July 19, 2012

Janet M. Angstadt, Esq.
Katten Muchin Rosenman LLP
525 W. Monroe Street
Chicago, IL 60661-3693

Re: S3 Matching Technologies LP

Dear Ms. Angstadt:

In your letter dated July 18, 2012, on behalf of S3 Matching Technologies LP ("Company" or "S3"), you request assurances from the staff of the Division of Trading and Markets ("Staff") that it will not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") if the Company engages in the activities described in your letter without registering as a broker-dealer in accordance with Section 15(b) of the Exchange Act.

S3 is a financial services software company that is developing a computerized platform (the "Platform") that will electronically link registered broker-dealers to one another, including broker-dealers that are also registered as alternative trading systems. Through a secure linkage, the Platform will permit a broker-dealer ("Sending Broker") to send electronic messages that communicate buy and sell orders to other broker-dealers participating on the Platform with whom a Sending Broker has a pre-existing brokerage relationship ("Receiving Broker," collectively with Sending Brokers, the "Platform Participants").[1]

Sending Brokers will provide instructions through the Platform concerning the appropriate Receiving Broker to whom a particular order should be routed. The Platform will contain an order routing analytical tool that a Sending Broker can use to determine to which Receiving Broker to send an order based on the order execution quality metrics that the Sending Broker considers important ("analytical tool").[2] The analytical tool will contain numerous execution quality metrics, including, but not limited to: (1) order size; (2) execution price; (3) price improvement; (4) execution speed; (5) effective spread; (6) the effective spread divided by

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[1]   You state that the Platform will be available for the order routing of U.S. exchange-listed equities and equity options. You also state that Platform Participants will connect to the Platform through dedicated lines or through a Platform Participant's order management system or service bureau.

[2]   You state that the software for the analytical tool will reside on Company servers in a secure data center. You also state that the analytical tool will permit a Sending Broker to evaluate the execution quality of a Receiving Broker in real-time throughout the trading day.

the quote spread; (7) transaction fees; and (8) rebates and credits offered by the Receiving Broker. The Company expects the criteria of the execution quality metrics to change over time based on the execution quality characteristics important to Sending Brokers. As part of the Platform's functionality, you state that a Sending Broker must define the routing rules applicable to orders communicated through the Platform.[3]

You state in your letter, that neither the Company nor the Platform will have discretion over the routing destination of an order, and will not make any decisions on behalf of a Sending Broker to initiate a buy or sell order. Instead, a Sending Broker will determine the parameters by which an order message is communicated to a Receiving Broker through the Platform, and the Platform will route order messages based on those parameters. You also state that a Receiving Broker will be able to provide order execution reports and other updates concerning the status of an order to a Sending Broker through the Platform. Orders will only be routed to a Receiving Broker that a Sending Broker has approved for order routing, and the Platform will not match orders. You represent that S3 will not conduct any trading for its own accounts and will not route any orders for its own accounts through the Platform. As stated in your letter and clarified in a subsequent telephone conversation with the Staff, you represent that the Company does not control a registered broker-dealer, nor is it controlled by or under common control with a registered broker-dealer.

Sending Brokers will pay a one-time configuration fee for use of the Platform and the analytical tool, and a Receiving Broker will pay a one-time set-up fee for access to the Platform. Platform Participants will also be charged a flat monthly fee for access to the Platform, customer and technical support, software updates, connectivity to the Platform, maintenance of the Platform's infrastructure, and a specified level of messages that can be generated by Platform Participants.[4]

The Company plans to offer a range of pricing tiers for Platform Participants. Tiers with a higher flat monthly fee will allow for higher specified message levels. In the event a Platform Participant exceeds the specified level of messages allowed in a particular pricing tier, the Company will notify the Platform Participant in advance that nominal excess usage charges will be imposed at a specified rate per message. You state that no fee will be charged to a Platform Participant, and that the Company will not receive any compensation, that is based directly or indirectly on the size, value, or occurrence of securities transactions that take place or are expected to take place. The Company will not receive, or make arrangements to receive, payment for order flow.

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[3]   You acknowledge that use of the Platform's analytical tool will not relieve a Platform Participant of its best execution obligations under the federal securities laws. *See, e.g., Regulation NMS*, Exchange Act Release. No. 49325 (February 26, 2004), 69 FR 11126, 11137 (March 9, 2004) ("A broker-dealer still must seek the most advantageous terms reasonably available under the circumstances for all customer orders. A broker-dealer must carry out a regular and rigorous review of the quality of market centers to evaluate its best execution policies, including the determination as to which markets it routes customer order flow."). You also acknowledge that Platform Participants will remain responsible for their compliance with the recordkeeping requirements under the Exchange Act.

[4]   Examples of the types of messages that Platform Participants will generate include messages communicating orders, modifications to orders, and status updates on orders including fill, partial fill, and cancels.

You state that the Company will obtain written assurances from each Sending Broker representing that only a customer of the Sending Broker that holds an "institutional account" within the meaning of FINRA Rule 4512(c)[5] will be able to directly send orders through the Platform. The Company will not accept any customer orders from a Sending Broker that does not provide such written assurances. You also state, however, that only a Sending Broker will define the routing rules applicable to orders sent by a customer to the Platform, and that Platform Participants will be responsible for compliance with Rule 15c3-5 under the Exchange Act, as applicable.

To the extent the Platform is advertised jointly with a Platform Participant, the Platform Participant will take full and sole responsibility for the advertisement and ensure compliance with relevant Commission and self-regulatory organization rules. You state that any advertisements for the Platform will make clear that the Company is not a broker-dealer, and that only a Platform Participant will perform brokerage services.

You represent that the Company will not be involved in the execution, settlement or clearance of transactions, and will not hold or have access to customer funds or securities. You also represent that the Platform will not solicit, process, or facilitate transactions in any way, other than by providing the order messaging feature and analytical tool.

In addition to those mentioned above, you also make the following representations:

- S3 will not hold, have access to, or handle funds or securities.

- The Company will not recommend or endorse specific securities nor become involved with the financial services provided by Platform Participants, including, among other things, the opening, maintenance, administration, or closing of accounts, or the solicitation, processing, or facilitation of transactions of any kind relating to accounts.

- The Company will not hold itself out as providing any securities-related financial services other than routing orders between Platform Participants, providing analytical tools, routing logic, and generating reports of transactions.

- Other than by identifying Receiving Brokers on the Platform as available destinations, the Company will not, directly or indirectly, make any endorsement or recommendation with respect to any Platform Participant.

- The Platform will not display quotations for securities.

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[5]   FINRA Rule 4512(c) defines an institutional account to mean the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

- Excess usage fees, as described above, will be designed to compensate the Company for any additional costs in delivering services that are beyond the agreed upon flat fee volume limitations.

- The Platform will not facilitate the sharing or splitting of commissions by Platform Participants; nor will it acquire, store, or report information with respect to any such activity.

- The Platform will not automate trading desk activities such as pricing and position management.

- The Platform will not change the sequencing or priority of a Sending Broker's orders. The Platform will not change the sequencing of fulfillment advisories transmitted from a Sending Broker to a Receiving Broker.

- The Platform will not bring together orders for securities of multiple buyers and sellers and will not use established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other and the buyers and sellers entering such orders agree to the terms of a trade.

- Agreements between the Company and Platform Participants contracting to use the Platform will require that Platform Participants have and maintain registration or qualification as broker-dealers to the extent required in the respective jurisdictions in which they conduct business, including the registration of foreign brokers whose activities in the United States or with U.S. investors require registration as broker-dealers under the Exchange Act.

- Platform Participants will receive no warranty or guarantee from the Company concerning execution quality in the fulfillment of orders.

- The Platform will be able to generate reports of transactions conducted using the Platform to help Platform Participants comply with their regulatory reporting obligations. S3 will also keep a record of these reports and will generate and keep a quarterly report of each Platform Participant's transaction volume per security. S3 will make these reports readily accessible to the staff of the Commission and FINRA upon request.

- Settlement of trades will not be handled by S3.

- The Platform will not generate settlement instructions, confirmations or other forms of advisories or messages to Platform Participants.

Response:

Based on the facts and representations contained in your letter, and without necessarily agreeing with your analysis and conclusions, the Staff will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act against the Company for engaging in the activities described in your letter without registering as a broker-dealer in accordance with

Section 15(b) of the Exchange Act. This position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This no-action position is subject to modification or revocation at any time the Staff determines that such modification or revocation is consistent with the public interest or the protection of investors. Furthermore, this response only expresses the Staff's position on enforcement action and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call Joseph Furey, Assistant Chief Counsel, Ignacio Sandoval, Special Counsel, Timothy White, Special Counsel, or me at (202) 551-5550.

Sincerely,

David W. Blass
Chief Counsel

cc: Mark Davies, S3 Matching Technologies LP

July 18, 2012

VIA FEDERAL EXPRESS

Mr. David W. Blass, Esq.
Chief Counsel
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

Re: **No-Action Request for S3 Matching Technologies LP**

Dear Mr. Blass:

Our client, S3 Matching Technologies LP (the "Company" or "S3") is a financial services software company that is developing a computerized, user-directed routing platform that will electronically link registered broker-dealers to one another, including broker-dealers registered as alternative trading systems (the "S3 Platform"). We respectfully request assurances from the staff of the Division of Trading and Markets (the "Staff") that it will not recommend enforcement action to the Securities and Exchange Commission ("Commission") under Section 15(a)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") if S3 provides and operates the S3 Platform, as described below, without registering as a broker-dealer under Section 15(b) of the Exchange Act.

Description of the S3 Platform

Through a secure linkage, the S3 Platform will permit broker-dealers ("Sending Brokers") to send electronic messages that communicate buy and sell orders to other broker-dealers participating on the S3 Platform with whom a Sending Broker has a pre-existing brokerage relationship ("Receiving Brokers," collectively with the Sending Brokers, the "Platform Participants").

Sending Brokers will provide instructions through the S3 Platform concerning the appropriate Receiving Broker to whom a particular order should be routed. Sending Brokers may utilize order routing analytical tools to help Sending Brokers determine where to route orders, as described in more detail below. The S3 Platform will be used to transmit orders from a Sending Broker to a Receiving Broker in accordance with the routing instructions established by the Sending Broker.

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S3 does not conduct any trading for its own accounts and will not route any orders for its own accounts. As well, S3 is not owned or controlled by a registered broker-dealer.

The S3 Platform will be available for the order routing of U.S. exchange-listed equities and equity options. Platform Participants will connect to the S3 Platform through dedicated lines or through their order management systems or service bureaus. All communications through the S3 Platform will occur via the FIX messaging protocol.

A Sending Broker that wishes to use the S3 Platform to route orders can select one or more execution quality analytical tools developed by S3. The software for these analytical tools will reside on S3 servers in a secure data center. The tools analyze historical data to determine the execution quality of the Receiving Broker. A Sending Broker can evaluate execution quality of Receiving Brokers in real-time throughout the trading day, rather than wait until monthly or even quarterly reports concerning execution quality are published. The S3 analytical tools will allow a Sending Broker to, among other things, route to the Receiving Broker that offers the execution quality metrics that a Sending Broker considers important. For example, a Sending Broker may wish to route to the Receiving Broker that historically offers the greatest price improvement in a particular security or group of securities. Sending Brokers would be able to select an S3 analytical tool to evaluate the price improvement performance of a Receiving Broker and whether the price improvement levels for that Receiving Broker change over the course of the day. With this selection, a Sending Broker would be able to send orders through the S3 Platform with instructions to direct orders to the Receiving Broker with the best price improvement performance in accordance with the analytics of the S3 tool.

Sending Brokers can direct orders through the S3 Platform based on numerous execution quality metrics, including, but not limited to: (1) order size, (2) execution price, (3) price improvement, (4) execution speed, (5) effective spread, (6) the effective spread divided by the quote spread, (7) transaction fees, and (8) rebates and credits offered by the trading venue. S3 expects that the criteria of the routing parameters will change over time based on the execution quality characteristics important to Sending Brokers. Thus, S3 will adapt its software to offer additional routing choices to Sending Brokers over time.

Prior to sending an order, the Sending Broker must define the routing rules applicable to orders transmitted through the S3 Platform. In other words, orders transmitted through the S3 platform must pass through the routing logic set up by the Sending Broker. The S3 Platform, however, will not have any discretion over the routing of orders. Instead, the S3 Platform will route orders based on the order parameters set up by the Sending Brokers.

Once the order passes through the routing logic set by the Sending Broker, the S3 Platform will transmit the order to the appropriate Receiving Broker through a secure connection. The S3 Platform is designed to submit orders to Receiving Brokers only in accordance with the instructions or parameters established by the Sending Broker. S3 does not make any order routing decisions for Sending Brokers nor does S3 make any decisions on behalf of Sending Brokers to initiate buy or sell orders. As well, orders are routed to only those Receiving Brokers that the Sending Broker has previously approved for receiving orders.

Once a Sending Broker has directed the S3 Platform to route an order to a Receiving Broker for execution, the order is transmitted to the Receiving Broker for order handling. The Receiving Broker will provide order execution reports and other updates concerning the status of the order to the Sending Broker through the S3 Platform. All Platform Participants will have a duty of best execution with respect to all orders sent and received through the S3 Platform.

S3 anticipates charging Sending Brokers a one-time configuration fee for use of the S3 Platform and the execution quality analytical tools. Receiving Brokers will be charged a one-time set-up fee for access to the S3 Platform. Platform Participants will be charged a flat monthly fee covering access to the S3 Platform, customer and technical support, software updates, connectivity to the S3 Platform, and maintenance of the S3 Platform infrastructure, and a specified level of messages that can be generated by the Platform Participants. Examples of the types of messages that Platform Participants will be able to generate include messages communicating orders, modifications to orders, status updates on orders including fill, partial fill, and cancels. Platform Participants will be responsible for all compliance with recordkeeping requirements under the Exchange Act.

S3 will offer a range of pricing tiers to Platform Participants. Tiers with a higher flat monthly fee will allow for higher specified message levels. Should a Platform Participant exceed the specified level of messaging allowed in a particular pricing tier, the Platform Participant will be notified in advance that nominal excess usage charges will be imposed at a specified rate per message. S3 notes that no fee charged to Platform Participants will be based, either directly or indirectly, on the size, value or occurrence of securities transactions that take place or are expected to take place in the future. S3 will not receive, or make arrangements to receive, payment for order flow from Platform Participants.

At the start of its operations, S3 intends to make the S3 Platform available to a single Sending Broker with access to a single participating Receiving Broker. S3 anticipates that over time, multiple Sending Brokers will use the S3 Platform to access multiple Receiving Brokers. While the Company will permit a Sending Broker's customer that holds an "institutional account"

within the meaning of FINRA Rule 4512(c)[1] to directly place orders through the Platform, the Company will only do so once it has obtained written assurances from each Sending Broker representing that only a customer holding an institutional account will be permitted to directly place orders through the Platform. The Company will not accept any customer orders from a Sending Broker that does not provide such written assurances. Importantly, only the Sending Brokers may define the routing rules applicable to orders sent by a Sending Broker's customer through the S3 Platform. In this way, only a Sending Broker controls the parameters for order routing by the S3 Platform and only the Sending Broker may make modifications to the order routing. Platform Participants will be responsible for any compliance obligation under Exchange Act Rule 15c3-5, as applicable.

S3 will not make any recommendation to Sending Brokers or prospective Sending Brokers regarding Receiving Brokers, other than by providing a list of participating Receiving Brokers. As noted earlier, S3 also will provide Sending Brokers with a wide array of analytical tools that will allow Sending Brokers to examine execution quality at the various Receiving Brokers. The payment for such data is not, and will not be conditioned, directly or indirectly, on the execution of any particular transaction or transactions.

To the extent that the S3 Platform is advertised jointly with a Platform Participant, the Platform Participant will take full and sole responsibility for the advertisement and ensure compliance with relevant Commission and self-regulatory organization rules. Any and all advertisements for the S3 Platform will also make clear that S3 is not a broker-dealer and that only Platform Participants will perform any and all brokerage related services.

S3's Activities Should Not Require Registration as a Broker-Dealer

Section 3(a)(4) of the Exchange Act defines a broker as "any person engaged in the business of effecting transactions in securities for the account of others." In interpreting Section 3(a)(4), the Commission and the Staff have considered the receipt of transaction-based compensation as a key factor in considering whether a person is "engaged in the business" of transacting securities, and therefore subject to registration as a broker. We respectfully submit that S3 does not meet this definition.

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[1] FINRA Rule 4512(c) defines an institutional account to mean the account of: (1) a bank, savings and loan association, insurance company or registered investment company; (2) an investment adviser registered either with the Commission under Section 203 of the Investment Advisers Act of 1940 or with a state securities commission (or any agency or office performing like functions); or (3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

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S3 will not engage in broker activity by virtue of simply offering Sending Brokers access to the S3 Platform or by operating the S3 Platform. Rather, the S3 Platform is simply a linkage for order routing from one registered broker-dealer to another. We note that the relief S3 requests is consistent with the conditions previously described in prior no-action letters regarding electronic linkages between investors and broker-dealers pursuant to which users can send orders to broker-dealers for execution. We reemphasize here that Platform Participants will be registered broker-dealers.

In particular, we believe that the S3 Platform is substantially similar to the market data and order management systems described in *GlobalTec Solutions, LLP*, SEC No-Action Letter (Dec. 28, 2005) ("GlobalTec"). The S3 Platform and the platform in GlobalTec both provide for connectivity between users and broker-dealers, and permit clients to send orders to participating broker-dealers. As well, the GlobalTec platform allowed users to access certain analytical and research tools in a manner similar to the S3 Platform.

In addition, we view S3's pricing model as more conservative than that described in *Swiss American Securities, Inc.*, SEC No-Action Letter (May 28, 2002) ("Streetline"). Streetline developed, customized and hosted financial websites for use by foreign financial institutions. Among the services that could be provided by the websites designed by Streetline was the ability of the foreign financial institutions to send orders to U.S. broker-dealers. The order routing services provided by Streetline reflected the foreign financial institution's decision about where to route its order flow. Importantly, the Staff indicated in the Streetline no-action letter that Streetline could receive fees on a per order basis. In contrast, S3 will offer pricing based on tiers of message traffic and not on a per order basis. In this way, we view S3's pricing model as more conservative than the per order fee proposed by Streetline.

With respect to S3's proposal to offer tiered pricing with excess usage fees, we view this proposal as consistent with the excess usage fees set forth in the no-action letter issued by the Staff to the *Broker-to-Broker Networks, Inc.*, SEC No-Action Letter, [2000-2001 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶78,044 (Dec. 1, 2000). In that instance, excess usage fees were permitted to be charged when a broker-dealer's use of the system generated interactions with the system beyond the set limits. The system that sought the *Broker-to-Broker* letter was permitted to collect additional compensation for the costs attributable to the excess volume of processing and storing the messaging activity. Similar to the conditions described in the *Broker-to-Broker* letter, S3 will permit a set volume of messaging traffic for each Platform Participant and will only charge an excess usage fee if the Platform Participant exceeds this limit. In no event is the excess usage fee dependent on the completion of any securities trade.

As noted above, Platform Participants will bear responsibility for performing all brokerage functions incident to the operation of the S3 Platform. Platform Participants, and not S3, will perform all brokerage functions associated with the operation of the S3 Platform. S3 will not be involved in any way with the execution, settlement or clearance of transactions. The S3 Platform

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will not solicit, process or facilitate transactions in any way, other than by providing the functionality of order transmission. S3 will not hold or have access to customer funds or securities. The S3 Platform will not match orders. All decisions regarding the Receiving Broker to which orders will be sent will be made by the Sending Broker, with the assistance of the analytical tool, as applicable. All decisions regarding the execution of such orders will be made only by the Broker-Dealers. S3 also will not solicit the opening of brokerage accounts and will have no responsibility for opening customer accounts, sending out customer statements or handling any other aspect of Sending Brokers' accounts.

S3 will not represent in any way that it is a broker-dealer or that it is performing brokerage services. Advertisements for the S3 Platform may discuss the system's functionality, but will make it clear to potential customers that S3 is not broker-dealer and is not performing the functions of a broker-dealer.

As discussed above, S3 will in no way receive transaction-based compensation from its operation of the S3 Router. No fees charged to Platform Participants will be based, directly or indirectly, on or retroactively modified as the result of the size, value or occurrence of any securities transactions which have taken place or are expected to take place in the future, or the amount of the deposits made to or maintained in users' accounts.

In addition, S3 will not provide investment advice with respect to any securities or securities transactions. The S3 Platform will not recommend the purchase or sale of or otherwise provide investment advice with respect to securities. S3 will not answer questions, engage in negotiations or provide assistance to Sending Brokers in resolving problems with a particular broker-dealer or with respect to any securities transactions with a participating broker-dealer. Finally, S3 will not screen counterparties for creditworthiness or arrange for or provide credit to users in connection with securities transactions.

In addition, S3 makes the following additional representations with respect to its operation of the S3 Platform:

- S3 will not hold or have access to or handle funds or securities.

- S3 will not recommend or endorse specific securities nor become involved with the financial services provided by Platform Participants, including, among others, the opening, maintenance, administration, or closing of accounts, or the solicitation, processing or facilitation of transactions of any kind relating to accounts.

- S3 will not hold itself out as providing any securities-related financial services, other than routing order between Sending Brokers and Receiving Brokers providing analytical tools and routing logic as described in this letter, and generating reports of transactions.

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- Other than by the S3 Platform identifying the Receiving Brokers on the S3 Platform available as destinations, S3 will not directly or indirectly make any statement about, or endorsement or recommendation of any kind in respect of, any Platform Participant.

- The S3 Platform will not display quotations for securities.

- Excess usage fees, as described above, will be designed to compensate the Company for any additional costs in delivering services that are beyond the agreed upon flat fee volume limitations.

- The S3 Platform will not facilitate the sharing or splitting of commissions by brokers, nor will it acquire, store or report information with respect to any such activity.

- The S3 Platform will not automate trading desk activities such as pricing and position management.

- The Platform will not change the sequencing or priority of a Sending Brokers' orders. The Platform will not change the sequencing of fulfillment advisories transmitted from a Sending Broker to a Receiving Broker.

- The S3 Platform will not bring together orders for securities of multiple buyers and sellers and will not use established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade.

- Agreements between S3 and Platform Participants contracting to use the S3 Platform will require that Platform Participants have and maintain registration or qualification as broker-dealers to the extent required in the respective jurisdictions in which they conduct business, including the registration of foreign brokers whose activities in the United States or with U.S. investors require registration as broker-dealers under the Exchange Act.

- Platform Participants will receive no warranty or guarantee from the Company concerning execution quality in the fulfillment of orders.

- The Platform will be able to generate reports of transactions conducted using the Platform to help Platform Participants comply with their regulatory reporting obligations, and S3 will also keep a record of these reports and will generate and keep a quarterly report of each Platform Participant's transaction volume per security. S3 will make these reports readily accessible to the staff of Commission and FINRA upon request.

- Settlement of trades will not be handled by S3.

- The S3 Platform will not generate settlement instructions, confirmations or other forms of advisories or messages to Platform Participants.

Conclusion

In light of the foregoing, we respectfully request assurances from the Staff that it will not recommend enforcement action to the Commission under Section 15(a)(1) of the Exchange Act if S3 provides and operates the S3 Platform without registering as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

Sincerely,

Janet M. Angstadt

JMA:vl:60991781
cc: Mark Davies