full panoply of clearing agency regulations, and that a "building block" approach whereby Respondent was exempt from registration but subject to conditions was consistent with the public interest and the purposes of the Exchange Act.

3. From 2001 to 2015, Respondent served as the sole provider of matching services in the U.S. securities markets for equity and fixed income trades operating pursuant to the Exemptive Order. Respondent maintains critical links to key market participants and financial market infrastructure in the U.S. markets, and many market participants depend on Respondent's matching service to facilitate the settlement of trades between broker-dealers and investment managers.

4. In October 2013, Respondent became a wholly-owned subsidiary of DTCC. Between October 2013 and March 2017, Respondent failed to fully comply with five of the nine operational conditions of the Exemptive Order, including failing to (1) provide the Commission with annual reports prepared by competent independent audit personnel that were generated in accordance with the annual risk assessment of the areas set forth in the Commission's Automation Review Policies ("ARPs"), (2) provide notice of material changes to services agreements with its parent companies, (3) preserve records of customer complaints, (4) provide twenty business days' notice of material changes to its matching services, and (5) respond fully to Commission requests

² In the Commission's Interpretation: Confirmation and Affirmation of Securities Trades; Matching, Rel. No. 34-39829 (April 6, 1998) (the "Matching Release"), the Commission concluded that providing a facility in which the terms of transactions between broker-dealers and their institutional customers are compared to each other would constitute the provision of facilities for the comparison of data, which would require an entity to either register as a clearing agency or seek an exemption from registration as a clearing agency.

for information. These failures occurred in part because Respondent lacked comprehensive policies and procedures to specifically address and ensure oversight of compliance with the Exemptive Order operational conditions.

Respondent

5. **Respondent** is a Delaware limited liability company headquartered in Boston Massachusetts. Respondent operates a post-trade matching service subject to the Exemptive Order. On January 10, 2018, Respondent filed an amendment to its Form CA-1 application to inform the Commission that it changed its name to DTCC ITP Matching (US) LLC.

Other Relevant Entities

6. **Omgeo LLC (n/k/a DTCC ITP LLC)** (“Omgeo”) is a Delaware limited liability company that wholly owns Respondent. Omgeo is not registered with the Commission in any capacity. Between 2001 and 2013, Omgeo was a joint venture wholly owned by Thomson Financial Inc. and certain of its affiliates (collectively, “Thomson”), and DTCC Global Joint Venture Corporation, a New York corporation wholly-owned by DTCC.

7. **The Depository Trust & Clearing Corporation (“DTCC”)** is a New York corporation that, as of October 1, 2013, wholly owns Omgeo, which in turn wholly owns Respondent. DTCC is the holding company for three clearing agencies registered with the Commission.

Background

8. On September 21, 2000, Respondent’s predecessor, Global Joint Venture Matching Services US, LLC (“GJVMS”), filed an application with the Commission seeking an exemption from registration as a clearing agency pursuant to Section 17A of the Exchange Act. GJVMS was formed for the purpose of being contributed to the Omgeo joint venture (among other assets of DTCC, Thomson, and certain of their affiliates) following issuance of the Exemptive Order.

9. In its application, GJVMS stated that it planned to offer an electronic trade confirmation service and a central matching service. The electronic trade confirmation service would create affirmed trade confirmations for broker-dealers, institutional customers, and custodian banks that are compliant with self-regulatory organization rules by transmitting messages (i.e. confirmation and affirmation messages) among these entities. The central matching service would also create affirmed trade confirmations, but it would do so via comparing or matching trade information submitted by a broker-dealer (i.e., confirmation information) with trade information submitted by an institutional customer (i.e., allocation instructions). Absent an exemption, GJVMS’s proposed central matching service required it to be registered as a clearing agency because GJVMS proposed to act as an intermediary to provide a facility to compare the terms of transactions in securities issued by a U.S. issuer between broker-dealers and their institutional customers.

10. On April 17, 2001, the Commission issued the Exemptive Order. In granting the exemption, the Commission considered, among other things, “GJVMS’s risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a

manner that will satisfy the fundamental goals of Section 17A (i.e., the safety and soundness of the national clearance and settlement system).” Further, the Commission granted the exemption subject to specific operational conditions “designed to promote a safe and efficient national clearance and settlement system and to enable the Commission to monitor the operation of GJVMS’s Central Matching Service.” The operational conditions included the following:

- a) before beginning commercial operation, providing the Commission with an audit report that addresses all the areas discussed in the ARPs (“Condition 1”);
- b) providing the Commission with annual reports prepared by competent independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs and audited financial statements prepared by competent independent audit personnel (“Condition 2”);
- c) reporting to the Commission all significant system outages (“Condition 3”);
- d) providing the Commission with 20 business days advance notice of any material changes to the electronic trade confirmation or central matching services (“Condition 4”);
- e) responding, and requiring service providers (including DTCC and Omgeo) to respond to requests from the Commission for additional information relating to the electronic trade confirmation or central matching services for the purpose of reviewing the operations of the electronic trade confirmation and central matching services, compliance with the federal securities laws, and the terms of the Exemptive Order (“Condition 5”);
- f) supplying the Commission with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that use the electronic trade confirmation or central matching services (“Condition 6”);
- g) preserving a copy or record of all trade details, allocation instructions, matching results, services agreements, and customer complaints, among other things, related to the operation of the electronic trade confirmation or central matching services for a period of five years (“Condition 7”);
- h) refraining from performing any clearing agency function other than as permitted by the Exemptive Order (“Condition 8”); and
- i) providing the Commission with copies of the services agreements between DTCC and Omgeo, between Thomson and Omgeo, and between Omgeo and Respondent, and notifying the

Commission of any material changes to these agreements (“Condition 9”).

Respondent Failed to Comply with Five of the Operational Conditions of the Exemptive Order

11. After Respondent became a wholly-owned subsidiary of DTCC, DTCC, Omgeo, and Respondent began integrating organizational structures. Prior to the integration, Respondent had relied upon various individuals and departments across Omgeo, Thomson, and DTCC for compliance with the conditions of the Exemptive Order. No single department or individual was charged with the specific, overall responsibility for monitoring or ensuring compliance with the Exemptive Order. During and after the integration, the Respondent did not establish a compliance function with overall responsibility for monitoring and ensuring compliance with the Exemptive Order. As a result, Respondent lacked comprehensive policies and procedures to specifically address and ensure oversight of compliance with the Exemptive Order operational conditions.

12. As a result, at various times between October 2013 and March 2017, Respondent failed to fully comply with five of the nine operational conditions of the Exemptive Order.

Audits Were Not Conducted In Accordance With Condition 2

13. In Condition 2 of the Exemptive Order, the Commission incorporated into the terms of the Respondent’s exemption the standards set forth in the ARPs. Accordingly, pursuant to Condition 2, Respondent was required to provide the Commission with annual audit reports prepared by competent, independent audit personnel in accordance with the annual risk assessment of the areas set forth in the ARPs.

14. Respondent failed to comply with Condition 2 because the audits conducted were of Omgeo, and did not clearly demonstrate that they covered the required risk assessment areas with respect to the electronic trade confirmation and central matching services provided by Respondent, the entity required to be audited under the Exemptive Order.

15. Additionally, Respondent failed to provide for organizational independence for the audits required by Condition 2. The Omgeo Audit and Risk Committee (“OARC”) retained responsibility under its charter to recommend to Omgeo’s Board of Managers the appointment or replacement of Respondent’s internal audit service. At the same time, the DTCC Internal Audit Department (“IAD”), which provided the annual audits, was required by the DTCC Audit Committee to monitor the effectiveness of joint venture and subsidiary audit committees, including OARC. As a result, the committee that hired IAD was monitored by IAD, and this condition persisted for approximately three years following the acquisition of Respondent by DTCC.

Notice of Material Changes to the Matching Services Were Not Timely Provided in Accordance With Condition 4

16. Under Condition 4 of the Exemptive Order, Respondent was required to provide the Commission with 20 business days advance notice of material changes to its central matching and electronic trade confirmation services. Respondent failed to timely provide such notice in two instances. First, on August 1, 2014, Respondent provided notice to the Commission of a material change to its central matching service 16 business days prior to its implementation on August 23,

2014. Second, on October 29, 2014, Respondent provided notice to the Commission of another material change to its central matching service 18 business days prior to its implementation on November 22, 2014.

**Records of Customer Complaints Were Not Preserved in
Accordance with Condition 7**

17. Under Condition 7 of the Exemptive Order, Respondent was required to preserve, among other things, a copy or record of all customer complaints relating to the operation of its central matching and electronic trade confirmation services for a period of five years. Complaints for the most recent two years must be easily accessible.

18. Respondent failed to properly preserve such customer complaints because they were commingled with, and not easily distinguishable from, customer service communications relating to all DTCC services. Respondent used DTCC's customer service system, which functioned as a repository for all customer service communications across DTCC and its subsidiaries. This system did not distinguish between customer complaints and other forms of communications, such as routine inquiries for password resets. Thus, while Respondent may have received customer complaints concerning its services, it was not readily able to identify, segregate, and produce them to the Commission.

**Responses to Commission Requests for Information
Were Not Provided and Notice of Material
Changes to Services Agreements
Were Not Provided in Accordance With Conditions 5 and 9**

19. Under Condition 5 of the Exemptive Order, Respondent was required to respond to Commission requests for additional information for the purpose of reviewing the operations of the electronic trade confirmation and central matching services, compliance with the federal securities laws, and the terms of the Exemptive Order.

20. Under Condition 9 of the Exemptive Order, Respondent was required to provide the Commission with notice of material changes to services agreements among DTCC, Omgeo, and Respondent. Such notice was critical to Commission oversight because Respondent outsourced the operation of its services to Omgeo, and, through Omgeo, to its parent entities and various of their subsidiaries and affiliates.

21. Respondent failed to provide Commission staff, in accordance with Condition 5, the services agreements among it, Omgeo, and DTCC, despite repeated requests from Commission staff. For example, Respondent provided only unexecuted 2013 service-level agreements between Omgeo and DTCC that governed cost allocations among the affiliated entities, and did not provide the related services agreement that had been executed in 2001. Additionally, Respondent did not produce a subsequent services agreement, dated January 1, 2015, until June 8, 2016.

22. By not providing the current services agreements that had been executed among DTCC and its multiple operating subsidiaries, including Omgeo, Respondent also failed to timely provide notice to the Commission of material changes to its services agreements in accordance with Condition 9.

Violation

23. As a result of the conduct described above, Respondent violated Section 17A(b)(1) of the Exchange Act, which provides that it shall be unlawful for any clearing agency, unless registered with the Commission or exempted from registration by the Commission, directly or indirectly, to make use of the mails or any means of instrumentality of interstate commerce to perform the functions of a clearing agency with respect to any security (other than an exempted security).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act, it is hereby ORDERED that:

- A. Respondent cease and desist from committing or causing any violations and any future violations Section 17A(b)(1) of the Exchange Act.
- B. Respondent shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$2,000,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. §3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center
Accounts Receivable Branch
HQ Bldg., Room 181, AMZ-341
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying DTCC ITP Matching (US) LLC as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Sandeep Satwalekar, Division of Enforcement, Securities and Exchange Commission, 200 Vesey Street, New York, New York 10281.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Vanessa A. Countryman
Secretary