markitSERV™

55 Water Street
19th Floor
New York
NY 10041
United States

tel +1 212 205 7110
fax +1 212 205 7123
www.markitserv.com

July 15, 2011

Ms. Elizabeth Murphy
Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: **S7–8–11 / Clearing Agency Standards for Operation and Governance– the "Clearing Agency Proposed Rule";**

S7-24-11 / Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps– the "July 16, 2011 Exemptive Order";

S7-28-11 / Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions from Clearing Agency Registration Requirements under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps– the "CCP Temporary Exemptive Order";

S7-27-11 / Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment– the "Security Temporary Exemptive Order"

Dear Ms. Murphy:

MarkitSERV[1] is pleased to submit the following comments to the Securities and Exchange Commission (the "***SEC***" or the "***Commission***") regarding the ***July 16, 2011 Exemptive Order***,[2] the ***CCP Temporary Exemptive Order***,[3] and the ***Security Temporary Exemptive Order***,[4] which relate to the implementation of certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***").[5]

This letter also comments on the Commission's proposed rule titled Clearing Agency Standards for Operation and Governance (the "***Clearing Agency Proposed Rule***")[6] insofar as the above-listed orders pertain to that proposed rule.

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[1] MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.

[2] Temporary Exemptions and Other Temporary Relief, Together with Information on Compliance Dates for New Provisions of the Securities Exchange Act of 1934 Applicable to Security-Based Swaps, 76 Fed. Reg. 36287 (published June 22, 2011).

[3] Order Pursuant to Section 36 of the Securities Exchange Act of 1934 Granting Temporary Exemptions from Clearing Agency Registration Requirements under Section 17A(b) of the Exchange Act for Entities Providing Certain Clearing Services for Security-Based Swaps, Release No. 34-34796 (issued July 1, 2011) (not yet published in the Federal Register).

[4] Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of "Security" to Encompass Security-Based Swaps, and Request for Comment, Release No. 34-34795 (issued July 1, 2011) (not yet published in the Federal Register).

[5] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).

[6] Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472 (published March 16, 2011).

Introduction

MarkitSERV is an independent facilitator, servicing the global derivatives market and making it easier for derivatives market participants to interact with each other. MarkitSERV provides trade processing, confirmation, matching and reconciliation services for swaps and security-based swaps ("***SB swaps***") across regions and asset classes. MarkitSERV also provides universal middleware connectivity for downstream clearing and reporting. With over 2,000 firms currently using the MarkitSERV platform, including over 21,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the swap markets in the United States and globally.

As a service and infrastructure provider to the domestic and international swaps markets, MarkitSERV supports the objectives of the DFA, and the Commission's objectives of increasing transparency and efficiency, reducing both systemic and counterparty risk, and identifying any market manipulation or abuse.

Comments

Below we discuss each of the applicable Commission orders as they relate to the operations of clearing agencies that do not provide CCP services.

(1) **The Clearing Agency Proposed Rule**

The Commission notes in the Clearing Agency Proposed Rule that the Securities Exchange Act of 1934 (the "***Exchange Act***") defines Clearing Agency ("***CA***") broadly to contain, in addition to providers of traditional central counterparty ("***CCP***") clearing services, certain service providers that facilitate SB swap contract management, *i.e.*, non-CCP entities. Section 3(a)(23)(A) of the Exchange Act states:

> *The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities...* [7] [Emphasis added.]

The DFA contains several provisions that either amend the Exchange Act or add new provisions to the Exchange Act with respect to clearing agencies.[8] One of the provisions added by the DFA is Section 17A(g) of the Exchange Act that requires CAs to register with the Commission if they provide clearing services with respect to SB swaps. The Commission has proposed to interpret this provision to require providers of trade matching services to register as CAs because they operate "facilities for the comparison of data regarding the terms of settlement of transactions."[9] MarkitSERV filed a comment letter in response to the Clearing Agency Proposed Rule on April 29, 2011 (the "***MarkitSERV Comment Letter***").[10]

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[7] Exchange Act § 3(a)(23)(A).

[8] *See* Exchange Act §§ 17A(g): Registration Requirement; 17A(h): Voluntary Registration; 17A(i): Standards for Clearing Agencies Clearing Security Based Swap Transactions; 17A(j): Rules; 17A(k): Exemptions; 17A(l): Existing Depository Institutions and Derivates Clearing Organizations; 17A(m): Modification of Core Principles

[9] *See* Clearing Agency Proposed Rule, 76 Fed. Reg. at 14495; Exchange Act § 3(a)(23)(A). Note that the statutory language makes no distinction between matching and affirmation services, nor does it reference any degree of legal certainty that must result from this "comparison of data" in order for an entity to fall into the definition of a Clearing Agency.

[10] *See* Letter from MarkitSERV to the SEC (April 29, 2011), *available at* http://www.sec.gov/comments/s7-08-11/s70811-23.pdf. *See also* Letter from MarkitSERV to the CFTC (June 3, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=44696&SearchText=markitserv.

(a) *The Non-CCP CA Rules Should Apply to All Similarly Situated Providers of Independent Verification Services*

The Commission has recently indicated that it might amend its proposed registration requirements for non-CCP CAs.[11] In considering revisions to the Clearing Agency Proposed Rule, we urge the Commission to ensure that any regulatory structure applicable to entities that provide trade matching services is equitable and does not leave any regulatory gaps.

Currently, however, the Clearing Agency Proposed Rule would regulate only entities that facilitate comparisons by applying the technique of "matching" and their services resulting in legally binding documentation.[12] We believe that this proposal would impose a significant constraint on competition, and could also result in systems being able to evade regulation by merely applying a certain technique for verification or technically avoiding the establishment of legally binding terms, even though counterparties and parties subsequent in the workflow will rely on the services provided as an integral part of the confirmation process:

- For example, transaction details of an SB swap may be verified by an affirmation service provider (which does not produce a legally binding contract) before being sent directly to a CCP, which will only then produce a legally binding record. In this example, the transaction data would never be sent to a third party for production of a legally binding record, so the affirmation provider would be the only entity verifying the transaction details in between execution and clearing. Such affirmation providers would therefore serve the exact same function as matching providers except that they would not produce a legally binding record.[13]
- Conversely, some service providers today produce a legally binding contract through employing techniques that are not "matching."

Therefore, the Commission should not determine whether an entity should be regulated or not based on whether or not it produces a legally binding confirmation and whether it employs a matching technique to perform verification of transaction details. Instead, we believe that the Commission's final rule must apply any registration and regulatory requirements equally to all providers of comparable services in order to avoid permitting certain entities to evade regulation based on the technicality that they do not facilitate a legally binding agreement or they do not employ a matching technique. We note that the Commission has already implied that it will expand the list of activities which would constitute non-CCP CA activities because the recent CCP Temporary Exemptive Order defined non-CCP functions to include, in addition to the proposed non-CCP CA functions in the Clearing Agency Proposed Rule, those services that are "substantially similar services for security-based swaps."[14] We believe that the Commission could clarify this expansion and create a more bright-line rule by requiring all providers of "independent verification services" to register as non-CCP CAs.

For this purpose, we recommend that the Commission, to the extent the Commission determines to regulate non-CCP CAs, define independent verification service providers as:

> *Entities that act independently from, but on behalf of, all counterparties to a SB swap to facilitate the agreement between those counterparties upon a verified record of SB swap transaction*

[11] *See* July 16, 2011 Exemptive Order, 76 Fed. Reg. at 36302 n.217 ("Temporary relief for such persons would provide time for the Commission to consider comments from industry on the issue of registration of these non-CCP clearance and settlement service providers, and to consider possible alternatives to full registration as clearing agencies.").

[12] *See* Clearing Agency Proposed Rule, 76 Fed. Reg. at 14495.

[13] As described below and in the MarkitSERV Comment Letter, we believe it would be counter-intuitive to encourage systems that do not produce a legally binding contract as opposed to those systems which *do* produce a legally binding contract.

[14] CCP Temporary Exemptive Order 8, 12.

> *details where such record is relied upon by the counterparties to the SB swap and other market participants for communication of transaction details to a CCP Clearing Agency or SB swap data repository.*[15]

We note that the Commission has implicitly considered affirmation services to require regulation in the past by exempting Omgeo and Thompson Financial Technology Services, Inc. from registration requirements stemming from their central matching services *and* their electronic confirmation and affirmation services.[16]

Accordingly, we believe that all entities falling within the above definition for independent verification service providers offer services comparable or substantially similar to trade matching services – or, as the definition in the Exchange Act states: "*provides facilities for comparison of data respecting the terms of settlement of securities transactions*"[17] and therefore should be treated similarly. We elaborate on this further below in discussing the CCP Temporary Exemptive Order.

(b) *Regulations Applicable to Non-CCP CAs Should be Tailored to Their Non-CCP Business Models*

We believe that the final rule should limit the requirements applicable to non-CCP CAs in order to account for the significant differences between such entities and traditional CCP CAs. The Commission could do so by tailoring the requirements applicable to these non-CCP CAs (as opposed to traditional CCP CAs) or by providing appropriate exemptive relief for non-CCP CAs in line with the exemptions previously provided to entities such as Omgeo and Thompson Financial Technology Services, Inc.[18]

Specifically, we believe that the following rules should not apply to non-CCP clearing agencies if they are required to register as CAs: (i) the ownership limitations and public director requirements in rule 17Ad-22(b)(8); (ii) governance standards for the board of directors in rule 17Ad-26; (iii) the requirement to establish procedures to identify conflicts of interest in rule 17Ad-25; and (iv) provisions in section 17A of the Exchange Act requiring clearing agencies to assure fair representation of shareholders and participants, equitable pricing, and fair discipline of participants.[19] These laws and regulations are all designed to curb potential problems that might have relevance for CCP CAs but are inapplicable to non-CCP CAs such as independent verification service providers and would add burden and expense for no apparent benefit. For example, issues related to conflicts of interest in general have little relevance to independent verification service providers. "Participation" in the services of independent verification service providers is driven by industry commitment for product,

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[15] See the MarkitSERV Comment Letter. Note that our definition of independent verification service providers in the MarkitSERV Comment Letter was limited to entities that facilitate the agreement of a verified record of *the complete* transaction details. In order to ensure that entities cannot evade regulation by merely facilitating agreement on some but not all of the transaction details, we have modified that definition in this letter. We have also modified the definition in an attempt to clarify the reach of the term "independent verification service providers."

[16] *See* Thompson Order, 64 Fed. Reg. at 25948 ("This order grants TFTS an exemption from registration as a clearing agency to offer an electronic trade confirmation (ETC) service and a central matching service subject to the conditions and limitations described below."); Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494, 20495 (April 23, 2001) ("This order grants [Omgeo] an exemption from registration as a clearing agency subject to certain conditions and limitations described below in order that GJVMS may offer an electronic trade confirmation ("***ETC***") service and a Central Matching Service.").

[17] Exchange Act § 3(a)(23)(A).

[18] *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494, 20498 (April 23, 2001); Self-Regulatory Organizations; Thomson Financial Technology Services, Inc.; Order Approving Application for Exemption From Registration as a Clearing Agency (Exchange Act Release No. 34–41377), 64 Fed. Reg. 25948, 25949 (May 13, 1999).

[19] *See* Exchange Act § 17A(b)(3); *see also* Clearing Agency Proposed Rule, 76 Fed. Reg. at 14476 ("Also, the clearing agency's rules must provide adequate access to qualified participants, fair representation of shareholders and participants, equitable pricing, fair discipline of participants, and must not impose any undue burden on competition.").

processing, and legal standardization, and the goals of these entities are to mitigate risk and attain the highest standards of operational efficiency. The implementation of electronic confirmation of swaps, for example, is based on an industry collaborative process that is open to all market participants. We therefore believe that no conflicts of interest will arise relative to participation in these entities that would require the type of scrutiny that will be applied to security-based SEFs, SDRs, and CCPs.[20]

(c) *The Non-CCP CA Rules Should be Consistently Applied*

Finally, we urge the Commission to ensure that any regulations applicable to non-CCP CAs under its rules are equally applicable to the same or similar entities under rules promulgated by the Commodity Futures Trading Commission (the "***CFTC***") in order to avoid regulatory gaps and in order to harmonize the SEC and the CFTC regulations under the DFA. We believe that such regulatory gaps could damage competition for matching and verification services in the SEC-regulated market.[21]

These requests are elaborated upon in the MarkitSERV Comment Letter[22] and in our June 3, 2011 letter to the CFTC.[23]

(d) *Industry Standards Already Provide Criteria for Entities Performing Confirmation and Affirmation Services*

For decades, several exchanges have required the confirmation or affirmation of cash securities transactions to be performed only by registered CAs or "Qualified Vendors." For example, New York Stock Exchange ("***NYSE***") Rule 387 requires that "[t]he facilities of either a Clearing Agency or a Qualified Vendor shall be utilized for the electronic confirmation and affirmation of all depository eligible transactions,"[24] and specifies detailed requirements for an entity to qualify as a "Qualified Vendor."[25] Other exchanges have rules similar to

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[20] Additionally, we question the utility of requiring non-CCP CAs to comply with requirements related to, but not limited to: (i) custody of assets and investment risks in rule 17Ad-22(d)(3); (ii) money settlement risks in rule 17Ad-22(d)(5); (iii) default procedures in rule 17Ad-22(d)(11); and (iv) many of the requirements related to chief compliance officers in rule 3Cj-1.

[21] We note that, while the recently-proposed CPSS/IOSCO Principles for Financial Market Infrastructures do not require matching, confirmation, or affirmation providers to register, they do adopt the *Recommendations for securities settlement systems* regarding confirmation of transaction details. *See* CPSS/IOSCO Principles for financial market infrastructure: Consultative Report at 110 Annex C (March 2011).

[22] *See* Letter from MarkitSERV to the SEC (April 29, 2011), *available at* http://www.sec.gov/comments/s7-08-11/s70811-23.pdf.

[23] *See* Letter from MarkitSERV to the CFTC (June 3, 2011), *available at* http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=44696&SearchText=markitserv.

[24] *See* NYSE Rule 387(5). Rule 387 was originally adopted in 1971.

[25] A Qualified Vendor is defined as a "vendor of electronic confirmation and affirmation services that:
(A) shall, for each transaction subject to this rule; (i) deliver a trade record to a Clearing Agency in the Clearing Agency's format; (ii) obtain a control number for the trade record from the Clearing Agency; (iii) cross-reference the control number to the confirmation and subsequent affirmation of the trade; and (iv) include the control number when delivering the affirmation of the trade to the Clearing Agency;
(B) certifies to its customers that: (i) with respect to its electronic trade confirmation/affirmation system, that it has a capacity requirements, evaluation, and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements; (ii) that its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year; (iii) that its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis; (iv) that its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and (v) that its current assets exceed its current liabilities by at least five hundred thousand dollars;
(C) has submitted and shall continue to submit on an annual basis, an Auditor's Report to the Commission staff which is not deemed unacceptable by the Commission. An Auditor's Report will be deemed unacceptable if it contains any findings of material weakness;

NYSE Rule 387. Therefore, the industry believes that entities performing confirmations and affirmations should be subject to certain requirements, which supports the notion of defining "Clearing Agencies" broadly to capture these same services.

If the Commission determines not to expand the CA definition (to include services in addition to matching which result in legally binding documentation), we respectfully request that the Commission institute a requirement similar to NYSE Rule 387 applicable to SB swap transactions. Specifically, we request that confirmations or affirmations of transactions executed on SB swap execution facilities ("***SB SEFs***") or exchanges facilitating SB swaps be performed by registered CAs or Qualified Vendors (as defined in NYSE Rule 387), or by the SB SEF or exchange itself, but only if such SB SEF or exchange can also satisfy the requirements applicable to Qualified Vendors in NYSE Rule 387.

(2) **The July 16, 2011 Exemptive Order**

To implement the new provisions under the DFA, and to clarify which of these provisions become effective on July 16, 2011, the Commission has promulgated its July 16, 2011 Exemptive Order. Many of the issues raised in the Clearing Agency Proposed Rule are also addressed in the July 16, 2011 Exemptive Order. In this Order, the Commission states:

> *Section 17A(g) of the Exchange Act, 15 U.S.C. 78q-1(g), will not require compliance as of the Effective Date because Section 17(a)(i) and (j) of the Exchange Act, 78q-1(i) and (j), require rulemaking regarding registration of clearing agencies that clear SB swap transactions.*[26]

The Commission also states that, with regard to the currently-existing registration requirement for clearing agencies under Section 17A(b) of the Exchange Act:

> *On March 2, 2011, the Commission proposed exempting certain market participants from the definitions of clearing agency as part of its clearing agency standards release. As noted above, the Commission also intends to separately consider temporary relief from section 17A(b) of the Exchange Act for persons that provide non-CCP clearing agency services in connection with SB swaps so that those persons are not required to be registered as a clearing agency on the Effective Date.*[27]

MarkitSERV supports the Commission's efforts in clarifying the requirements of the DFA in its Clearing Agency Proposed Rule as well as in delineating the DFA's implementation timelines in the July 16, 2011 Exemptive Order. Given that several provisions of the Clearing Agency Proposed Rule applying to non-CCP clearing agencies require further revisions by the Commission as discussed in greater detail in the MarkitSERV Comment Letter, we request that the Commission clarify in its July 16, 2011 Exemptive Order that, under that Order, none of the provisions in the DFA that may arguably apply to non-CCP CAs, including Section 17A(g), will become effective on July 16, 2011.

(D) notifies the Commission staff immediately in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation systems including, without limitation, changes that (i) affect or potentially affect the capacity or security of its electronic trade confirmation/affirmation system; (ii) rely on new or substantially different technology; or (iii) provide a new service to the Qualified Vendor's electronic trade confirmation/affirmation system;
(E) immediately notifies the Commission staff in writing if it intends to cease providing services;
(F) provides the Exchange with copies of any submissions to the Commission staff made pursuant to .50(B), (C), (D) and (E) of this rule within ten business days; and
(G) supplies supplemental information regarding their electronic trade confirmation/affirmation services as requested by the Exchange or the Commission staff." *Id.*

[26] July 16, 2011 Exemptive Order, 76 Fed. Reg. at 36302 n.217.

[27] *Id.* at 36303.

Further, in the July 16, 2011 Exemptive Order, the Commission also requests comment on whether there are any other provisions of Section 17A of the Exchange Act for which the Commission should grant temporary exemptive relief.[28] If, on July 16, 2011 any of the CA-related provisions of the Exchange Act apply to entities that might qualify as non-CCP CAs, these entities would become subject to a developed regulatory regime without adequate guidance from the Commission on how to comply (*see* below our further comments with respect to the Security Temporary Exemptive Order).

Thus, subjecting non-CCP CAs to some but not all provisions of Section 17A would create significant uncertainty that would not only be detrimental to these entities' business but could potentially cause market disruption. This uncertainty would be exacerbated by the Commission's indication that it might amend the registration requirements of these entities in its final rule regarding CAs.[29] Therefore, subject to our discussion below, we request that the Commission specifically state that the July 16, 2011 Exemptive Order provides a blanket exemption for non-CCP CAs from all requirements in Section 17A of the Exchange Act.

(3) **The CCP Temporary Exemptive Order**

We appreciate and welcome the SEC's efforts in clarifying some of the matters in the July 16, 2011 Exemptive Order and proposing the CCP Temporary Exemptive Order in combination with the Security Temporary Exemptive Order (discussed below). The CCP Temporary Exemptive Order temporarily exempts entities from the registration requirements in Section 17A(b) of the Exchange Act to the extent that such requirements would arise solely as a result of providing, among other things, trade matching services, collateral management services, tear up and compression services, and/or substantially similar services for SB swaps (the "***Exempted Activities***").[30] These are the same services that would require entities to register as non-CCP CAs in the Clearing Agency Proposed Rule[31] except that they also include "substantially similar services."

We support the Commission's proposal to temporarily provide these entities with relief from any CA registration requirements until the compliance date for the Commission's final rules relating to registration of CAs (the "***Compliance Date***"). However, we believe that narrowly defining the list of Exempted Activities to include only those services that are listed in the Clearing Agency Proposed Rule might be read to limit the Commission in the final definition of non-CCP CA services to those specific categories that were originally proposed. For example, if the Commission were to decide that trade affirmation providers (which are not included in the list of Exempted Activities, but which activity is functionally identical to trade matching services[32]) must register with the Commission,[33] doing so after July 16, 2011 might cause such entities to automatically be in violation of

[28] *See id.* at 36303 ("Are there any provisions of section 17A of the Exchange Act for which the Commission should grant temporary exemptive relief?").

[29] *See id*. at 36302 n. 217 ("Temporary relief for such persons would provide time for the Commission to consider comments from industry on the issue of registration of these non-CCP clearance and settlement service providers, and to consider possible alternatives to full registration as clearing agencies.").

[30] *See* CCP Temporary Exemptive Order 8, 12.

[31] *See* Clearing Agency Proposed Rule, 76 Fed. Reg. at 14495.

[32] *See* Exchange Act § 3(a)(23)(A) ("The term "clearing agency" means any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides *facilities for comparison of data* respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.") (emphasis added). Note that the statutory language makes no distinction between matching and affirmation services, nor does it reference any degree of legal certainty that must result from this "comparison of data" in order for an entity to fall into the definition of a Clearing Agency.

[33] *See* July 16, 2011 Exemptive Order, 76 Fed. Reg. at 36302 n. 217 ("Temporary relief for such persons would provide time for the Commission to consider comments from industry on the issue of registration of these non-CCP clearance and settlement service providers, and to consider possible alternatives to full registration as clearing agencies.").

Section 17A retroactively unless such entities were granted some exemptive relief. This would likely prove to be an untenable and an unintended result.

As explained above and in the MarkitSERV Comment Letter,[34] we strongly believe that if any providers of independent verification services are required to register as CAs on the Compliance Date, all such independent verification services providers should be required to register with the Commission. This would include providers of trade matching and trade affirmation services. First, there is no statutory basis for distinguishing between independent verification services providers. Second, it would be counter-productive to require entities that provide more legal certainty (such as trade matching providers) to register with the Commission than those entities that fill the same position in the market but provide less legal certainty (such as affirmation providers) but whose verified records are equally relied upon. Third, all independent verification services providers occupy a crucial position in the marketplace by generating a verified, definitive record of the transaction that is relied upon in subsequent processing of the transaction. They should therefore all be regulated similarly. Finally, we believe that regulating independent verification services providers differently based on their method of verification would create an undue restraint on competition.

In order to require all independent verification services providers to register as CAs on the Compliance Date, however, the Commission may need to grant all such entities temporary exemptions from Section 17A now. We therefore believe that the Commission should temporarily exempt all independent verification services providers from Section 17A in order to treat these entities similarly.

(4) **The Security Temporary Exemptive Order**

As the Commission identified in the Security Temporary Exemptive Order, as of July 16, 2011, the "Exchange Act definition of 'security' will expressly encompass security-based swaps."[35] As a result, any entities that potentially provide "clearing" services for SB swaps (that will become "securities") will be subject to the full panoply of CA regulations for two reasons.

First, existing CA regulations, including the CA registration requirement in Exchange Act Section 17A(b), apply to any entity that performs "the functions of a clearing agency with respect to any security,"[36] which will include SB swaps on July 16, 2011. Second, newly-added Exchange Act Section 17A(g) specifically applies CA regulations to entities performing the same functions with respect to SB swaps[37] (*i.e.*, even without referencing the term "security").

We appreciate the temporary relief from CA regulations which the Commission provided for in the Security Temporary Exemptive Order and the other orders discussed above. Specifically, we note that the Commission largely exempted SB swaps from Exchange Act regulations in the Security Temporary Exemptive Order, exempted entities that might potentially be classified as non-CCP CAs from Section 17A(b) in the CCP Temporary Exemptive Order, and stated that CAs will not be required to register as CAs under newly-added Section 17A(g) on July 16, 2011 because that Section requires Commission rulemakings.

However, for the avoidance of doubt, we request that the Commission specify that these orders will work concurrently so that any entities that will potentially be classified as non-CCP CAs will not be subject to any Exchange Act requirements in Section 17A or other CA regulations on July 16, 2011 and that these rules are applied consistently to all affected entities (*i.e.*, non-CCP CAs engaged Exempted Activities, or activities

[34] *See* Letter from MarkitSERV to the SEC (April 29, 2011), *available at* http://www.sec.gov/comments/s7-08-11/s70811-23.pdf.

[35] Security Temporary Exemptive Order, Release No. 34-34795 at 5.

[36] *See* Exchange Act § 17A(b)(1).

[37] *See* DFA § 763(b).

functionally similar to Exempted Activities). In this way, the Commission would facilitate an orderly implementation of the rules over an agreed compliance period without significant disruption to existing market practices during the DFA implementation phase, as it stated was the intention of the exemptive orders.[38]

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MarkitSERV appreciates the opportunity to comment on the Clearing Agency Proposed Rule, the July 16, 2011 Exemptive Order, the CCP Temporary Exemptive Order, and the Security Temporary Exemptive Order. We would be happy to elaborate or further discuss any of the points raised.

In the event you may have any questions, please do not hesitate to contact the undersigned or Gina Ghent at gina.ghent@markitserv.com.

Sincerely,

Jeff Gooch
Chief Executive Officer
MarkitSERV

Cc: **Commissioners**
Chairman Mary L. Schapiro
Commissioner Kathleen L. Casey
Commissioner Elisse B. Walter
Commissioner Luis A. Aguilar
Commissioner Troy A. Paredes

Staff
John Ramsay
Haime Workie
Jeff Mooney
Catherine Moore
Joe Kamnik
Andrew Blake
Andrew Bernstein

[38] *See* Security Temporary Exemptive Order, Release No. 34-34795 at 5.