DTCC

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Mr. Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Bloomberg STP LLC; Notice of Filing of Application for Exemption from Registration as a Clearing Agency (File Number 600-33)

Dear Mr. Fields:

The Depository Trust & Clearing Corporation ("DTCC") appreciates the opportunity to provide comments to the Securities and Exchange Commission ("Commission" or "SEC") on its notice of a filing by Bloomberg STP LLC ("BSTP") seeking an 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.[1]

I. Summary

DTCC is an industry-owned holding company that through its various operating subsidiaries provides the largest post-trade market infrastructure for the global financial services industry. In the U.S., DTCC's three wholly-owned registered clearing agency affiliates, The Depository Trust Company ("DTC"), the National Securities Clearing Corporation ("NSCC"), and the Fixed Income Clearing Corporation ("FICC"), together with its wholly-owned exempt clearing agency affiliate, Omgeo LLC ("Omgeo"), provide the vast majority of clearing agency services to the U.S. securities markets.

DTCC supports the Commission's view that a company that limits its clearing agency activities to central matching should be eligible for an exemption from registration as a clearing agency under Section 17A of the Exchange Act. In this regard, DTCC formed a joint venture with Thomson Financial in 2000 to create Omgeo, which has served as the sole provider of central matching services in the U.S. markets since it received an exemption from registration in April 2001.[2] DTCC also supports the Commission's view that it is consistent with the goals of Section 17A of the Exchange Act, particularly the goal to create a national clearance and settlement

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[1] Securities Exchange Act Release No. 74394 (February 27, 2015), 80 FR 12048 (March 5, 2015) ("Notice"). Publicly available sections for BSTP's Form CA-1 were also published on the SEC's website at: http://www.sec.gov/rules/other/2015/34-74394-form-ca-1.pdf ("Form CA-1").

[2] See Securities Exchange Act Release No. 44188 (April 17, 2001), 78 FR 20494 (April 23, 2001) ("Omgeo Exemptive Order"). DTCC purchased all of Thomson Financial's outstanding interest in Omgeo in October 2013.

system, to have linked or coordinated clearing agencies provide central matching services for delivery versus payment/receive versus payment ("DVP/RVP") transactions in depository eligible securities.[3] This support extends to the promotion of competition in service offerings to customers, including electronic confirmation and affirmation and matching services to registered broker-dealers, investment managers, and custodians/settlement agents. Competition in service offerings may permit useful innovation and product alternatives, to the benefit of industry participants, and ultimately to investors.

The Commission should distinguish competition in central matching, however, from competition in access to settlement and related functions (e.g., providing internal control numbers, and sending matched confirmations and settlement instructions to settlement agents and the central securities depository) when reviewing BSTP's requested exemption from registration as a clearing agency on Form CA-1 (the "Application"). By use of the term "matching," DTCC generally means the process whereby an intermediary compares a broker-dealer's trade data submissions to an institution's allocation instructions to see whether the descriptions of the trade agree.[4] While DTCC supports competition in matching, the optimal way to allow this would be to enable the industry to continue to rely on the existing DTCC systems to provide access to DTC and the bank and broker-dealer custodians/settlement agents for the sending of matched confirmations and settlement instructions, while relying on those existing DTCC systems to provide the necessary internal controls and internalized audit functions. This approach would promote the safe and efficient clearance and settlement of securities transactions, while permitting the securities industry to reap the benefits of the reliable, centralized infrastructure that has developed over the past forty years. This continued reliance on the existing industry infrastructure would be preferable to a system in which multiple points of access are created through new linkages between and among industry participants, which would lead to additional costs and settlement risks to the registered broker-dealers, investment managers, custodians/settlement agents, and investors relying on the national clearance and settlement system. For this reason, DTCC strongly recommends that the Commission ensure that neither BSTP, nor any other central matching service that may apply in the future for an exemption from registration as a clearing agency, gain access to DTC or NSCC through additional access points (i.e., a "dual access" model). Instead, they should continue to rely on the existing infrastructure for access to DTC, NSCC[5] and custodians/settlement agents (a "single access" model) because this would mitigate systemic risks while avoiding the duplicative costs on market participants of creating additional access points and linkages.

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[3] See 15 U.S.C. 78q-1(b)(2).

[4] See Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943, 17945 (April 13, 1998).

[5] Prime brokers in particular rely on the NSCC's continuous-net-settlement ("CNS") system to clear their transactions. Prime broker transactions, which include a significant portion of the high volume hedge fund industry's transactions are linked to NSCC through DTCC's TradeSuite ID system.

II. Background

DTCC supports the Commission's goal to create a national clearance and settlement system that includes linked or coordinated facilities for the clearance and settlement of securities transactions.[6] DTCC notes, however, that the risk that the clearance and settlement system would fail during times of market stress, including the 1987 market break has been described as the single most important threat to our nation's financial system.[7] When considering institutional trades in particular, "[p]romptly verifying trade details is essential to identifying discrepancies that can lead to, among other things, settlement failures and errors in recording trades."[8] Such settlement failures, if widespread, can have a systemic impact on the national clearance and settlement system, while imposing significant costs on market participants.

In recognition of these concerns, beginning in 1982, self-regulatory organization ("SRO") rules, particularly those of the New York Stock Exchange, Inc. ("NYSE," i.e., Rule 387, now Financial Industry Regulatory Authority ("FINRA") Rule 11860), have required use of a highly regulated entity (i.e., originally a registered clearing agency, but more recently permitting an exempt clearing agency or an approved "qualified vendor") for the electronic confirmation and affirmation ("electronic confirmation") of institutional trades in depository eligible securities settling DVP/RVP in the U.S.[9] As discussed in the SEC order approving this requirement in

[6] See 15 U.S.C. 78q-1(b)(2).

[7] Luncheon Address: Perspective on Payment System Risk Reduction by E. Gerald Corrigan, President, Federal Reserve Bank of New York, cited in Securities Exchange Act Release No. 33023 (October 7, 1993), 58 FR 52891 (October 13, 1993), 1993 SEC LEXIS 2712, fn. 16 (stating that "[t]he greatest threat to the stability of the financial system as a whole [during the 1987 market break] was the danger of a major default of these clearing and settlement systems.") See also statement of Alan Greenspan, Chairman of the Board of Governors of the Federal Reserve System, that "[t]he overloading of the ... clearing systems last October induced breakdowns that dramatically increased uncertainty among investors and likely contributed to additional downward pressures on prices." Id. at fn. 20.

[8] Securities Exchange Act Release No. 49405 (March 11, 2004), 69 FR 12922, 12923 (March 18, 2004).

[9] Securities Exchange Act Release No. 19227 (November 9, 1982), 1982 SEC LEXIS 455. The amendment to Rule 387 was adopted to address the prevalence of the "DK" problem during periods of high volume trading. The DK problem occurred because, in a typical institutional trade, there are at least three parties involved in the customer side settlement process; the investment manager, the custodian bank, and the customer side broker-dealer. After executing the trade, the broker-dealer must confirm the terms of the trade in writing to the investment manager, and if the confirmation conforms to the terms of the investment manager's records, must confirm the terms of the ordered trade; and the investment manager must issue instructions to the custodian bank authorizing the receipt or delivery of securities against payment to or by the settling broker-dealer. Failure by the investment manager to timely issue such instructions led to DK's, causing the trade failures and requiring the broker-dealer to finance the open position until the issue was resolved.

The requirement to use a clearing agency for electronic trade confirmation and affirmation was later modified, as discussed below, to allow a "qualified vendor" to provide electronic confirmation and

NYSE Rule 387, the Commission contemplated that DTCC's institutional delivery ("ID") system would be the primary registered securities depository system for the electronic confirmation of institutional DVP/RVP trades, although other systems in place at that time included systems operated by the Midwestern Securities Trust Company and the Philadelphia Depository Trust Company, neither of which remains in service.[10]

The original requirement to provide electronic confirmation of institutional DVP/RVP trades was adopted by SROs in a T+5 settlement environment when trading volumes, the number of market participants, and the number of instruments traded and cleared through the national clearance and settlement system were far lower than today.[11] In the aftermath of the 1987 market break, policymakers in the U.S. concluded that shortening the settlement cycle from T+5 to T+3 would significantly reduce risk in the national clearance and settlement system.[12] In particular, a major study after the 1987 market break concluded that "Time = Risk" and that a migration to T+3 settlement therefore was an important step toward securing the national clearance and settlement system.[13] The Commission proposed Rule 15c6-1 in February 1993 to shorten the settlement cycle for the vast majority of depository eligible securities.[14]

In response to the Commission's proposal to adopt Rule 15c6-1, commenters proposed an interactive ID feature as "critical" to the successful implementation of three-day settlement.[15] DTC filed a proposed rule change in 1993, identifying certain enhancements it intended to make to its ID system, including interactive ID, which would enable DTC to implement a real-time

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affirmation of institutional trades, as long as trade matching was performed by a clearing agency registered with the Commission or exempted for the purpose of providing clearing agency functions. See Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 1999 (May 13, 1999).

[10] Id.

[11] In 1982, the average monthly trade confirmations processed through the ID system was 341,012. See Securities Exchange Act Release No. 19227 (November 9, 1982), 1982 SEC LEXIS 455. In 2013, the average monthly trades processed through Omgeo exceeded 64 million (approximately 770 million annually). See DTCC 2013 Annual Report at http://www.dtcc.com/annuals/2013/performance-dashboard/index.php. See also, Government Securities Act of 1986, Pub. L. No 99-511, 100 Stat. 3208 (adding requirement to clear government securities through facilities of a registered clearing agency).

[12] See Remarks of Mary Schapiro, Commissioner, SEC, to The Group of Thirty Steering Committee (March 1, 1990), at http://www.sec.gov/news/speech/1990/030190schapiro.pdf.

[13] See Bachman Task Force, Report of the Bachman Task Force on Clearance and Settlement in the U.S. Securities Markets (May 1992).

[14] See Securities Exchange Act Release No. 31904 (February 23, 1993), 58 FR 11806 (March 1, 1993), 1993 LEXIS 2712.

[15] Cited in Securities Exchange Act Release No. 33023 (October 7, 1993), 58 FR 52891 (October 13, 1993), 1993 SEC LEXIS 2712, at Appendix 3.

electronic confirmation of institutional trades and a matching function.[16] The Commission approved interactive ID in 1994[17] and the ID matching function in 1998.[18]

In response to demand for competition in electronic confirmation of institutional DVP/RVP trades, while preserving clearing agency controls on matching, several SROs, including the NYSE, National Association of Securities Dealers, Inc. ("NASD") and the Municipal Securities Rulemaking Board ("MSRB"), filed proposed rule changes with the SEC in 1998 to permit persons other than registered clearing agencies to provide electronic confirmation of institutional DVP/RVP trades, although not permitting these persons to provide central matching unless registered or exempted from the registration as a clearing agency.[19] In May 1999, the Commission approved these SRO proposed rule changes thereby creating a model for electronic confirmation that the Commission should rely on if it grants an exemption (or the Division of Trading and Markets by no-action letter grants qualified "vendor status" to an entity providing electronic confirmation of DVP/RVP trades). The proposed rule changes by the SROs permitted non-clearing agency qualified vendors to perform electronic confirmation of institutional DVP/RVP trades under the following conditions. For each transaction, the qualified vendor would be required to:

- Deliver a trade record to a clearing agency in the clearing agency's format;
- Obtain a control number for the trade record from the clearing agency;
- Cross reference the control number to the confirmation and subsequent affirmation of the trade; and
- Include the control number when delivering the affirmation of the trade to the clearing agency.[20]

The Commission's approval of the SROs' qualified vendor proposals enabled competition in electronic confirmation of institutional DVP/RVP trades, while preserving the controls and existing matching and settlement infrastructure that DTCC had developed with the industry during the prior decades. The result was that the securities industry obtained the benefits of

[16] See Securities Exchange Act Release No. 33010 (October 4, 1993), 58 FR 53007 (October 13, 1993), 1993 LEXIS 2724.

[17] Securities Exchange Act Release No. 36685 (January 12, 1994), 59 FR 1338 (January 20, 1994).

[18] Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18602 (April 13, 1998).

[19] See Securities Exchange Act Release No. 39830 (April 6, 1998), 63 FR 18060 (NYSE) (April 13, 1998); 39831 (April 6, 1998), 63 FR 18057 (NASD) (April 13, 1998); 39833 (April 6, 1998), 63 FR 18055 (MSRB) (April 13, 1998); see also Securities Exchange Act Release No. 39832 (April 6, 1998), 63 FR 18602 (April 13, 1998), at fn. 16 (citing 1996 Petition of Thomson Trading Services, Inc. to petition the SEC to use its authority to cause SROs to permit Thomson to provide electronic confirmation and affirmation of institutional DVP/RVP trades).

[20] See Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 1999 (May 13, 1999).

competition with respect to electronic confirmation, without adding significant risks to the national clearance and settlement system or significant additional costs to participants in the national clearance and settlement system.

Two years later, in 2001, the Commission granted Omgeo an exemption from registration as a clearing agency, permitting Omgeo to provide electronic confirmation and central matching services. As part of the joint venture forming Omgeo, DTC (through DTCC) transferred its TradeSuite ID services to Omgeo and transferred certain systems and infrastructure that were integrated into DTC's remaining systems.[21] Despite that transfer, DTCC's TradeSuite ID service remained fully integrated into DTC's settlement operations and infrastructure, as well as into the back office operations and infrastructure of clearing broker-dealers and custodial banks.[22] We use the term "Existing Infrastructure" to refer to the combined TradeSuite ID/DTC/NSCC systems for providing internal control numbers and for sending matched confirmations to DTC and the custodians/settlement agents to facilitate settlement, and to other related services, including recordkeeping and maintaining an audit trail.[23]

As the efforts to reduce risk and otherwise strengthen the national clearance and settlement system have progressed, increased attention has been placed on the importance of central matching and on early, even same day, affirmation of trades.[24] Additional emphasis has been placed on resiliency of critical participants in the national clearance and settlement system, including enhanced business continuity and data security and control requirements.[25] DTCC, through its clearing agency affiliates has been an industry leader in the effort to reduce risk and otherwise enhance the security and integrity of the national clearance and settlement system. DTCC applauds the Commission's leadership in enhancing the safety and soundness of the national clearance and settlement system because the financial markets have grown in size, complexity and overall trading volume.

As discussed below, in determining whether, or on what terms, to grant an exemption from registration to BSTP, the Commission should preserve the existing system of controls, redundancy, resiliency and infrastructure in order to promote safety and soundness, without imposing unnecessary costs on industry participants and ultimately investors. The optimal way to do this would be to leverage the Existing Infrastructure to provide access to DTC, NSCC, and

[21] See Securities Exchange Act Release No. 44189 (April 17, 2001), 66 FR 20502 (April 23, 2001).

[22] See Omgeo Exemptive Order at 20495.

[23] The Existing Infrastructure is not intended to include the specific services of electronic confirmation or central matching.

[24] See Securities Exchange Act Release No. 49405 (March 11, 2004), 53 FR 12925 (March 18, 2004).

[25] See Securities Exchange Act Release No. 47638 (April 7, 2003), 68 Federal Register 17809 (April 11, 2003) ("Interagency Paper"); see also Securities Exchange Act Release No. 73639 (November 19, 2014), 79 FR 72251 (December 5, 2014) ("Regulation SCI Release").

the bank and broker-dealer custodians/settlement agents for the sending of matched confirmations and settlement instructions, while relying on that Existing Infrastructure to provide the necessary internal controls and centralized audit function.[26] The Commission also should hold BSTP and its parent company Bloomberg L.P. (including, as applicable, other affiliates, "BLP"), to the extent relied upon to perform matching services, to the same standards of internal controls, security, and business continuity as the Commission holds other critical participants in the national clearance and settlement system, because that would best serve the public interest and the protection of investors.

III. Advantages of Current Single Access Model

Under the current single access model, upon executing an institutional trade, broker-dealers provide a trade record and obtain from the Existing Infrastructure a control number to be used throughout the transaction by each of the broker-dealer, institution, custodian/settlement agent, DTC and any other participant in the electronic confirmation, matching and settlement processes.[27] The presence of the DTCC-issued control numbers on each trade confirmation, from the moment a trade record is presented by a broker-dealer to the Existing Infrastructure through settlement permits DTC, market participants, and regulators to recreate the phases of one or more trades over time, which serves multiple purposes.

The centralization of time-stamped trade records at DTCC has permitted the settlement agents and DTC to more efficiently and effectively settle trades that failed to settle on the scheduled settlement date, while allowing market participants to reconstruct trades and even unwind them where appropriate. For example, the time-stamped control number has allowed market participants to reconstruct and reconcile failed trades, by providing a time-stamped audit trail in the life of an institutional transaction, from the time the broker-dealer executes an order and inputs it into the Existing Infrastructure to the time of settlement at the various subaccounts. The time-stamped control number, for example, allowed DTC and its affiliates to reconstruct trades after the events of September 11, 2001; the bankruptcy of Lehman Brothers in 2008; the Flash Crash in 2010; and other less publicized but significant market events. By maintaining a centralized record, DTC, market participants and regulators have been able to piece together the events leading up to situations causing market stress. In addition, the centralization of these records provides enormous benefits to regulators in examining trading history among investment managers and broker-dealers. This centralization has proven invaluable to the Commission and other federal and state regulators, as well as FINRA, in their oversight of trading and market participants.

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[26] This leverage would be of even greater importance as competition among central matching services grows to include additional providers.

[27] The control number is issued by TradeSuite ID on behalf of the DTCC.

Under a dual access model, the advantages gained by regulators and market participants from DTCC having these time-stamped trade records in a single location would be severely hampered, perhaps even lost. Moreover, by continuing the current system under which DTCC produces and maintains all of the audit records in a centralized location, the industry can evaluate affirmation and settlement rates industry-wide, as the current system ensures that a single entity, DTCC, has records of all institutional DVP/RVP trades from the point of execution through settlement. Bifurcating this process would make it far more difficult to monitor improvements and spot trends in affirmation and settlement rates, including in particular spotting the points in transactions where failure is most likely to occur.

Another regulatory advantage of the single access model is that the broker-dealers, investment managers and custodians already have their regulatory compliance systems programmed to rely on the Existing Infrastructure as the source of Rule 10b-10 compliant confirmations.[28] If multiple central matching services were to provide an additional source of such confirmations (assuming similar Rule 10b-10 and related recordkeeping relief was obtained by such other central matching services), each affected broker-dealer, investment manager and custodian would need to choose either to rely solely on one source for trade confirmations or develop, implement and maintain multiple systems, one related to each provider, for such trade confirmations. This would include not only referencing two sources for providing trade instructions, but also would require two sources for receiving, downloading and maintaining such trade confirmations under the applicable recordkeeping rules.[29] Such unnecessary duplication would likely lead to additional costs and risks of error, to the detriment of industry participants and their customers.

IV. BSTP's Proposed Services

BSTP's Application proposes both a central matching service and an electronic confirmation service. In contrast to matching, the electronic confirmation process is utilized by institutions, broker-dealers and custodians to transmit messages between and among one another regarding the terms of an institutional transaction. Under a typical electronic confirmation service, the executing broker-dealer submits trade data to the electronic confirmation vendor, which generates and sends a confirmation to the institution. After reviewing the confirmation, the institution, or its custodian, sends an affirmation to the broker-dealer through the electronic confirmation vendor. At some point in the process, the electronic confirmation vendor forwards the confirmation to a clearing agency,[30] in a format determined by that clearing agency, so that

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[28] See letters re: Omgeo (March 12, 2008) and (December 14, 2006); see also letters re: DTC (January 31, 1983) and (October 29, 1974).

[29] See e.g., letters re: Omgeo (August 14, 2009); (March 19, 2009); and (December 14, 2006); see also letters re: DTC (January 31, 1983) and (October 29, 1974).

[30] DTCC TradeSuite ID currently issues the control numbers on behalf of DTC and forwards the affirmed confirmation to DTC for settlement.

the clearing agency can issue a control number to the broker-dealer and the institution. After receipt of the affirmation from the institution, or its custodian, the electronic confirmation vendor sends the affirmed confirmation with the control number to the securities depository in the format determined by the securities depository.[31]

A. BSTP's Matching/Electronic Confirmation Proposals

BSTP's proposals consist of one scenario in which BSTP would centrally match trades and a second proposal which is described in the Application as "matching" but is more accurately described as an electronic confirmation service.[32]

Under the first scenario ("Scenario 1"), BSTP's proposed matching service would operate as follows:

1. An investment manager would route an order to its broker-dealer.
2. The broker-dealer would execute the order and send a notice of execution ("NOE") to the investment manager.
3. For voice executed trades, the investment manager would affirm to the broker-dealer the trade details contained in the NOE. For electronically executed trades, the electronic trading platform would record the trade in the blotters of the investment manager and the broker-dealer.
4. The investment manager would send to BSTP, the broker-dealer and the custodian allocation information for the trade.
5. The broker-dealer would send to BSTP trade data corresponding to each allocation, including settlement instructions, and, as applicable, commissions, taxes, and fees.
6. BSTP would next compare the investment manager's allocation information (containing multiple fields of data) with the broker-dealer's trade data to determine whether the information in each field matches.[33] If all required fields match, BSTP would generate a

[31] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943, 17945 (April 13, 1998).

[32] BSTP also states that its matching electronic confirmation services would meet the requirements of a qualified vendor under FINRA Rule 11860, although it is unclear whether BSTP is requesting qualified vendor status or merely asserting that its matching services would meet the requirements of a qualified vendor under Rule 11860. If BSTP is requesting qualified vendor status, then we understand that FINRA would be required to request such status on BSTP's behalf through a no-action letter. See Securities Exchange Act Release No. 41378 (May 7, 1999), 64 FR 1999 (May 13, 1999).

[33] BSTP notes that it would follow DTC's format for delivering matched confirmations to DTC. Further, BSTP would obtain a control number from DTC for each trade record, cross-reference such control number to the confirmation and subsequent affirmation of the trade, and include the control number when delivering the affirmation of the trade to DTC. The Notice and Application are unclear as to when in the trade process BSTP would obtain a control number. Moreover, use of a control number is referenced solely in Exhibit S to the Application, which discusses BSTP's qualification as a qualified vendor under FINRA Rule 11860. Because qualified vendors are not permitted to perform matching, it is unclear how

matched confirmation and send it to the broker-dealer, the investment manager, and other entities designated by the investment manager (e.g., the custodian).

7. After BSTP creates the matched confirmation, it would interface directly with DTC and send an affirmed confirmation. From there, the trade would go into DTC's settlement process.

B. BSTP's Electronic Confirmation Proposal

Under the second scenario ("Scenario 2"), BSTP's electronic confirmation service would operate as follows:

1. An investment manager would route an order to a broker-dealer.
2. The broker-dealer would execute the order and send an NOE to the investment manager.
3. For voice executed trades, the investment manager would affirm to the broker-dealer the trade details. For trades executed electronically, the electronic trading platform would record the trade in the blotters of the investment manager and the broker-dealer.
4. The investment manager would send to the broker-dealer and the custodian allocation information for the trade.
5. The broker-dealer would submit to BSTP trade data corresponding to each allocation, including settlement instructions, and, as applicable, commissions, taxes and fees.
6. BSTP would send the broker-dealer's trade data to the custodian.
7. The custodian would compare the broker-dealer's trade data received from BSTP to the allocation information it received from the investment manager. If the custodian determines that the allocation information received from the investment manager matches the broker-dealer's trade data received from BSTP, the custodian would notify BSTP of the matched confirmation.
8. BSTP would submit the matched confirmation to DTC as an affirmed confirmation and send the affirmed confirmation to the broker-dealer, the investment manager and to other entities designated by the investment manager. From there, the trade would go into DTC's settlement process.

Although BSTP's Form CA-1 describes Scenario 2 as a matching service, BSTP would not act as an intermediary that compares the terms of a broker-dealer's trades with the allocations of an institution.[34] BSTP merely would transmit information among the broker-dealer, the institution

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this reference to Exhibit S relates to BSTP's proposed matching services, nor is it clear under what circumstances BSTP proposes to act as a qualified vendor, rather than as an exempt clearing agency. If BSTP intends to obtain a control number from the Existing Infrastructure and otherwise comply with FINRA Rule 11860 under Scenarios 1 and 2, BSTP should amend its Exhibit J to indicate how that process would occur in each scenario.

[34] See Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943, 17945 (April 13, 1998).

and the custodian. After the custodian compares the institution's trade allocations, it would notify BSTP of a matched confirmation, which BSTP would forward to DTC.

As discussed below, Scenario 1 and Scenario 2 (together, the "BSTP CA Scenarios") appear to contemplate a dual access model under which matched confirmations would be sent directly by BSTP to DTC and the applicable custodians. As also discussed below, such a model would increase systemic risk, while also imposing additional costs to the industry, as they provide for separate access to DTC and custodians outside of the Existing Infrastructure.

V. Concerns with BSTP Dual Access Model

A. Dual Access as Proposed by BSTP would Add Costs and Risks without Identifiable Benefit to Industry

Under the BSTP CA Scenarios, BSTP would obtain from DTC a control number,[35] which BSTP would use once a matched confirmation was produced, to attach to the matched confirmation sent both to DTC for settlement and to the custodians/settlement agents directly. Under those scenarios, DTC, the bank (and broker-dealer) custodians and the securities industry generally, would incur additional unnecessary costs to confirm and settle transactions and to comply with the federal securities laws and SRO rules, because these connections have already been built and tested by the Existing Infrastructure.[36] Moreover, if a third or fourth central matching service were to enter the market, the risks and costs would multiply exponentially as new connections to DTC, other central matching services and custodians/settlement agents would need to be built. The Commission should therefore allow the industry to avail itself of the systems and controls that have already been established and are operating through the Existing Infrastructure, an industry-owned utility, rather than impose such costs and risks on the securities industry.

In order to provide BSTP direct access to DTC under the Application, both DTC and BSTP would have to develop and test interfaces to allow BSTP to send matched confirmations directly to DTC. This would require a substantial amount of work and testing by both DTC and BSTP, and would require BSTP to implement a redundant fault tolerant network design, including interfaces that ensure robust security protocols and processes based on DTCC standards. BSTP would also have to build access to the custodian/settlement agent community to implement the dual access model, requiring significant time, cost and other resources on the part of both BSTP and the custodians/settlement agents, which cost would inevitably be passed through to investors.

[35] The Notice indicates BSTP would obtain a control number from DTC, but the Application only discusses this with respect to complying with the requirements to act as a qualified vendor. See Notice at fn.11 and Application at Exhibit S. See also, notes 32 and 33, supra.

[36] Because under the Existing Infrastructure, control numbers are obtained and matched confirmations are sent via Omgeo to DTC and the other custodians, BSTP appears to propose bypassing the Existing Infrastructure for these purposes.

In addition, DTC would have to modify its internal systems and network management infrastructure and build in capabilities to prepare for the possibility of additional central matching services with direct access to DTC. As DTC's systems become more complex, DTC's maintenance requirements would become more complex and costly. The additional DTC costs would also be borne by industry participants and ultimately by investors. The additional costs also would require DTC to reprioritize other critical projects, thereby potentially delaying important industry initiatives intended to make the national clearance and settlement system more secure and efficient, thereby reducing risk.[37]

B. Single Access Model would Significantly Mitigate Additional Costs and Risks of Application

An alternative, single access model - under which BSTP may provide central matching or electronic confirmation services, but would send the matched trades (or affirmed confirmations) to DTC and the custodians/settlement agents through the Existing Infrastructure - would leverage the Existing Infrastructure, market capabilities and processes to send settlement instructions and confirmations to DTC and the custodians/settlement agents. This approach would accomplish BSTP's goal of providing competition in central matching and electronic confirmation services, but would avoid significantly increasing risks and costs to the industry.

Under DTCC's single access model, broker-dealers would be required to send a trade record to the Existing Infrastructure in the format determined by DTCC upon execution of an order. The Existing Infrastructure, using existing procedures, would assign a control number that would be included on all communications between and among the broker-dealer, Omgeo, BSTP (if applicable), the investment manager, DTC, and the custodian/settlement agents from the NOE through settlement. If a trade were matched by Omgeo, a matched confirmation would be sent by TradeSuite ID (as part of the Existing Infrastructure) to DTC, the custodian/settlement agents, the broker-dealer and the investment manager, to the extent applicable, and to any additional party requested by the broker-dealer or the investment manager, just as TradeSuite ID does today. If the trade were matched by BSTP, BSTP would send the matched confirmation through DTCC TradeSuite ID (as part of the Existing Infrastructure) to DTC and the other custodians/settlement agents, and if any additional party requested by the broker-dealer or the investment manager, just as is done by the Existing Infrastructure today.

DTCC's proposed single access model would permit BSTP to avail itself of the Existing Infrastructure's extensive community of custodians and settlement agents, without the costs and

[37] DTCC notes further that, as a private company, BSTP could become insolvent or choose to forego providing matching services after a short time, if providing such services did not prove to be profitable or otherwise considered advisable. In such an event, the industry would have incurred substantial costs with little or no benefit.

risks that would be incurred if each custodian and settlement agent had to create, operate and maintain a separate interface and infrastructure with BSTP. Moreover, because all matched confirmations would continue to flow to DTC through the Existing Infrastructure, this alternative would require no additional interfaces directly with DTC, no (or at most few) settlement system modifications, dramatically reduced network management capability concerns, and far less, if any, additional maintenance obligations on DTC and the rest of the industry than BSTP's dual access model would require. Moreover, from a systemic risk perspective, fewer additional interfaces would mean fewer potential points of failure, less complexity and therefore less risk to the national clearance and settlement system.

DTCC's single access model would permit a more rapid, less expensive option for BSTP to begin central matching, while also limiting additional business continuity obligations that would be imposed on the industry. The industry and investors would all benefit from avoiding the additional expense that would be required to form linkages and build additional systems required under a dual access model. The single access model would also permit the industry (and regulators) to enjoy the benefits of centralized, single format confirmations and confirmation archiving, and a central audit trail for all institutional trades. Finally, as discussed below, DTCC's single access model would facilitate the migration of the industry to T+2 settlement, by avoiding the reduction of reduce same day affirmation rates that BSTP's dual access model would cause.[38]

The single access structure proposed above furthers the purposes of Section 17A of the Exchange Act. As the Commission has stated, a receiving clearing agency that is entering into an interface with another clearing agency "has an interest in assuring itself that the participant clearing agency will be able to meet its obligations. For this reason, the Division [of Trading and Markets] has determined that clearing agencies may require reasonable assurance of another clearing agency's ability to meet its obligations" provided such requirements do not impose an inappropriate burden on competition.[39] In this regard, "each clearing agency would be well situated to propose safeguards necessary and appropriate to minimize its exposure to the particular risks presented by another clearing agency in an interface arrangement."[40] DTC is well positioned to determine that the single access model DTCC proposes would promote a more stable, secure, rapid and efficient national clearance and settlement system than the BSTP CA

[38] See Section VII.A., infra.

[39] Securities Exchange Act Release No. 16900 (July 1, 1980),http://www.sec.gov/rules/other/34-16900.pdf ("Clearing Agency Standards Release").

[40] Id. The Clearing Agency Standards Release stated that such interface arrangements should be submitted to the Commission for approval pursuant to Rule 19b-4. In this instance, however, DTCC believes it would be appropriate to request that the Commission condition approval of the Application on use of DTCC's single access option.

Scenarios would promote,[41] and DTCC therefore requests that the Commission require adoption of the single access approach.[42] Among the benefits of single access would be that DTC would receive earlier warnings of potential problem transactions, which would reduce disruptions and improve the reliability and efficiency of the national clearance and settlement system.[43] Moreover, exclusive reliance on the Existing Infrastructure for access to DTC, NSCC and the custodians/settlement agents would permit DTCC to facilitate future developments in the operational systems used to generate trade instructions for clearance and settlement,[44] thereby reducing risks of system disruptions or systems incompatibilities resulting in a reduction of trade failures.[45]

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[41] Single access would help DTC to ensure that the trade instructions it receives are in a proper format and would provide DTC with greater visibility into the pre-settlement matching process, which would help to ensure the safety and soundness of the national clearance and settlement system.

[42] Federal courts have determined that the Commission's duty to consider the anticompetitive effect of a clearing agency's actions is but one of several factors to be considered in its review of a proposed rule change, or in this case, the conditions of an exemption. See Bradford National Clearing Corporation, in which the United States Court of Appeals for the District of Columbia Circuit determined that, when approving a proposed rule change by a registered clearing agency, the Commission need do no more than "balance the maintenance of fair competition and a number of equally important express purposes of the Act." 590 F.2d 1085, 1106; 1978 U.S. App LEXIS 8948, 53 (September 19, 1978).

[43] Failed trades are resolved and reconciled through Omgeo currently, not DTC.

[44] A recent example of such a development was the Commission approval of a DTC proposed rule change to require Receiver Authorized Delivery approval for DTC processing of ID transactions. This new requirement, part of DTC's Settlement Matching initiative, is intended to reduce uncertainty in the settlement of institutional DVP/RVP transactions at DTC. See Securities Exchange Act Release No. 73804 (December 10, 2014), 79 FR 74796 (December 16, 2014).

[45] Section 17A of the Exchange Act requires that the rules of a registered clearing agency do not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. 15 U.S.C. 78q-1(b)(3)(I). Permitting DTC to require BSTP to send trade instructions to DTC solely though the Existing Infrastructure would not impose such a burden, but rather would be justified by the benefits to the clearance and settlement system. For example, the single access proposal would provide DTC and its participants greater visibility into pre-settlement trade activity, enabling firms to correct errors before fails occur; it would reduce the number of places within the life of a trade where an error in settlement could occur; and it would accomplish this without imposing additional costs on the industry, unlike BSTP's dual access proposal.

C. Control Number Issues Raised by Dual Access

The Notice states that BSTP will follow DTC's format for delivering matched confirmations to DTC.[46] Further, BSTP would obtain a control number from DTC for each trade record, cross-reference such control number to the confirmation and subsequent affirmation of the trade, and include the control number when delivering the affirmation of the trade to DTC.[47] However, the Notice does not specify at what point in the matching process BSTP would obtain such control number or how such number would be obtained. Also, TradeSuite ID, which is a part of the Existing Infrastructure that is not part of DTC, currently provides control numbers upon receiving the trade data input from the executing broker-dealer. Providing DTC (rather than DTCC TradeSuite ID) with the ability to issue control numbers would require substantial system changes, either through building a new system within DTC or transferring the TradeSuite ID control number issuance capability to DTC. It is essential that only one entity issue control numbers, because multiple issuers of control numbers would greatly increase the likelihood of settlement errors.

DTCC therefore recommends that regardless of where a trade is centrally matched, the broker be required to send a trade record and obtain a control number for that trade from the Existing Infrastructure in a manner that facilitates the single access model.[48] This is how the electronic confirmation and matching process is currently conducted.

VI. <u>TimeFrames for Building and Operating Interfaces</u>

The timeframes for building and operating interfaces, as contained in each of Omgeo's Exemptive Order and the Notice, do not fully take into account the amount and complexity of the work that would need to be done to accommodate BSTP's entry and likely would be insufficient to enable the operational accuracy and reliability for the proper operation of an interface. More realistic timeframes are therefore justified, given the amount and complexity of the work required.

DTCC would need to analyze requirements for and provide interoperability specifications to BSTP to facilitate the formation of an interface, but such specifications cannot be specified until a functioning interface has been designed, developed and tested. Because functionality related to central matching interoperability does not currently exist within Omgeo (as it is not needed) or elsewhere within the DTCC, DTCC would need to analyze its existing systems to ensure those systems, processes, and workflows would not be compromised by connecting to BSTP,

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[46] The Application, however, asserts BSTP would follow DTC's format for delivering matched confirmations to DTC solely in Exhibit S, in which BSTP addresses its determination to meet the requirements of a qualified vendor under FINRA Rule 11860.

[47] <u>See</u> Notice at fn.11.

[48] <u>Id</u>.

especially since this would be the first time an interface with another central matching service would be put into place. Functionality to be considered would include, without limitation: (1) matching rules; (2) reconciliation routines; (3) exception management; (4) control number assignment; and (5) account matter file requirements, among others. Because DTCC does not know the nature of the BSTP (or BLP) systems, if any, and whether or on what terms BSTP might be eligible for an exemption from the SEC, it would be unreasonable to expect DTCC to devote resources to such issues until it has sufficient certainty about the nature of the interfaces that would need to be developed, if any. Due in part to the complexity of the work and the number of linkages required, the length of time and costs to each of DTC, BSTP, and other industry participants to implement interoperability under the single access model would likely be shorter and lower than under the dual access model.

VII. Additional Concerns with BSTP Application

A. Application would Make Migration to T+2 More Complicated, Riskier and More Expensive

The U.S. securities industry has determined to move toward a T+2 settlement cycle, in order to reduce risk and costs and to conform equities settlement with the recent European move to T+2 settlement, and certain Asian markets (which already settle in fewer than three business days).[49] As DTCC and others have stated, early trade affirmation (preferably same day affirmation), is a fundamental component towards shortening the settlement cycle.[50] The dual access model BSTP proposes would make same day affirmation particularly difficult to attain, and therefore the migration to T+2 settlement (and ultimately T+1 settlement) more complicated, riskier and more expensive, and likely would delay the industry's ability to move to shortened settlement.

BSTP's Scenario 2 would particularly not be viable in a T+2 settlement cycle. That scenario would involve the broker-dealer sending trade information (including NOE and allocations) to BSTP, which would forward that trade information to the institution's custodian for comparison with allocations sent by the investment manager to the custodian. Only after the custodian affirmed the confirmation details would BSTP send a matched confirmation to DTC and the other custodians/settlement agents and market participants. The affirmation rates of trades

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[49] See "DTCC Recommends Shortening the U.S. Trade Settlement Cycle" (April 2014) http://www.dtcc.com/~/media/Files/Downloads/WhitePapers/t2-Shortened-Cycle-WP.pdf.

[50] See e.g., Securities Exchange Act Release No. 49405 (March 11, 2004), 53 FR 12925 (March 18, 2004); see also, letters from: Jill M. Considine, Chairman and Chief Executive Officer, DTCC to Jonathan G. Katz, Secretary, Commission (June 23, 2004) http://www.sec.gov/rules/concept/s71304/s71304-26.pdf; Adam J. Bryan, President and CEO, Omgeo to Jonathan G. Katz, Secretary, Commission (June 4, 2004) http://www.sec.gov/rules/concept/s71304/s71304-12.pdf; and Jeffrey C. Bernstein, Chairman, SIA STP Steering Committee to Jonathan G. Katz, Secretary, Commission (June 16, 2004)http://www.sec.gov/rules/concept/s71304/sia061604.pdf.

electronically confirmed as described in Scenario 2 have been shown to be significantly lower than that of other electronic confirmation or central matching alternatives.[51] These lower affirmation rates by the affirmation cutoff time (midday T+1) in the proposed T+2 cycle would make such a scenario unworkable.[52]

B. BSTP Application Lacks Sufficient Governance and Other Controls

BSTP's request for an exemption raises significant corporate governance issues, as well as concerns about BLP's role in providing services relating to trade execution, the potential for a BSTP (or BLP) insolvency, intellectual property control and licensing issues, and the potential that BSTP will target high volume customers, leaving DTCC to service the remaining low volume customers, to the detriment of those low volume customers and the industry as a whole.

1. BSTP Board Should Have Majority Industry Representative Directors

The composition of BSTP's board, as disclosed in its Application, raises concerns regarding the separateness of BSTP, a proposed central matching utility, from its for-profit parent, BLP. BSTP's board of directors consists of four members only one of which is an industry representative director.[53] Two of the directors are employed by BLP and one of the directors is the Chairman of Bloomberg Inc., which is the parent company of BLP.[54] The fact that there is only one industry representative director raises concerns regarding BSTP's independence from BLP and the extent to which BSTP is capable of playing a neutral role as an industry utility, representing industry participants. BSTP should be subject to stricter corporate governance controls similar to those imposed on Omgeo when it was formed (and as it is currently governed). BSTP's Board should be required to maintain fair representation of BSTP matching or electronic confirmation customers in order to help protect industry participants and ultimately investors as well.

2. BSTP and BLP Should be Required to Provide Additional Assurances on Solvency

As a newly-created private company, BSTP could rapidly become insolvent, in which event BLP would be free to make the business decision not to continue to support it. Of equal concern is the potential insolvency of BLP itself, in part because BSTP is licensing virtually all of its operating

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[51] In fact, because the BSTP trade details must later be compared with trade data sent by the investment manager to the custodian, Scenario 2 does not provide a true central match, which should be the goal of any system approved by the Commission to provide matching.

[52] Current affirmation rates by midday T+1 would support the migration to T+2 settlement, but any reduction in those affirmation rates could make such a change problematic.

[53] Form CA-1, Exhibit S-10.

[54] Form CA-1, Exhibits S-9, S-10.

systems from BLP and is therefore completely reliant on BSTP's affiliated companies. If BSTP ceased (whether voluntary or involuntary, due to its insolvency) to provide matching services after the industry had become reliant on it to perform such services, the likelihood of failed trades would significantly increase. This risk would be of even greater significance if major market participants ceased to maintain connectivity with the matching feature of the Existing Infrastructure, because the time required to "onboard" a mass migration of major industry participants from BSTP to the Existing Infrastructure in the event of BSTP's insolvency could require an extensive reintegration period. During that onboarding period, the national clearance and settlement system would incur significantly greater risks of failed trades than it does currently. The Commission should therefore require BSTP and BLP to provide sufficient protections from the risk of BSTP's or BLP's insolvency to prevent a major disruption to the national clearance and settlement system if such an insolvency occurred.

3. BSTP and BLP Should Provide Additional Assurances on Internal Controls

BLP's historic treatment of intellectual property ("IP") raises concerns regarding BSTP's safeguards in this area.[55] BSTP's plan to license its software, hardware, administrative, operational, and other support services from BLP therefore raises concerns about BSTP's ability to appropriately protect its IP and to maintain the privacy of users and confidentiality of data within its (i.e., BLP's) databases. The Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through BSTP's electronic confirmation or matching services, including the misuse of such data in providing other BLP or BSTP services. Such firewall and other internal control requirements would help protect industry participant data, and ultimately investor data, from misuse or misappropriation as a result of interactions among BSTP, BLP and third parties.

C. General Pricing and Access Conditions

1. Need for Pricing and Access Conditions

The conditions on pricing and access to BSTP services in the Notice are based substantially on the conditions imposed on Omgeo in its 2001 Exemptive Order.[56] As discussed below, however, the pricing and access conditions in Omgeo's Exemptive Order should be reconsidered in connection with BSTP's Application because of changes in the marketplace, including DTCC's

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[55] See e.g., "Bloomberg clamps down with data-access policies after scandal," PCWorld, (February 27, 2014) http://www.pcworld.com/article/2102880/bloomberg-clamps-down-with-data-access-policies-after-scandal.html (last visited December 17, 2014) (discussing Bloomberg's development of in-house access controls after it emerged last year that Bloomberg journalists had routinely accessed data on Wall Street clients' use of Bloomberg Terminal).

[56] See Omgeo Exemptive Order.

2013 purchase of Thomson Financial's outstanding ownership interest in Omgeo, differences in the ownership and corporate governance of Omgeo and BSTP, differences in the related services offered by each of their affiliates, different pricing structures of Bloomberg and Omgeo, and changes in law and regulation since 2001.

The pricing and access conditions in Omgeo's Exemptive Order derived largely from concerns that central matching, which at that time was provided solely by DTC as an industry utility, was to be performed by a separate for-profit entity, Omgeo. The concern was that Omgeo could restrict competitors' access to DTC and give Omgeo an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of Omgeo's clients by DTC.[57]

Today, however, the situation is reversed. Omgeo is now a wholly-owned subsidiary of DTCC, an industry-owned and governed utility, which does not currently compete with BLP for customers. In contrast, BSTP is a for-profit entity and therefore is subject to the incentive to limit access to competitors. The Commission therefore should impose on BSTP and where applicable BLP, pricing and access conditions appropriate to the specific roles of each of BSTP and BLP in the national market system and the national clearance and settlement system.

2. BSTP Could Target High Volume Customers to Detriment of Industry

An additional topic not addressed in the Notice or the Application is access to BSTP services. Today, Omgeo provides access to all broker-dealers, investment managers and custodians/settlement agents on request, under substantially similar terms.[58] BSTP, as a for-profit entity, should not be allowed to provide matching services in an anti-competitive manner by targeting solely larger, more actively trading end-users while not permitting fair access to smaller, less actively trading end-users. In particular BSTP should not be allowed to condition use of its matching services on customers renting Bloomberg Terminals, which likely would include the larger, more actively-trading portions of the industry. BSTP, as a for-profit entity, may have an incentive to target high volume customers, essentially depleting Omgeo's high volume customer base.[59] In its Application, BSTP states that part of the impetus for BSTP entering the post trade settlement business and providing matching is to offer straight through processing to existing customers.[60] DTCC notes that Omgeo currently interfaces with over 60

[57] Id.

[58] Omgeo provides the large majority of its services under a Master Services Agreement whose terms are rarely negotiable, with the exception of volume discounts for very large Omgeo customers.

[59] BSTP's targeting of DTCC's high volume matching customers in this way may leave DTCC with only two options, both of which could be harmful to the industry: (1) DTCC could raise prices on is remaining customers to cover its fixed costs (likely leading to a further erosion of its customer base); or (2) DTCC could keep prices at approximately the same level as today, and thereby cause the securities industry (indirectly through DTCC) to subsidize BLP's operations.

[60] Form CA-1, Exhibit J-1.

vendors, including Bloomberg Finance, LLP, on behalf of their customers, and as a result already facilitates straight through processing from execution through settlement for Bloomberg's clients.

3. Access to FailStation

In 2001, when DTCC and Thomson Financial combined DTCC's standing instruction database ("SID") with Thomson Financial's ALERT service to form Omgeo's ALERT service ("ALERT"), securities industry participants expressed concerns about their access to ALERT after the creation of Omgeo.[61] In response to these concerns, the conditions in Omgeo's Exemptive Order included assurances that other central matching services and persons that represent or otherwise provide services to customers (i.e., end-users) of Omgeo ("End-User Representatives") would have access to ALERT on "fair and reasonable terms."[62] The Commission should require conditions on access to BSTP's FailStation product that are similar to those required for access to ALERT in Omgeo's Exemptive Order.[63]

4. Possible Antitrust Issues

There would be antitrust implications if BSTP bundled central matching services with its other services. As noted above, there were competition concerns raised in connection with Omgeo's application – namely, that no entity should be able to improperly gain a monopoly on any aspect of trade processing. Specific concerns were that competitors would be denied access to DTC and that Omgeo would obtain an unfair advantage through differential pricing, lack of interoperability, and preferential treatment of Omgeo customers by DTC.

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[61] See Omgeo Exemptive Order at 20496-7.

[62] This arrangement was designed to permit such other central matching services and End-User Representatives to draw information from ALERT to facilitate matching and other services provided by those entities (which would include the variable cost of sending account data to BSTP for purposes of matching trades). Omgeo, however, is not permitted under its Exemptive Order to charge end-users more for forwarding ALERT data to or receiving ALERT data from other central matching services, than if the end-user had obtained ALERT data directly from Omgeo and matched its trades through Omgeo.

[63] BSTP describes FailStation as "an industry utility that aggregates failed trade and settlement pre-matching data from all trade counterparties in real-time into a single report for the Investment Manager, Custodian and Broker. See "Bloomberg STP: FailStation," http://www.middleofficesolutions.com/?page_id=55 (last visited March 18, 2015). FailStation permits users to resolves discrepancies in trade details, and thereby to avoid trade failures more easily. BLP states that other than FailStation, there is (1) No other standardized fail report; (2) no other efficient method for aggregating failed trade information; (3) no other organized method of comparing broker and custodian data; (4) no other efficient method of performing metrics on data from multiple sources; and (5) no other effective method of pre-matching high risk market trades for multiple brokers. Id.

Here, there are similar risks but in reverse. The concern is that BLP would use its market power in the global financial data market and order management system markets to include central matching services as part of a bundled price for services. Such bundling of fees by BLP would create a disincentive for BLP customers to match trades through Omgeo.[64]

BLP should clarify its intentions with regard to bundled pricing, and the Commission should clarify whether BSTP may offer different prices to distinct groups of customers, while requiring fair access to BSTP central matching services.

D. BSTP should Address Business Continuity, Cybersecurity and Stress Testing Review More Specifically

The Notice states that BSTP would be "an exempt clearing agency subject to ARP," in which case Regulation SCI would apply to BSTP as an SCI entity.[65] BSTP proposes, however, to have a relatively small staff to perform the significant role of central matching as part of the national clearance and settlement system. Moreover, DTCC's regulated affiliates have each been subject to business continuity standards higher than those explicitly specified in Regulation SCI, and BSTP should be held to the same standards.[66] DTCC notes further that BSTP seeks to license from BLP the operations and systems to be used for central matching. Both BSTP, and by extension BLP (to the extent it supports BSTP's central matching and electronic confirmation

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[64] In antitrust parlance, a "bundled sale" is one in which a basket of different products or services are offered at a lower total price than the sum of the individual product prices. For example, it would be a "bundle" if Bloomberg offered matching services to its AIM or TOMS customers at only a slight increase in their current monthly charges and at a substantial discount than if the matching services was purchased alone (without any other Bloomberg service).

DTCC understands that Bloomberg may not be literally "tying" its financial data services to its new matching services (although DTCC is not currently certain). Tying involves conditioning the purchase of one service on the purchase of another service, *i.e.*, refusing to sell a highly desirable or unique service unless the customer also purchases a separate, less desirable service. DTCC requests that any determination to grant BSTP's request for an exemption be expressly conditioned on BSTP not engaging either tying of central matching services to other BLP services or in bundled pricing with respect to central matching services. Put differently, DTCC requests that the Commission require BSTP to make matching services "separately available" to someone who did not wish to purchase any other BLP service.

[65] Notice at fn.15. Regulation SCI requires covered entities (i.e., "SCI entities") to adopt, maintain and enforce written policies and procedures related to automated systems that are central to the entities' performance of regulated activities. Specifically, SCI entities are required to carefully design, develop, test, and maintain surveillance systems integral to their operations and the functioning of the U.S. securities market. The requirements impose reporting and notification requirements on SCI entities when specified events, known as "SCI events," occur. See 17 CFR 242.1000 et seq.

[66] See Interagency Paper.

services), should be subject to the full panoply of legal and regulatory requirements under Regulation SCI and the Interagency Paper.[67]

DTCC is also concerned whether BSTP' systems would have the capacity to handle the significant amount of potential order flow, particularly during the high volumes that can occur during times of market stress or volatility. The Existing Infrastructure has developed with its customers both direct proprietary links into Existing Infrastructure systems, as well as web-based linkages and interfaces hosted by third party order management systems and vendors.[68]

DTCC notes that each of Omgeo's Exemptive Order and the Notice contain specific reporting requirements to the Commission in the event of systems outages and other events.[69] DTCC requests that the Commission clarify whether, and to what extent, those reporting requirements have been superseded by Regulation SCI.

[67] BLP should be required to make available its book and records, as well as its operating systems, to inspection of the Commission staff upon request.

[68] In addition to being more secure than web-based linkages, the proprietary linkages offered by the Existing Infrastructure can handle tremendous trading volumes, as has been demonstrated repeatedly during the past fourteen years, including during the flash crash of May 2010. If BSTP's systems cannot efficiently handle market stress, that would cause a backup in the system, which likely would make timely trade affirmation more difficult or even impossible in a T+2 environment. This limitation in turn would lead to numerous additional trade failures, with significant potential downstream impacts on the markets, when the markets might least be able to handle such trade failures (i.e., during times of market stress).

[69] Under Regulation SCI, SCI entities are also required to report to the Commission material system changes. Within thirty calendar days after the end of each calendar quarter the SCI entity must submit to the Commission a report describing completed, ongoing and planned material changes to SCI systems, including security of indirect SCI systems. SCI entities must establish their own criteria for identifying a "material change" to their systems. 17 CFR 242.1003. DTCC requests clarification of the relationship between this requirement and the requirement in the Notice to provide twenty days advance notice of material systems changes.

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DTCC appreciates the opportunity to comment on BSTP's Application. Please contact the undersigned, at [redacted], if you would like to discuss any of the items outlined above.

Sincerely,

Larry E. Thompson

Larry E. Thompson
Vice Chairman and General Counsel

Cc: The Honorable, Mary Jo White, Chairman
The Honorable Luis A. Aguilar, Commissioner
The Honorable Daniel M. Gallagher, Commissioner
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Stephen I. Luparello, Director, Division of Trading and Markets
Gary Goldsholle, Deputy Director, Division of Trading and Markets
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