Bloomberg

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August 26, 2015

VIA ELECTRONIC MAIL

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

RE: Application by Bloomberg STP LLC for Exemption from Registration as a Clearing Agency
Securities and Exchange Commission (the "Commission")
Release Number 34-74394; File Number 600-33

Dear Mr. Fields:

Bloomberg STP LLC ("Bloomberg STP") appreciates the opportunity to provide further comment on the Commission's notice of filing of Bloomberg STP's application for exemption from registration as a clearing agency. This letter addresses the most recent comment letter submitted by The Depository Trust & Clearing Corporation ("DTCC") in response to the Commission's notice.[1]

1. Introduction

DTCC Letter 2 reiterates potential concerns already proffered by DTCC in its first comment letter,[2] which Bloomberg STP previously addressed,[3] or raises issues that are not relevant to the matter at hand. In our view, DTCC's sole purpose in submitting these materials is delay, which is intended to maintain the existing monopoly enjoyed by DTCC's wholly-owned affiliate, Omgeo LLC ("Omgeo").

DTCC has appended to its latest letter a self-commissioned report ("DTCC Report") that repeats arguments in DTCC Letter 1 and purports to "examine the economic implications of BSTP's potential entry into the national clearance and settlement system . . . ." The DTCC Report instead raises hypothetical scenarios that are speculative and/or unsupported by relevant evidence. In the instance where the authors cite to economic literature in terms of what "may" happen, they concede that the literature to which they cite "**focuses on central clearing and settlement systems and <u>not</u> on the confirmation/affirmation and matching services provided by Omgeo**."[4] (emphasis added). In sum,

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[1] Letter from Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (June 23, 2015) ("DTCC Letter 2").

[2] Letter from Larry E. Thompson, Vice Chairman and General Counsel, DTCC (April 6, 2015) ("DTCC Letter 1").

[3] Letter from Ben Macdonald, President, Bloomberg STP LLC (May 21, 2015) ("Bloomberg STP Letter"). Certain capitalized terms defined in that letter are incorporated in our present comment letter.

[4] *See* DTCC Report footnote 58.

the DTCC Report fails to buttress DTCC's previously stated contentions or to raise any material new points. Rather, the DTCC Report focuses on how approval of the Bloomberg STP application could affect Omgeo and "Omgeo's business model."[5] That business model is rooted in Omgeo's *de facto* monopoly on matching services.

The fact that competition is clearly contemplated by the Exchange Act and in the 2001 Omgeo Exemption,[6] and is incompatible with DTCC's repeated insistence on the use of its Omgeo-centric Existing Infrastructure,[7] is addressed thoroughly in the Bloomberg STP Letter. It would run contrary to Congressional intent for the Commission to give credence to DTCC's monopoly-preserving arguments.

2. <u>Contrary to DTCC's assertion, a Single Point of Failure is not beneficial to the national clearance and settlement system</u>

Contrary to DTCC's assertion, a single point of failure is detrimental to the market. In multiple instances, the Commission has stated that dependence on a single point of failure for systems core to the functioning of securities markets poses a risk to the markets themselves. The Commission's concern extends to matching services: "[A]n entity providing matching would have a significant impact on the national clearance and settlement system. The breakdown of a matching system's ability to accurately compare the trade information from hundreds of institutions and broker-dealers involving thousands of transactions and millions of dollars worth of securities could result in widespread systemic failure of the national

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5 DTCC Report at 22.

6 See Securities Exchange Act of 1934 Section 17A(a)(2)(A) ("The Commission is directed, therefore, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority under this chapter—(i) to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities (other than exempt securities); and (ii) to facilitate the establishment of linked or coordinated facilities for clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options; in accordance with the findings and to carry out the objectives set forth in [Section 17A(a)(1)].") and Global Joint Venture Matching Services-US, LLC, Securities Exchange Act Release No. 44188 (April 17, 2001), 66 FR 20494, 20499-20500. ("The [SEC] . . . finds that the conditions imposed upon [Omgeo] respecting other Central Matching Services will promote transparency, consistency, and interoperability in central trade matching and will assure that other Central Matching Services receive equal treatment. . . . Because these conditions are designed to promote interoperability, the Commission intends to require substantially the same conditions of other Central Matching Services that obtain an exemption from registration as a clearing agency.") The Interoperability Conditions in the 2001 Omgeo Exemption, including the time parameters for negotiations, are clearly designed to require Omgeo to facilitate the development of additional matching services.

7 DTCC defines "Existing Infrastructure" in DTCC Letter 1 as the combined products and services of multiple separate entities all owned and controlled by DTCC: Omgeo's TradeSuite ID, DTC's depository systems and National Securities Clearing Corporation ("NSCC") systems. Among other roles, these products and services generate and provide DTC internal control numbers, allow Omgeo's affirmed confirmations to be sent to DTC and to Omgeo's customers that are custodians and settlement agents, and provide other related services, including recordkeeping and audit trails. DTCC uses the phrase "single access" model to refer to the concept of all matching service providers', including providers that would compete with Omgeo, relying on the Omgeo-centric Existing Infrastructure to gain access to DTC, NSCC and the matching service provider's own customers which are custodians/settlement agents.

clearance and settlement system."[8] DTCC discounts these views because they conflict with its commercial interests.

In an attempt to characterize its monopoly position as being good for the public, without any empirical or logical support and in contradiction to the 2001 Omgeo Exemption and the Congressional decision to promote competition, DTCC requests the Commission to accept and encourage a single point of failure and claims that the DTCC Report demonstrates the benefits of a "financial system relying on a well operated single point of failure [i.e., Omgeo and the Omgeo-centric Existing Infrastructure] . . . ."[9] On the contrary, we, and members of the public other than DTCC that commented (as evidenced from the numerous supportive comment letters Bloomberg STP's application received), believe that having multiple matching service providers is beneficial to the market. Several comment letters specifically herald that an additional provider of matching services would be more sound from a national clearance and settlement system safety standpoint than relying on a single point of failure.[10]

To mitigate the risk posed by a single point of failure, the marketplace needs matching services with separate connectivity through redundant lines. Recent events in the securities markets underscore the risk

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[8] Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943, at 17946.

[9] DTCC Letter 2 at 2.

[10] The comment letter submitted by the Securities Industry and Financial Markets Association Asset Managers Forum (April 2, 2015), available at http://www.sec.gov/comments/600-33/60033-15.pdf, advocates the benefits of multiple providers as opposed to DTCC's 'single-access model' utilizing the Omgeo-centric Existing Infrastructure, including: "improving upon contingency strategies and disaster recovery models;" "eliminating single points of dependency;" "increas[ing] creative development of solutions;" and "support[ing] the industry's move to a shortened settlement cycle." Several additional letters specifically comment that having an additional provider of matching services would: reduce risk concentration currently embedded in one platform; reduce the operational risk of dependency on a single system or process; reduce the operational risk of a single point of failure currently in the process; reduce dependency on existing platforms; remove the risk of a single point of failure; and result in single point of failure risk reduction. No commenter other than DTCC expressed concerns about technology difficulties or risk or cost burdens. *See* Letters from: James Wallin, Senior Vice President - Fixed Income, AllianceBernstein (April 9, 2015): "Currently with only one provider of confirmation and settlement services for U.S. securities transactions, any associated risks are concentrated within one platform and may significantly disrupt trade flows in the entire market."; David Pearson, Head of Post-Trade Strategy, Fidessa (April 3, 2015): "A key point repeatedly voiced [by Fidessa customers] is the operational risk of having a dependency on a single system and process. By having multiple providers of US confirmation matching, that risk is significantly lowered."; Joseph Denci, Vice President, COO, Scotia Capital (USA) Inc. (March 31, 2015): "Omgeo, as a DTCC entity, should understand and support the existence of another independent entity providing the [matching] service as it reduces the operational risk of a single point of failure currently in the process."; Subramanian M, Capital Market Solutions - Wipro Limited (March 26, 2015): "[The Bloomberg initiative] would reduce the dependency on the existing platforms . . . ."; Terrence J. Ransford, Senior Vice President, Northern Trust Securities Inc. (March 18, 2015): "Having an additional supplier in [the trade confirmation services] space removes the risk of having a single point of failure and promotes competition."; James Connolly, RBC Capital Markets, LLC (March 16, 2015): "I am very supportive of Bloomberg's initiative to offer a confirmation matching service for various reasons: . . Single point of failure risk reduction - with only one firm currently providing this functionality the risk of market disruption is significant. If they were to experience technical issues over a period of days the settlement cycle could be significantly interrupted. Bloomberg's plan to 'interoperate' with other platforms appears to be an excellent step towards reducing that risk".

of single points of failure[11] and highlight the benefits multiple service providers and multiple points of connectivity can bring, for example, by permitting trading to continue across multiple venues even when the primary listing venue suffers an extended outage.[12] A similar resilient environment is needed in the matching service arena, which can be achieved through the introduction of additional matching service providers if they are allowed to establish separate and therefore redundant connectivity to DTC and market participants.

The monopoly position that DTCC seeks to protect extends to the Omgeo-centric Existing Infrastructure, which DTCC also refers to as the "single access model." If the Commission were to approve a second or third matching service provider, but were to mandate that the new matching service provider(s) use the Omgeo-centric Existing Infrastructure instead of their own connectivity to DTC and to their customers (e.g., custodians), that stricture would vitiate the benefits of competition contemplated by and essential to the 2001 Omgeo Exemption and be contrary to the essential nature of the Commission's well-established concept of a matching service.[13] This type of restriction would also be antithetical to the policy embodied in Section 17A of the Exchange Act.

As noted above, required use of the Omgeo-centric Existing Infrastructure would also hold the market hostage to a single point of failure. Significantly, if all matching service providers were required to rely on the Omgeo-centric Existing Infrastructure, Bloomberg STP and any other new matching service would be in the untenable position of being dependent on a competitor's infrastructure, cooperation and fee structure. Any potential entrant into the currently monopolistic matching space would find such construct insurmountable. Mandated use of the Omgeo-centric Existing Infrastructure is a significant barrier to entry and undermines the objectives of Section 17A of the Exchange Act.

Additionally, transmission of matched settlement data without a direct electronic link to DTC would introduce a layer of inefficiency and complexity that would impair the Commission's and industry's ongoing efforts to reduce the settlement cycle.

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[11] Chair Mary Jo White, "Enhancing Our Equity Market Structure" (June 5, 2014), detailing Commission action after the August 2013 Nasdaq SIP incident, available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312 ("We also have closely focused on certain market infrastructure systems that are 'single points of failure' that can halt or severely disrupt trading when a problem occurs.")

[12] Chair Mary Jo White, "Statement on NYSE" (July 8, 2015), available at http://www.sec.gov/news/statement/statement-on-nyse-.html ("While NYSE is working to resolve the situation, NYSE and NYSE MKT stocks continue to trade normally through other trading venues.")

[13] As noted in the Bloomberg STP Letter, the ability of a matching service provider to link directly to DTC to send matched confirmations to DTC is an intrinsic component of the Commission's concept of a matching service. Without a direct link to DTC to deliver matched confirmations, the intermediary would be functioning as a mere service bureau, not rising to the level of the regulated activity of an exempt clearing agency.

3. <u>DTC must make available DTC Control Numbers and access to DTC to all matching services on a fair and non-discriminatory basis</u>

In its second letter, DTCC revisits issuance of DTC Control Numbers and access to DTC by matching services.[14] Our earlier letter addressed the false operational dichotomy and corporate confusion that pervades DTCC's positions and it is unnecessary to repeat our views here. We agree, however, that "the creation of the [DTC Control Number], the transmission of the [DTC Control Number] to the parties involved in settlement, and the transmission of settlement instructions to the DTC are critical components of post-trade processing."[15] As such, those elements of the national clearance and settlement system must be provided, on a fair and non-discriminatory basis, by DTC.[16] As discussed in our earlier comment letter, Commission actions make it clear that (1) each exempt matching service must have an electronic link to DTC, and (2) access to DTC must be made available without the involvement of Omgeo.

4. <u>Contrary to DTCC's assertions, the existence of multiple matching services will not affect compliance with Commission rules.</u>

DTCC Letter 2 and the DTCC Report attempt to raise concerns about compliance with certain Commission rules, including Regulation SHO, as a consequence of multiple matching services.[17]

The DTCC Report imagines a potential increase in broker-dealer failures to deliver occurring at NSCC resulting from delays in the affirmation or matching process in connection with a "long" sale of securities.[18] DTCC's concerns could exist under the current market structure. They are not unique to introducing another matching service and DTCC offers no evidence as to why the introduction of Bloomberg STP would exacerbate any hypothetical problem. Such failures to deliver could be wholly unrelated to the affirmation or matching process.[19] This potential issue is illusory at best.

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[14] DTCC Letter 2 at 3-4; DTCC Report at 13, 18-19, 21.

[15] DTCC Report at 21.

[16] See, e.g., Section 17A(b)(3)(D), (F), and (I). DTCC Letter 2 on page 3 mischaracterizes Bloomberg STP's discussion of DTC Control Number issuance. Our position is that, ideally, there should be one issuer of DTC Control Numbers, namely, DTC. If the Commission, however, determines DTC can continue to outsource that obligation to Omgeo, an exempt clearing agency, then the Commission should not provide Omgeo a special anti-competitive issuer status and should mandate that DTC authorize and accommodate issuance of DTC Control Numbers on DTC's behalf by multiple exempt clearing agency matching service providers. Bloomberg STP Letter at 13-14.

[17] DTCC Report at 38-40.

[18] DTCC Report at 39.

[19] The DTCC Report refers to two enforcement cases that alleged violations of Regulation SHO as illustrating a regulatory focus on "violations [that] arise for technical, operational reasons" or "appear to arise solely from weaknesses in the [broker-dealer's] policies and procedures." DTCC Report at 39 n.126. These cases are inapposite: they do not illustrate the kinds of situations imagined by the DTCC Report: one case involved allegations of Rule 204 violations that persisted over a four-year period, and the other involved allegations of knowingly and willfully ignoring the requirements of Rule 204.

5. Interoperability: Delay of the pro-competitive process in the 2001 Omgeo Exemption should not be accepted

The DTCC Report speculates about the "complexity, risk, and cost" associated with adding Bloomberg STP's service. The introduction of any new matching service will require DTC and Omgeo to adjust to competition, and this fact has been fully recognized by the Commission, for example, in crafting the terms of the 2001 Omgeo Exemption. DTCC Letter 2 reasserts that the time frames governing interoperability in the 2001 Omgeo Exemption must now be lengthened.[20] DTCC, however, provides no substantiated reason why the time frames in the 2001 Omgeo Exemption are now impractical. Given that DTCC refers to Omgeo's past experience of the value of using standard industry methods to establish connectivity,[21] it is evident DTCC has successfully and efficiently integrated with other systems and does not explain why that type of integration would not be beneficial and efficient for interoperability connectivity between matching services. Bloomberg STP believes that the Commission's time frames outlined in the 2001 Omgeo Exemption are valid and remain workable.

The interoperability conditions included in the 2001 Omgeo Exemption are a direct reflection of the fact that the exemption granted Omgeo a *de facto* monopoly on matching services, and those conditions were added to facilitate later competition for matching services in the context of that monopoly.[22] If anything, Omgeo's position has become more entrenched than it was in 2001. It is therefore important that the negotiation process and time lines established in the 2001 Omgeo Exemption be implemented without delay.

Revising the time frames would require an amendment to the 2001 Omgeo Exemption. That would, of course, be enormously time consuming, in addition to the added delay if the time frames were lengthened. If DTCC (or Omgeo) earnestly believed the 2001 Omgeo Exemption's timeframes were unworkable, there was ample opportunity to make that case at a time when such discussion and amendment would not have resulted in significant delay to a potential competitor.[23] It is striking that this concern is only now being raised.

The Commission should not entertain further requests for delay.

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[20] DTCC Letter 2 at 4.

[21] Id.

[22] Compare the 2001 Omgeo Exemption with the earlier exemption issued to Thomson Financial Technology Services, Inc., Securities Exchange Act Release No. 41377 (May 7, 1999), 64 FR 25948, 25950.

[23] At least one potential competitor has been on the horizon for Omgeo for at least ten years according to the article below. At the time that SS&C Technologies, Inc. ("SS&C") received relief from the Commission to provide an electronic confirmation service, SS&C disclosed that it also had submitted an application to the Commission in 2005 to provide a matching service. *See* The Securities Technology Monitor, "SS&C Gets SEC Approval for E-Confirmations" (September 22, 2008): "Although SSCNet, formerly known as FMCNet, has a strong following among Canadian investment managers, it has faced an uphill battle to win market share in the U.S., where it has not received the green light from the SEC to offer central matching services akin to Omgeo's. The former FMC filed the paperwork in 2005 but was forced to redo its application when it was acquired, said an SS&C official who declined to speculate on when the SEC would reach a decision."

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Please do not hesitate to contact the undersigned if the Commissioners or Commission Staff believe that additional information or analysis from Bloomberg STP would be useful.

Sincerely,

Benjamin Macdonald
President, Bloomberg STP LLC