

SECURITIES AND EXCHANGE COMMISSION
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April 23, 2015

Self-Regulatory Organizations; SS&C Technologies, Inc.; Notice of Filing of Application for Exemption from Registration as a Clearing Agency

I. Introduction

On April 15, 2013, SS&C Technologies, Inc. (“SS&C”) 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. SS&C amended its application on August 12, 2013, December 23, 2014, and March 30, 2015. SS&C 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 SS&C’s request for an exemption from clearing agency registration.

II. Background

A. SS&C Organization

SS&C was incorporated in the State of Delaware on March 29, 1996. SS&C’s headquarters are in Windsor, Connecticut, with offices in 20 locations across the United States. SS&C has additional offices in Toronto and other locations throughout the world, and is a global

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

provider of financial services-related solutions to investment management, banking, and other financial sector clients. All control and direction over SS&C is vested in SS&C Technologies Holdings, Inc., SS&C's parent company and a public holding company listed on NASDAQ (symbol SSNC).²

SS&C proposes to provide ETC services and matching services for fixed-income and equity trades as described in its Form CA-1 application. An overview of SS&C's proposed matching service is presented in Part III below. All matching service activities would be performed by SS&C's subsidiary, SS&C Technologies Canada Corp. ("SS&C Canada"). The policies and operations of SS&C Canada are overseen by its officers and directors, and are subject to control by SS&C's parent, SS&C Technologies Holdings, Inc. SS&C Canada will perform the matching services in Mississauga, Canada, through its software-enabled service, SSCNet, which is a global trade network linking investment managers, broker-dealers, clearing agencies, custodians, and interested parties. Client support for these services will be rendered through SS&C's offices in the United States, the United Kingdom, and Australia. SS&C will coordinate support activity, which includes help desk facilities and call and issue tracking through a shared client call database, and relationship management. SS&C and SS&C Canada will maintain an intercompany agreement setting forth respective services and obligations.

In addition to the conditions set forth in this notice, SS&C has made the following representations regarding its operations: (i) SS&C shall obtain contractual commitments from its customers permitting it to provide information to the Ontario Securities Commission, the Commission, and other third parties; (ii) SS&C shall make available SS&C Canada employees in

² See Form CA-1 at p. 111 (Exhibit C, providing a graphic description of SS&C's organizational structure).

Canada or the United States for interview by the Commission subject to reasonable notice, provided that such action does not impose unreasonable hardship under applicable immigration law on such employees; (iii) as set forth in the intercompany agreement, SS&C shall provide the Commission access to information related to SS&C's matching system and ETC services, including those documents it receives from its service provider, SS&C Canada (the "Business Activities Information"); (iv) SS&C Canada shall provide on the same business day to SS&C at its headquarters in Windsor, Connecticut electronically generated Business Activities Information, in whatever form SS&C shall specify, including regularly and automatically generated and ad hoc reports, books and records, correspondence, memoranda, papers, notices, accounts and other such records; and (v) SS&C Canada shall send to SS&C at its headquarters in Windsor, Connecticut all manually generated Business Activities Information, in whatever form SS&C shall specify, no later than the business day on which the record is generated. Further, SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian Personal Information Protection and Electronic Documents Act or the Ontario Business Records Protection Act.³ This would allow for the disclosure of personal information by SS&C Canada to SS&C (U.S.).

SS&C's directors and officers maintain direct control over SS&C and will oversee the business of SS&C's proposed matching service. The board of directors includes a standing audit committee and, from time to time, special committees formed to address specific issues.⁴ SS&C

³ As the draft intercompany agreement is governed by Connecticut law, and as external counsel are not qualified to practice in Connecticut, in providing these opinions they have assumed that the provisions of the Agreement have the same meaning under Connecticut law as they would under Ontario and Canadian law.

⁴ For example, SS&C maintains an Information Security Policy as well as a Confidentiality and Privacy Policy to ensure customer information is protected. The SS&C Board of Directors

is owned principally by public shareholders, including William C. Stone, who controls approximately 20% of the shares and has indirect control of SS&C.⁵

B. Matching as a Clearing Agency Function

On April 6, 1998, the Commission issued an interpretive release regarding matching services⁶ (the “Matching Release”).⁷ 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.⁸ Therefore, any person providing independent matching services must either register with the Commission as a clearing agency or obtain an exemption from registration

and executive officers are ultimately responsible for Information Security. The Vice President of Security coordinates the Information Security activities within SS&C.

⁵ See Form CA-1 at p. 112 (Exhibit D).

⁶ The term “matching service” as used here means an electronic service to centrally match trade information between a broker-dealer and its institutional customer.

⁷ See Confirmation and Affirmation of Securities Trades; Matching, Exchange Act Release No. 34-39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998).

⁸ 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.

pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder.⁹ 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.¹⁰ SS&C has applied for a similar exemption from registration as a clearing agency to provide ETC and matching services.

III. SS&C’s Proposed Matching Service

In its application for exemption from registration as a clearing agency, SS&C states it will provide ETC and matching services for broker-dealers and institutional customers that will allow such entities to streamline communications and process allocation and post-trade information for fixed-income and equity trades for depository eligible U.S. securities.¹¹

According to SS&C, users of its services will gain access to a matching utility that is affordable, flexible in handling either part or all of the trade matching cycle, and easily interfaced with other matching utilities. Its matching service allows users to route an order to a broker, receive an execution notice from the broker, and enter trade details and allocations so that SS&C’s matching service can generate a matched confirmation and send an affirmed confirmation to the depository at the Depository Trust Company (“DTC”)—the full lifecycle of a trade.

⁹ See 15 U.S.C. 78q-1 and 17 CFR 240.17Ab2-1.

¹⁰ 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 that it had entered into an agreement with Thomson Financial to acquire full ownership of Omgeo.

¹¹ See Form CA-1 at p. 129 (Exhibit S).

SS&C's matching service will offer both block level matching and detail level matching.¹² The block level matching, also known as trade level matching, is an optional first step that requires a broker-dealer to submit a final cumulative notice of execution ("NOE") on the trade date, which will be matched against the aggregated totals of the corresponding allocations submitted on the trade date by the investment manager.¹³ During import of the trade data, the matching service validates key fields, and if errors are found, the trade is placed in a reprocess queue and displayed within a reprocess blotter to allow for manual data correction or resubmission. The matching service will allow the investment manager and the broker-dealer to configure a match agreement to determine whether to require block level matching, which instrument types are eligible for block level matching, and which fields are eligible as well. For example, the counterparties may choose to match proceeds based on gross or net amounts. The investment manager is allowed to set tolerances against certain fields (such as accrued, commission, fees, price, or settlement amount) on either an actual or percentage basis, and if the details submitted by the broker-dealer fall within the accepted tolerance range, the details are deemed to be accepted by the investment manager. SS&C's matching service considers all matches within tolerance to be partially matched, with exact matches to be fully matched, and matches outside of the tolerance (or submitted details without a corresponding entry by the counterparty) to be unmatched.

Detail level matching occurs either at once or after the block level matching process is complete. Upon receipt of an allocation, a broker-dealer can generate a confirmation for delivery to the investment manager and capture within SS&C's matching service. The confirmation is

¹² See id. at p. 118 (Exhibit J).

¹³ See id.

subject to validation of its key fields, and any errors are returned to the broker-dealer through a reprocess blotter. Like the block level matching process, the detail level matching process allows the investment manager to determine which fields must be matched, and within what tolerance such matches should be set. The same partially matched, exact match and unmatched results apply to the detail level matching process as they do in the block level matching process. However, because additional time is required to prepare and submit allocations or confirmations, there is a “Waiting to be Matched” period that can be established by the investment manager, which allows trades to be matched within this period (approximately thirty minutes), with other trades appearing as unmatched.¹⁴ Trades can be released to custodian or interested parties that are direct members of SS&C’s network SSCNet once the trade enters the network, or after the match. If a custodian is responsible for affirming a trade, it can be released to them immediately.

Standing instructions are provided through the Delivery Instruction Database (“DIDB”), which is fully integrated into SSCNet, and provides a repository for settlement instructions across asset classes, including foreign exchange and term deposits. Rather than requiring users to attach instructions to portfolios directly, or maintaining portfolios within the DIDB, a cross-referencing mechanism is used to ensure portfolios are synchronized with the proper set of instructions. In addition, local cross-referencing allows each user to maintain its own set of currency codes, transaction type identifiers, counterparty codes, and portfolio identifiers, ensuring that the responsibility for maintenance rests with each user.¹⁵ SSCNet is also integrated into the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”) Network,

¹⁴ See id.

¹⁵ See id. at p. 119 (Exhibit J).

allowing users to communicate with parties outside the SSCNet platform.¹⁶ For example, some users desire receiving transactions from a batch facility, rather than SSCNet's real-time message system. Users can select the output format for batch communications (SSCNet proprietary, SWIFT, ISITC, or DTC affirmation format), as well as when the batch should be submitted. Once a transaction is exported from SSCNet, it is marked in the audit trail.

Finally, central time stamping and a full audit trail are available for all transactions, with transaction histories maintained online for a minimum of 45 days and accessible in an online archive for up to 10 years.¹⁷

Other than the above matching service, SS&C's Form CA-1 application indicates that it will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act,¹⁸ such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

IV. SS&C's Request for an Exemption

A. Introduction

In its Form CA-1 application, SS&C notes that it has engaged in ETC and settlement services for over 20 years. During that time, SS&C states that it has maintained open interoperability conditions and has provided the assurance to participants and regulators abroad of a secure, reliable service.¹⁹ Its SSCNet utility offers a post-trade, pre-settlement ETC and affirmation service for all constituents in the institutional trade process, including investment

¹⁶ See id.

¹⁷ See id.

¹⁸ See id. at p. 118 (Exhibit J).

¹⁹ See id. at p. 129 (Exhibit S).

managers, broker-dealers, custodians, and other interested parties.²⁰

In sum, SS&C believes that users of its service in the United States will “gain access to a matching utility that is affordable, a utility that will strengthen the industry-wide business continuity efforts in the institutional trading area and will allow users to choose the best matching process for their purposes.”²¹ SS&C also believes that the flexibility offered by its SSCNet service “will allow easy interfacing with other matching utilities and therefore offer market participants a greater choice in selecting their matching provider.”²²

B. Conditions to Exemption from Registration

SS&C 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.²³ 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

²⁰ See id. at p. 118 (Exhibit J).

²¹ See id. at p. 129 (Exhibit S).

²² See id.

²³ See id. In addition, 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 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.

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.²⁴

C.1. Operational Conditions

(1) Before beginning the commercial operation of its matching service, SS&C shall provide the Commission with an audit report that addresses all the areas discussed in the Commission’s Automation Review Policies (“ARP”).²⁵

(2) SS&C 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. SS&C shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

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

²⁴ See 15 U.S.C. 78q-1(a)(1)(D).

²⁵ 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>.

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

(5) SS&C shall respond and require its service providers 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 SS&C's matching service and the ETC service.

(6) SS&C 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.²⁶

(7) SS&C 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 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. SS&C shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

²⁶ DTC submits monthly affirmation/confirmation reports to the appropriate self-regulatory organizations. The Commission anticipates a similar schedule for SS&C.

(8) SS&C 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, SS&C shall provide the Commission with copies of the intercompany agreement between SS&C and SS&C Canada and shall notify the Commission of any material changes to the service agreement.

C.2. Interoperability Conditions

(1) SS&C shall develop, in a timely and efficient manner, fair and reasonable linkages between SS&C'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) SS&C shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to SS&C ("end-user representative") to gain a single point of access to SS&C 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 SS&C is necessary to develop, build, and operate links or interfaces to SS&C's matching service, as described in these conditions, SS&C shall license such intellectual property to other matching services seeking linkage to SS&C on fair and reasonable terms for use in such links or interfaces.

(4) SS&C shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,²⁷ which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, SS&C will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from SS&C's matching service.

(5) SS&C 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, SS&C need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, SS&C shall make publicly known those standards supported by SS&C's matching service. To the extent that SS&C decides to support other industry standards, including new and modified standards, SS&C 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 SS&C's system shall be performed by SS&C without any significant delay or service degradation of the linked parties' services.

(6) SS&C shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, SS&C shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services ("interface"). SS&C shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such

²⁷ 15 U.S.C. 78q-1(a)(2)(A)(ii).

participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,²⁸ SS&C 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 SS&C's receipt of the written request. This 120-day period may be extended upon the written agreement of both SS&C and the other matching service engaged in negotiations. For each other matching service with whom SS&C reaches a binding agreement to develop and build an interface, SS&C 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 SS&C and the other matching service. For each interface and within the same time SS&C must negotiate and begin operating each interface, SS&C 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. SS&C shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take input from such participants into account in agreeing to commercial rules. At a minimum, each interface shall enable SS&C 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, SS&C shall develop and operate each interface without imposing

²⁸ 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.

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 SS&C.

(7) In order to facilitate fair and reasonable linkages between SS&C and other matching services, SS&C 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 SS&C through an interface to establish a linkage with SS&C through an interface or a substantially similar interface. SS&C 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 SS&C is currently operating. SS&C 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 SS&C and the other matching service that plans to use that link.

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

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

(10) SS&C 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, SS&C’s interface charges shall be equal to the interface charges of the respective other matching service.

(11) If SS&C and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, SS&C 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 SS&C and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or SS&C 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) SS&C’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 SS&C or the other matching service in creating and maintaining interfaces; (ii) the value that SS&C or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to SS&C that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading SS&C’s matching service; or (v) the cost of building, maintaining, or

upgrading value added services to SS&C'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 SS&C by other matching services.

(13) SS&C shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than SS&C charges its customers for use of its matching service when all counterparties are customers of SS&C. SS&C 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) SS&C 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 SS&C's service. SS&C 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 SS&C; (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. SS&C 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. SS&C and its service providers shall provide the Commission with reports regarding the time it takes SS&C to process trades and forward information under various circumstances within 30 days of the Commission's request for such reports. However, SS&C 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 SS&C.

(15) SS&C shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if SS&C receives trade and account information that SS&C is required to forward to other matching services under applicable commercial rules (“pass-through information”) prior to receiving trade and account information from SS&C’s customers necessary to provide matching services for a trade in which all parties are customers of SS&C (“intra-hub information”), SS&C 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, SS&C shall process the intra-hub information before forwarding the pass-through information.

(16) SS&C 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 SS&C’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 SS&C's matching service, SS&C shall provide the Commission with reports every six months sufficient to document SS&C's adherence to the obligations relating to interfaces set forth in conditions C.2(6) through C.2(13) and C.2(16) above. SS&C shall incorporate into such reports information including but not limited to (A) all other matching services linked to SS&C; (B) the time, effort, and cost required to establish each link between SS&C and other matching services; (C) any proposed links between SS&C 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 SS&C; and (F) if SS&C 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 SS&C more than five years after issuance of an exemptive order issued by the Commission with respect to SS&C's matching service, SS&C shall notify the Commission of the other matching service's request to link with SS&C within ten days of receiving such request. In addition, SS&C 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 SS&C and the other matching service begin operating their interface. The Commission reserves the right to request reports from SS&C at any time. SS&C shall provide the Commission with such updated reports within thirty days of the Commission's request.

(18) SS&C shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by SS&C 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.²⁹ 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 stated 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 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.

²⁹ See 15 U.S.C. 78q-1(b) and 17 CFR 240.17Ab2-1.

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.³⁰ 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. SS&C's Compliance with Statutory Standards

SS&C's matching service would be the only clearing agency function that it would perform under an exemptive order. SS&C 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.

SS&C 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 SS&C, 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, SS&C 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 SS&C 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 believes that granting SS&C 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.

³⁰ See supra note 10.

In evaluating SS&C's application, the Commission intends to consider whether SS&C 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. Because the service is flexible in handling part or all of the trade matching cycle, SS&C states that its proposed service "will allow easy interfacing with other matching utilities and therefore offer market participants a greater choice in selecting their matching provider." SS&C also states that the proposed matching service will provide improved and automated verification which eliminates obstacles to settlement as well as losses created by input and data errors, and further states that its proposed matching service will strengthen industry-wide business continuity efforts in the institutional trading space.³¹ SS&C believes that market participants seek flexibility and choice in selecting their matching provider and the resulting improvements to reliability and stability in the post-trade space would flow from its 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 SS&C'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 SS&C an exemption from clearing agency registration would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 17A of the Exchange Act.

³¹ See Form CA-1 at p. 129 (Exhibit S).

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 SS&C'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 SS&C'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 SS&C'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 SS&C'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 600-34 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 600-34.

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 600-34 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.³²

Brent J. Fields
Secretary

³² 17 CFR 200.30-3(a)(16).