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**Larry E. Thompson**

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55 Water Street

New York, NY 10041

May 28, 2015

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

Re: SS&C Technologies, Inc.; Notice of Filing of Application for Exemption from Registration as a Clearing Agency (File Number 600-34)

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 SS&C Technologies, Inc. (“SS&C”) 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.<sup>1</sup>

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 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

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<sup>1</sup> Securities Exchange Act Release No. 74794 (April 23, 2015), 80 FR 23618 (April 28, 2015) (“Notice”). Publicly available sections for SS&C’s Form CA-1 were also published on the SEC’s website at: <http://www.sec.gov/rules/other/2015/34-74794-form-ca-1.pdf> (“SS&C Application”).

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exemption from registration in April 2001.<sup>2</sup> DTCC 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 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.<sup>3</sup> As we have recently expressed to the Commission, 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.<sup>4</sup>

Omgeo is proposing a "central matching interoperability" model that is consistent with Commission guidance on central matching services. This model would seek to provide interoperability "through the ability to connect multiple providers and the resulting improvements to reliability and stability in the post-trade space that would flow from this type of service offering."<sup>5</sup> Under this model, end-user clients or any service that represents end-user clients would gain seamless access to other central matching services through interfaces between and among the central matching services. Such interfaces would also enable all end-users of one central matching service to communicate with all end-users of all other central matching services. This model is consistent with the guidance in Omgeo's exemptive order and with the interoperability conditions proposed by the Commission when publishing notice of application to obtain an exemption from clearing agency registration by both SS&C and BSTP.<sup>6</sup>

As we have also previously stated, however,<sup>7</sup> the Commission should distinguish, from central matching interoperability, from 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 SS&C's request for an exemption from registration as a clearing agency on its Form CA-1,<sup>8</sup> the Commission should

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<sup>2</sup> 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.

<sup>3</sup> See 15 U.S.C. 78q-1(b)(2).

<sup>4</sup> See letter from Larry E. Thompson, Vic Chairman and General Counsel, DTCC, to Brent J. Fields, Secretary, Commission (April 6, 2015) ("Bloomberg Application Comment Letter"), available at: <http://www.sec.gov/comments/600-33/60033-20.pdf>.

<sup>5</sup> See Securities Exchange Act Release No. 74394 (February 27, 2015), 80 FR 12048 (March 5, 2015) ("BSTP Notice"), at p. 12053.

<sup>6</sup> See Notice and BSTP Notice.

<sup>7</sup> See Bloomberg Application Comment Letter.

<sup>8</sup> 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

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therefore distinguish SS&C's proposal to provide central matching, which may provide an additional option to market participants, from the related communications and controls required to safely and efficiently settle the matched trades. In this regard, the Commission should consider the SS&C Application in conjunction with the recent application by Bloomberg STP LLC ("BSTP") to provide central matching as a clear indication that reliance on a single point of access from central matching services to DTCC, NSCC and the bank and broker-dealer custodians/settlement agents for the sending of matched confirmation and settlement instructions ("single access model") would promote safety and soundness in the national clearance and settlement system. Any alternative approach that results in multiple points of access to DTC, NSCC and the bank and broker-dealer custodians/settlement agents ("multiple access model") would necessarily increase systemic risk without identifiable benefits to the national clearance and settlement system or to the industry generally.

For this reason, DTCC strongly recommends that the Commission ensure that any central matching service that has applied,<sup>9</sup> or that may apply in the future for an exemption from registration as a clearing agency, rely on the "Existing Infrastructure," defined below, to access DTC or NSCC<sup>10</sup> and the custodians/settlement agents, because this would, among other things, mitigate systemic risk.

The Commission also should require SS&C and its parent company, SS&C Technology Holdings, Inc. ("Holdings"), SS&C Technologies Canada Corp., its Canadian subsidiary performing matching functions ("SS&C Canada"), and each of Holding's other subsidiaries (collectively, the "SS&C Complex"), to the same standards of internal controls, redundancy, security, and business continuity as the Commission requires of other critical participants in the national clearance and settlement system. Such a requirement would serve the public interest and the protection of investors. In particular, the integral role played by SS&C Canada suggests that extra scrutiny be placed on cross-border issues to the extent they could delay or impede the proper functionality of trade matching and settlement.

## II. Background

In 2001, the Commission granted Omgeo, a newly-formed joint venture between DTCC and Thomson Financial, an exemption from registration as a clearing agency, permitting Omgeo to provide electronic confirmation and central matching services. As part of the joint venture

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descriptions of the trade agree. See Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943, 17945 (April 13, 1998).

<sup>9</sup> See BSTP 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> ("BSTP Form CA-1").

<sup>10</sup> 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.

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forming Omgeo, DTC (through DTCC) transferred its electronic confirmation and central matching services (“TradeSuite ID”) to Omgeo and also transferred certain other systems and infrastructure that were already integrated into DTC’s remaining systems.<sup>11</sup> The TradeSuite ID service remains to this day 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.<sup>12</sup> We use the term “Existing Infrastructure” to mean central access to the DTCC, which consists of the combined TradeSuite ID/DTC/NSCC systems for providing internal control numbers and for sending matched confirmations to DTC, NSCC and the custodians/settlement agents to facilitate settlement, and to other related services, including recordkeeping and maintaining an audit trail.<sup>13</sup>

### 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 TradeSuite ID 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.<sup>14</sup> 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.<sup>15</sup>

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.<sup>16</sup> Under a multiple 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. Decentralizing this process would make it far more

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<sup>11</sup> See Securities Exchange Act Release No. 44189 (April 17, 2001), 66 FR 20502 (April 23, 2001).

<sup>12</sup> See Omgeo Exemptive Order at 20495.

<sup>13</sup> The Existing Infrastructure is not intended to include the specific services of electronic confirmation or central matching.

<sup>14</sup> The control number is issued by TradeSuite ID on behalf of the DTCC.

<sup>15</sup> See FINRA Rule 11860.

<sup>16</sup> See Bloomberg Application Comment Letter for a discussion of prior demonstration of benefits of DTCC’s control number.

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.<sup>17</sup> 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 multiple sources for providing trade instructions, but also would require multiple sources for receiving, downloading and maintaining such trade confirmations under the applicable recordkeeping rules.<sup>18</sup> Such unnecessary redundancies would lead to additional costs and risks of error, to the detriment of industry participants and their customers.

#### IV. Concerns with SS&C Multiple Access Model

##### A. Multiple Access as Proposed by SS&C would Add Complexities and Risks without Identifiable Benefit to Industry

Under the SS&C Application, SS&C would issue its own control number, which SS&C would use throughout the life of the trade. The SS&C Application does not explain how the SS&C issued control number would relate, if at all, to the DTCC issued control number. As we have previously stated, it is imperative that the national clearance and settlement system rely upon a single issuer of control numbers for centrally-matched trades. Use of control numbers issued by multiple sources would inevitably lead to difficulties in reconstructing failed trades and auditing trade histories, particularly during times of high market volatility or market disruptions. In

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<sup>17</sup> See letters re: Omgeo (March 12, 2008) and (December 14, 2006); see also letters re: DTC (January 31, 1983) and (October 29, 1974).

<sup>18</sup> 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). DTCC recognizes that SS&C has obtained no-action relief from the Commission Staff permitting broker-dealers to rely on SS&C's SSCNet service to electronically confirm their transactions in compliance with Rule 10b-10. That relief, however, applied solely to SS&C's electronic trade confirmation service, not to a central matching service. Moreover, the SS&C Application discusses the sending of "ISO" messages to investment managers or custodians acting as their settlement agents, but not confirmations in compliance with Rule 10b-10, so it is unclear whether SS&C intends the ISO messages or some other communication to act as a confirmation to fulfill their broker-dealers' Rule 10b-10 obligations delivery and disclosure obligations, including with respect to transactions electronically confirmed by SS&C in compliance with FINRA Rule 11860. See SS&C Application at Exhibit J; see also, letter re: SS&C Technologies, Inc. (August 13, 2008).

addition, reliance on multiple issuers of control numbers would greatly increase the likelihood of settlement errors.<sup>19</sup> By contrast, continued reliance solely on DTCC issued control numbers would permit the Commission, other regulators, and market participants generally to recreate and events leading up to market crises and to reconstruct and settle potentially failed trades.<sup>20</sup> By providing for a decentralized system of control numbers, the SS&C Application therefore raises the risk both of failed trades due to inconsistent coding between and among central matching services, and of significant difficulty reconstructing trading on any give trade date as multiple systems and control numbers would have to be reconciled.

As discussed below, SS&C's multiple access model would also lead to increased risk of individual trades failing to settle and risk to the national clearance and settlement system generally. DTCC's concerns about risks raised by the multiple access model would be exacerbated if the BSTP application for an exemption from registration as a clearing agency were approved along with the SS&C Application. These concerns would increase significantly with each additional central matching service approved by the Commission under this multiple access model, as additional complexity within the national clearance and settlement system adds new risks and challenges. As new connections to DTC, other central matching services and custodians/settlement agents are built, additional coding and logic will need to be developed that interoperate with all central matching services. Each such connection and each new round of systems development would increase the risk of individual trade failures to settle and reduce market efficiency. Moreover, a general failure in any of these central matching services, or a general failure of two or more central matching services, to communicate effectively, may result in all customers of the temporarily failing central matching service being unable to confirm and affirm their trades. Under such a scenario, the introduction of multiple central matching services, each with direct access to DTC, would result in far greater risk to the national clearance and settlement system than exists under the current single access model.

In order to provide SS&C direct access to DTC under the SS&C Application, both DTC and SS&C would have to develop and test interfaces to allow SS&C to send matched confirmations directly to DTC. It is unclear how SS&C would send settlement instructions to DTC using SS&C issued control numbers or how DTC would integrate such instructions into its existing systems. In any event, this scenario would require a substantial amount of work and testing by both DTC and SS&C prior to being implemented and would require SS&C to implement a redundant fault tolerant network design, including interfaces that ensure robust security protocols and processes based on DTC standards. In addition, DTC would have to modify its internal systems and network management infrastructure and build in capabilities to prepare for additional central matching services such as BSTP with direct access to DTC and the other custodians. As DTC's systems become more complex, DTC's maintenance requirements would become more complex, leading to additional risk and security issues. The additional resources

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<sup>19</sup> See Bloomberg Application Comment Letter.

<sup>20</sup> Id.

required to properly handle the issues raised by the multiple access model 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.<sup>21</sup>

Under the multiple access model, SS&C would also have to replicate the Existing Infrastructure and build access to the custodian/settlement agent community, requiring significant time, cost and other resources on the part of the custodians/settlement agents, which cost would inevitably be passed through to investors. The custodians would each need to develop new internal systems to accept S&C issued control numbers and to convert SS&C messages to use by systems currently coded to accept DTC messages. The additional systemic build required for direct access to DTC by SS&C introduces additional complexity and issues that raise the risk profile of the national clearance and settlement system.

**B. Single Access Model would Significantly Reduce the Complexity of the System and the Risks of SS&C Application**

An alternative, single access model - under which SS&C 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 access to DTC and NSCC, market capabilities and processes to send settlement instructions and confirmations to DTC, NSCC and the custodians/settlement agents. This approach would accomplish SS&C's goal of providing competition in central matching and electronic confirmation services, but would avoid significantly increasing risk to the industry and the national clearance and settlement system.

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. DTCC, using existing procedures, would assign a control number that would be included on all communications between and among the broker-dealer, Omgeo, SS&C (if applicable), the investment manager, DTC, and the custodian/settlement agents from the notice of execution through settlement. If a trade were matched by Omgeo, a matched confirmation would be sent by TradeSuite ID to DTC (or NSCC, as applicable), 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 SS&C, SS&C would send the matched confirmation through

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<sup>21</sup> DTCC notes further that, as a for-profit, non-industry-owned company, SS&C 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.

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TradeSuite ID 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 today.

DTCC's proposed single access model would permit SS&C to avail itself of DTCC's extensive community of custodians and settlement agents, without adding additional complexity to the national clearance and settlement system and the associated risk resulting from each custodian and settlement agent being responsible to create, operate and maintain a separate interface and infrastructure with SS&C. Moreover, because all matched confirmations would continue to flow to DTCC as is currently done, 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 SS&C's multiple access model would require. 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. Moreover, because Omgeo's Exemptive Order already requires interoperability between Omgeo and each other central matching service, an interface between Omgeo and SS&C (or any other central matching service) must be built and operated on fair and reasonable terms. Settlement communications through Omgeo must therefore be built anyway pursuant to the terms of that order (*i.e.*, through the interfaces). It would be duplicative to build additional linkages to DTC, NSCC and the bank custodians/settlement agents, particularly as Omgeo is now 100% industry owned and governed.

The single access model leveraging central access to DTC and NSCC would permit a more rapid, less expensive option for SS&C to begin central matching and take advantage of the business continuity testing the industry currently conducts. The industry and investors would all benefit from avoiding the development issues that would need to be addressed 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, *infra*, DTCC's single access model would facilitate the migration of the industry to T+2 settlement, by avoiding the reduction of same day affirmation rates that SS&C's multiple access model could cause.<sup>22</sup>

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

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<sup>22</sup> See Section VIII.A., *infra*.



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inappropriate burden on competition.<sup>23</sup> 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.”<sup>24</sup> 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 SS&C Application would promote,<sup>25</sup> and DTCC therefore requests that the Commission require adoption of the single access approach.<sup>26</sup> 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.<sup>27</sup> Moreover, exclusive reliance on central 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,<sup>28</sup> thereby reducing risks of system disruptions or systems incompatibilities resulting in a reduction of trade failures.<sup>29</sup>

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<sup>23</sup> Securities Exchange Act Release No. 16900 (July 1, 1980), <http://www.sec.gov/rules/other/34-16900.pdf> (“Clearing Agency Standards Release”).

<sup>24</sup> *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 SS&C Application on use of DTCC’s single access option.

<sup>25</sup> 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.

<sup>26</sup> 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).

<sup>27</sup> Failed trades are resolved and reconciled through Omgeo currently, not DTC.

<sup>28</sup> 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).

<sup>29</sup> 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 through the Existing Infrastructure would not impose such a burden, but rather would be justified by the

## VI. TimeFrames for Building and Operating Interfaces

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 SS&C's (and possibly also BSTP's) entry into central matching 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 SS&C (and possibly 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 SS&C, especially since this would be the first time an interface with another central matching service would be put into place. Additional time would also be needed should another matching service be in place or be simultaneously developing an interface thus adding a layer of complexity that would need to be addressed in a risk mitigating manner. 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, SS&C, BSTP, and other industry participants to implement interoperability under the single access model would likely be shorter and lower than under the multiple access model.

## VII. Concerns with Reliance on SS&C Canada to Perform Matching

### A. General Cross-Border Concerns

The Notice indicates that all matching services activities for SS&C will be performed by SS&C Canada. SS&C Canada is therefore integral to SS&C's ability to perform its undertakings and to satisfy the conditions of exemption from the requirement for SS&C to register as a clearing agency. SS&C's reliance on a foreign subsidiary to perform these critical functions distinguishes the SS&C Application from the circumstances underlying, and the regulatory impact of, Omgeo's current exempt status. For this reason, the indirect nature, comparability and enforceability by the Commission of the material undertakings by SS&C relating to SS&C Canada as the Commission assesses of SS&C's overall proposed business and matching activities.

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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.

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The Commission also must satisfy itself that the role of SS&C Canada in the SS&C Application would not weaken the regulatory framework applicable to SS&C's activities and undertakings in the U.S. In particular, the Commission must satisfy itself that the proposed framework in which SS&C is the regulated entity, but SS&C Canada performs the actual matching operations and then sends relevant information to SS&C, would not create a risk of disconnectedness or regulatory impairment with respect to the Commission's oversight of the national clearance and settlement system.

The Notice indicates that organizational and capacity issues related to SS&C's ability to facilitate prompt and accurate matching services will be relevant in considering the SS&C Application. SS&C's broad reliance on SS&C Canada suggests that SS&C's undertakings with respect to operational, interoperability and access matters, and the Commission's ability to monitor the effects of SS&C's overall activities on clearance and settlement in the United States, in each case as they depend on SS&C Canada and its core functionality in the delivery of services by SS&C, should therefore be carefully scrutinized, including with respect to the specific considerations discussed below.

#### B. Substance of Outsourcing Arrangements

The SS&C Application offers some insight into the performance history of SS&C, and proposes compliance by SS&C with the White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.<sup>30</sup> The SS&C Application, however, does not discuss any due diligence performed by SS&C in respect of SS&C Canada and SS&C Canada's capabilities in supporting the undertakings given by SS&C, or its abilities to discharge the services and obligations contemplated in the intercompany agreement.

In this regard, IOSCO has noted various risks relating to cross-border outsourcing, with respect to which financial institutions should conduct enhanced due diligence.<sup>31</sup> For example, when considering cross-border outsourcing, outsourcing firms should conduct enhanced due diligence that focuses on special compliance risks, including the ability to effectively monitor the foreign service provider, the ability to maintain the confidentiality of firm and customer information; and the ability to execute contingency plans and exit strategies where the service is being performed on a cross-border basis. Special outsourcing risks also include individual firm concentration risk and the associated exit strategy risk (e.g., over-reliance on the outsource provider and a lack of relevant skills within SS&C itself). Concentration risk also includes the potential sale of SS&C Canada by SS&C. Access risk includes both the risk of timely access by SS&C and its auditors

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<sup>30</sup> See SS&C Application at Exhibit S. See, also, Securities Exchange Act Release No. 47638 (April 7, 2003), 68 FR 17809 (April 11, 2003) ("Interagency Paper").

<sup>31</sup> IOSCO Technical Committee Standing Committee on the Regulation of Market Intermediaries (SC3), Principles on Outsourcing of Financial Services for Market Intermediaries (February 2005); available at: <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD187.pdf>.

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and regulators to data, records or assets and conversely risk of access by SS&C Canada employees over SS&C client account data, records and assets. The Commission should require SS&C to demonstrate that it has conducted such enhanced due diligence, including the written documentation of the results of such due diligence.

C. Making Available SS&C Canada Employees

The Commission also should require SS&C to demonstrate that applicable Canadian employment law would not impede or impair SS&C's ability to perform the undertakings provided in the SS&C Application, including with respect to access to SS&C Canada employees.

D. Potentially Conflicting Legal Regimes

1. Privacy laws

The Notice states that, as provided in the intercompany agreement between SS&C and SS&C Canada, SS&C shall provide the Commission with access to information relating to SS&C Canada's matching system and electronic confirmation services, including all documents its receives from SS&C Canada, which appear to include daily trade data, such as trade details and confirmations. The Notice states that SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian Personal Information Protection and Electronic Document Act or the Ontario Business Records Protection Act (the "Canadian Statutes"). The Notice and SS&C Application each state, however, that because the intercompany agreement is governed by Connecticut law and SS&C's external counsel are not qualified to practice in Connecticut, they merely assume that the Connecticut courts would interpret the intercompany agreement the same as the applicable Canadian courts.

If SS&C's external counsel were incorrect in their assumption about how Connecticut courts would interpret the application of the Canadian Statutes to the intercompany agreement, a Canadian customer might be able to sue SS&C to prevent SS&C Canada from providing SS&C with daily trade information, including confirmations. This would make it very difficult for SS&C to oversee SS&C Canada's operations and may prevent the Commission from having ready access to trade records. SS&C therefore should be required to engage competent Connecticut counsel to offer its views on whether Connecticut law would interpret the Canadian Statutes to permit SS&C Canada to provide trade information to SS&C daily without concerns about being in violation of those statutes.

SS&C needs to demonstrate that Canadian law applicable to the treatment and production of relevant data and client information would not be impeded or impaired the production and provision of information required by SS&C and regulators. Given the importance of this issue, the opinion of qualified legal counsel concerning whether local Ontario privacy and business record laws would be breached by the intercompany agreement seems insufficient and further due diligence is warranted. Among other things, SS&C should also address whether other Canadian law could result in unanticipated disclosure of customer information or could provide the basis for a Canadian customer asserting that data held by SS&C Canada should not be provided to SS&C or to the SEC.

2. Securities Laws

We understand that certain activities of SS&C Canada are regulated by the Ontario Securities Commission in Ontario and the Autorité des marchés financiers in Québec which necessitates that SS&C demonstrate that its reliance on SS&C Canada for the purposes contemplated in the SS&C Application would not conflict or be inconsistent with its existing requirements under applicable Canadian provincial securities laws.

E. IP Considerations

SS&C has recognized that a substantial portion of its operations are conducted outside of the United States, and that it is subject to a variety of related risks, including the potential difficulty to enforce third-party contractual obligations and intellectual property rights.<sup>32</sup> The Commission should therefore require further due diligence in this regard by SS&C in this area.

F. Functional Considerations in a Cross-Border Context

While the U.S.-Canadian information technology and data infrastructure enjoy extensive integration, the cross-border nature of SS&C's proposed operation should be carefully scrutinized by the Commission to confirm that systemic risks would not arise, including as a result of potential physical infrastructure concerns or jurisdictional conflicts.

G. SS&C's Direct Oversight of SS&C Canada's Policies and Procedures

Under the SS&C Application, SS&C Canada will operate the electronic confirmation and central matching services on behalf of SS&C. Although DTCC believes operational support may be provided to an exempt clearing agency by its non-U.S. affiliate, the SS&C proposal raises issues relating to such support. For example, the Notice states that the policies and operations of SS&C Canada are overseen by its officers and directors, and are subject to control by SS&C Holdings. DTCC believes SS&C Canada's policies and operations relating to central matching should be overseen in the first instance by SS&C itself.

VIII. Additional Concerns with SS&C Application

A. SS&C 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).<sup>33</sup> As DTCC and others have stated, early trade affirmation (preferably same day affirmation), is a fundamental component towards shortening the settlement cycle.<sup>34</sup> The multiple access model

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<sup>32</sup> See SS&C Application, Exhibit A – SSC's Form 10-K at p. 27.

<sup>33</sup> 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>.

<sup>34</sup> 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)

SS&C 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.

A. SS&C Application Lacks Sufficient Internal Controls

SS&C's request for an exemption raises significant concerns about the potential for an SS&C (or Holdings) insolvency and intellectual property control issues.

1. SS&C and SS&C Holdings should Provide Additional Assurances on Solvency

As a for-profit company, SS&C could rapidly become insolvent, in which event SS&C Holdings would be free to make the business decision not to continue to support it or not to continue to support its central matching services. Of equal concern is the potential insolvency of SS&C Holdings itself, or SS&C Canada, in part because SS&C is licensing virtually all of its operating systems from SS&C Canada and is therefore completely reliant on the SS&C Complex for its operations. If SS&C 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, potentially posing significant risks to the national clearance and settlement system. The Commission should therefore require SS&C Holdings, SS&C and SS&C Canada to provide sufficient protections from the risk of the insolvency of any of these entities to prevent a major disruption to the national clearance and settlement system if such insolvency occurred.

2. The SS&C Complex Should Provide Additional Assurances on Internal Controls

SS&C's plan to rely on SS&C Canada and other off-shore affiliates within the SS&C Complex for operational performance of electronic confirmation and central matching, along with other related services, raises concerns about SS&C Canada's ability to appropriately protect its intellectual property and to maintain the privacy of users and confidentiality of data within its (*i.e.*, the SS&C Complex's) databases. The Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through SS&C's electronic confirmation or matching services, including the misuse of such data in providing other SS&C Complex services.

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<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>.

B. General Pricing and Access Conditions

The SS&C Application and the Notice each state that SS&C believes that users of its service in the United States will gain access to a matching facility that is affordable.<sup>35</sup> The SS&C Application, however, does not state how its prices would be determined, and DTCC is therefore unable to draw any reasonable inference on how SS&C supports this representation. The Commission therefore should obtain additional information on how SS&C would price its services or request that SS&C retract that representation.

The general conditions on pricing and access to SS&C services in the Notice are based substantially on the conditions imposed on Omgeo in its 2001 Exemptive Order.<sup>36</sup> As discussed below, however, the pricing and access conditions in Omgeo's Exemptive Order should be reconsidered in connection with the SS&C Application because of changes in the marketplace, including DTCC's 2013 purchase of Thomson Reuters's outstanding ownership interest in Omgeo and differences in the ownership and corporate governance of Omgeo and SS&C.

The pricing and access conditions in Omgeo's Exemptive Order were 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 entity, Omgeo jointly owned by the for-profit entity Thomson Financial. 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.<sup>37</sup> Omgeo therefore represented in its original request for an exemption under Section 17A that Omgeo would not impose prohibitions or limit access to its services by potential customers, although it might terminate a subscription for failure to pay fees.<sup>38</sup> 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 SS&C for customers.

C. SS&C should Address Business Continuity, Cybersecurity and Stress Testing Review More Specifically

The Notice states that SS&C would be "an exempt clearing agency subject to ARP," in which case Regulation SCI would apply to SS&C as an SCI entity.<sup>39</sup> SS&C proposes, however, to have

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<sup>35</sup> See, e.g., Notice at 23620.

<sup>36</sup> See Omgeo Exemptive Order.

<sup>37</sup> Id.

<sup>38</sup> See Securities Exchange Act Release No. 43540 (November 9, 2000), 65 FR 69582 (November 17, 2000), at fn. 16.

<sup>39</sup> Notice at fn. 23. 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,



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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 are subject to obligations explicitly specified in Regulation SCI, and SS&C should be held to these same standards.<sup>40</sup> DTCC notes further that SS&C seeks to rely on SS&C Canada for the operations and systems to be used for central matching. Both SS&C, and by extension SS&C Canada (to the extent it supports SS&C's central matching and electronic confirmation services), should be subject to the full panoply of legal and regulatory requirements under Regulation SCI and the Interagency Paper.<sup>41</sup>

DTCC is also concerned whether SS&C Canada's 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.<sup>42</sup>

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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.*

<sup>40</sup> See Interagency Paper.

<sup>41</sup> SS&C represents that it would comply with the "White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System," citing Securities Exchange Act Release No. 46432, before its volume of U.S. securities matched is 1% of the U.S. aggregate daily volume. See SS&C Application at Exhibit S. DTCC supports this requirement generally, although we are concerned that SS&C has not indicated how it would limit its matching activities to 1% or less of the U.S. market if its central matching services become widely used by its customers. This is also significant because SS&C represents that it is initially seeking an exemption to match up to 1% of the U.S. aggregate daily volume of securities trades and would seek an amendment 180 days prior to exceeding that limit. Presumably, SS&C may have to refuse to provide matching services to additional daily trades in some instances, which might create problems for market participants that are uncertain whether their trades would be accepted for matching by SS&C. DTCC also notes that Release 46432 was superseded by the Interagency Paper. To the extent the Interagency Paper imposes standards that exceed those in Release No. 46432, the Commission should require compliance with standards described in the Interagency Paper before SS&C matches more than 1% of the aggregate U.S. market in securities.

DTCC is not suggesting that the SEC directly regulate SS&C Canada, but rather, that SS&C Canada, by virtue of its critical role in performing matching on behalf of SS&C, should be subject to the same Regulation SCI requirements as SS&C would be subject to, were SS&C to perform the matching function itself.

<sup>42</sup> 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 SS&C'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

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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.<sup>43</sup> DTCC requests that the Commission clarify whether, and to what extent, those reporting requirements have been superseded by Regulation SCI.

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

Sincerely,



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  
Peter Curley, Associate Director, Division of Trading and Markets  
Jeffrey Mooney, Assistant Director, Division of Trading and Markets

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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).

<sup>43</sup> 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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