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Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption From Registration as a Clearing Agency; Notice

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-76514; File Nos. 600-33, 600-34]

### Bloomberg STP LLC; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption From Registration as a Clearing Agency

November 24, 2015

#### I. Introduction

On March 15, 2013, Bloomberg STP LLC (“BSTP”) filed with the Securities and Exchange Commission (“Commission”) an application on Form CA-1 for an exemption from registration as a clearing agency (“BSTP application”) pursuant to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 17Ab2-1 thereunder. BSTP amended the BSTP application on May 7, 9, and 10, July 11, August 8, September 18, and November 21, 2013, December 19, 2014, and January 22, 2015.<sup>1</sup> BSTP intends to provide a matching service<sup>2</sup> and an electronic trade confirmation (“ETC”) service, and accordingly the BSTP application seeks an exemption from registration as a clearing agency. Notice of the BSTP application was published for comment in the **Federal Register** on March 5, 2015.<sup>3</sup>

On April 15, 2013, SS&C Technologies, Inc. (“SS&C”) filed with the Commission an application on Form CA-1 for an exemption from registration as a clearing agency (“SS&C application”) pursuant to Section 17A of the Exchange Act and Rule 17Ab2-1 thereunder. SS&C amended the SS&C application on August 12, 2013, December 23, 2014, March 30, 2015, and November 9, 2015.<sup>4</sup> SS&C intends to

provide a matching and ETC service, and accordingly the SS&C application seeks an exemption from registration as a clearing agency.<sup>5</sup> Notice of the SS&C application was published for comment in the **Federal Register** on April 28, 2015.<sup>6</sup>

In all, the Commission received thirty comment letters in response to the BSTP and SS&C applications. Among these comment letters, the Commission received twenty-seven in response to the BSTP application, including two from BSTP itself, and three comment letters on the SS&C application, including one from SS&C itself.<sup>7</sup> After

securities matched is 1% of the U.S. aggregate daily share volume with a representation stating that SS&C understands that in offering its ETC services and matching services it will be defined as an “SCI entity” under Regulation Systems, Compliance, and Integrity (“Regulation SCI”) and, as such, that it will operate in compliance with applicable obligations under Regulation SCI. *See infra* Part III.B.8.

<sup>5</sup> The Commission understands that the applicants included descriptions of their ETC services in their applications for the sake of completeness in describing their proposed services, as well as in connection with FINRA Rule 11860, which contains specific references to confirmation and affirmation services.

<sup>6</sup> *See* Exchange Act Release No. 34-74794 (Apr. 23, 2015), 80 FR 23618 (Apr. 28, 2015) (“SS&C notice”).

<sup>7</sup> *See* letters from James Wallin, Senior Vice President—Fixed Income, AllianceBernstein (Apr. 9, 2015) (“AllianceBernstein”); Diane C. Altieri, White Oak Global Advisors, LLC (Mar. 24, 2015) (“Altieri”); Jon Ambos (Mar. 29, 2015) (“Ambos”); Anonymous (Mar. 16, 2015) (“Anonymous”); Benjamin Macdonald, President, Bloomberg STP LLC (August 26, 2015) (“BSTP August letter”); Ben Macdonald, President, Bloomberg STP LLC (May 21, 2015) (“BSTP May letter”); M. Subramanian, Capital Market Solutions—Wipro Limited (Mar. 26, 2015) (“Capital Market Solutions”); Thomas Murphy, Managing Director, Citigroup Global Markets Inc., and Automated Trading Desk Financial Services, LLC (Apr. 6, 2015) (“Citi”); James Connolly, Managing Director, Head of U.S. Broker Dealer Operations, RBC Capital Markets, LLC (Mar. 16, 2015) (“Connolly”); Joseph Denci, Vice President COO, Scotia Capital (USA) Inc. (Mar. 31, 2015) (“Denci”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (Sept. 14, 2015) (“DTCC September letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (June 23, 2015) (“DTCC June letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (May 28, 2015) (“DTCC May letter”); Larry E. Thompson, Vice Chairman and General Counsel, The Depository Trust & Clearing Corporation (Apr. 6, 2015) (“DTCC April letter”); Frank D. Dore, Head of Securities Operations, Acadian Asset Management LLC (Apr. 1, 2015) (“Dore”); Peter J. Durant (Mar. 26, 2015) (“Durant”); David Pearson, Head of Post-Trade Strategy, Fidessa (Apr. 3, 2015) (“Fidessa”); Bruce James, Managing Director and Chief Operations Officer, Amherst Pierpont Securities LLC (Mar. 10, 2015) (“James”); James Lang, Managing Director, Cedar Hill Capital Partners (Mar. 26, 2015) (“Lang”); Jerome Matthews, Vice President, Investment Operations, Prudential Fixed Income (Apr. 6, 2015) (“Matthews”); Shawn McCafferty (Mar. 11, 2015) (“McCafferty”); Barbara Naratil, COO (Mar. 31 and

careful review of these comment letters and the details and information in the BSTP and SS&C applications (including their representations), the Commission concludes that it has sufficient information to decide whether BSTP and SS&C should be granted exemptions. This order grants BSTP and SS&C each an exemption from registration as a clearing agency to provide matching and ETC services, subject to certain conditions and limitations described below.

#### II. Summary of Applicants’ Organization and Proposed Services

##### A. BSTP

BSTP is a limited liability company organized under the laws of the State of Delaware and is wholly-owned by Bloomberg L.P. (“BLP”).<sup>8</sup> BLP is a global business and financial information and news company headquartered in New York with offices around the world. BLP’s principal product is the BLOOMBERG PROFESSIONAL service, which provides financial market information, data, news and analytics to banks, broker-dealers, institutional investors, governmental bodies, and other business and financial professionals worldwide.

The BSTP application states that BSTP will enter into a Software License Agreement and a License and Services Agreement with BLP. Under the terms and conditions of such agreements, BLP will provide BSTP with software, hardware, administrative, operational, and other support services, and BSTP will retain ultimate legal responsibility for its operations. BSTP has also established a board of directors to oversee its operations, and the BSTP application states that it will establish

Apr. 6, 2015) (“Naratil”); Russell H. Stamey, Senior Vice President, The Northern Trust Co. (Apr. 6, 2015) (“Northern Trust”); Paul Puskuldjian, Chief Operating Officer, Kinetix Trading Solutions, Inc. (Mar. 11, 2015) (“Puskuldjian”); Terrence J. Ransford, Senior Vice President, Northern Trust Securities, Inc. (Mar. 18, 2015) (“Ransford”); Fredrick Scuteri, Vice President, Head of Trade Operations, AQR Capital Management, LLC (Mar. 16, 2015) (“Scuteri”); Timothy W. Cameron, Managing Director, Asset Management Group—Head, and Elisa Nuottajarvi, Asset Management Group, The Asset Managers Forum, Securities Industry and Financial Markets Association (Apr. 2, 2015) (“SIFMA AMF”); David I. Goldstein, Senior Counsel, SS&C Technologies, Inc. (July 20, 2015) (“SS&C letter”); Nick Solinger, Head of Product Strategy and Chief Marketing Officer, Traiana, Inc. (Apr. 6, 2015) (“Traiana”). Copies of the comment letters are available at <http://www.sec.gov/comments/600-33/600-33.shtml> and <http://www.sec.gov/comments/600-34/600-34.shtml>.

<sup>8</sup> The Commission notes that any proposed changes to either applicant’s organization or its proposed ETC and matching service will require an amendment to the applicant’s Form CA-1.

<sup>1</sup> A copy of the BSTP application is available at <http://www.sec.gov/rules/other/2015/34-74394-form-ca-1.pdf>.

<sup>2</sup> The term “matching service” as used herein means an electronic service to centrally match trade information between a broker-dealer and its institutional customer.

<sup>3</sup> *See* Exchange Act Release No. 34-74394 (Feb. 27, 2015), 80 FR 12048 (Mar. 5, 2015) (“BSTP notice”).

<sup>4</sup> A copy of the SS&C application is available at <http://www.sec.gov/rules/other/2015/34-74794-form-ca-1.pdf>. The November 9, 2015 amendment to the SS&C application removed the representation that SS&C would notify the Commission and seek a volume limit amendment to its Form CA-1 at least 180 days before it anticipates its volume for U.S. securities matched to reach one percent of the U.S. aggregate daily share volume. *See infra* Part III.B.4.iv.

In addition, in the November 9, 2015 amendment SS&C replaced a representation stating that SS&C shall comply with the White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System before its volume for U.S.

an advisory board consisting of industry members and users of the matching service, including representatives from sell-side firms, buy-side institutions, and custodians.

The BSTP application proposes a matching service that will compare post-trade information from a broker-dealer (the firm) and the broker-dealer's institutional customer and reconcile such information to generate an affirmed confirmation, operating as follows according to the BSTP application:

1. A customer routes an order to its firm.
2. The firm executes the order and then sends a notice of execution ("NOE") to the customer.
3. For voice executed trades, the customer affirms to the firm the trade details contained in the NOE. For trades executed electronically, the electronic trading platform records the trade in the blotters of the customer and the firm.
4. The customer sends to the matching service, the firm, and the customer's custodian allocation information for the trade.
5. The firm then submits to the matching service trade data corresponding to each allocation, including settlement instructions and, as applicable, commissions, taxes, and fees.
6. The matching service next compares the customer's allocation information (containing multiple fields of data) with the firm's trade data to determine whether the information contained in each field matches. If all required fields match, the matching service generates a matched confirmation and sends it to the firm, the customer, and other entities designated by the customer (e.g., the customer's custodian). The matching service will typically perform this step in less than one second.
7. After the matching service creates the matched confirmation, the matching service submits it to The Depository Trust Company ("DTC") as an "affirmed confirmation." From there, the trade goes into DTC's settlement process.

Other than the matching service, the BSTP application states that BSTP will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act, such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

#### B. SS&C

SS&C was incorporated in Delaware in 1996 and has headquarters in

Windsor, Connecticut, with offices in 20 locations across the United States and additional offices in Toronto, Canada, and other locations throughout the world. SS&C is a global provider of financial services-related solutions to investment management, banking, and other financial sector clients. All control and direction over SS&C is vested in SS&C Technologies Holdings, Inc. ("SS&C Holdings"), SS&C's parent company and a public holding company listed on NASDAQ (symbol SSNC).

The SS&C application states that all matching services would be performed by SS&C's subsidiary, SS&C Technologies Canada Corp. ("SS&C Canada"). The policies and operations of SS&C Canada are overseen by its officers and directors, and are subject to control by SS&C Holdings. SS&C Canada will perform the matching services in Mississauga, Canada, through its software-enabled service, SSCNet, which is a global trade network linking investment managers, broker-dealers, clearing agencies, custodians, and interested parties. Client support for these services will be rendered through SS&C's offices in the United States, the United Kingdom, and Australia. SS&C will coordinate support activity, which includes help desk facilities and call and issue tracking through a shared client call database, and relationship management. SS&C and SS&C Canada will maintain an intercompany agreement setting forth respective services and obligations.

In addition, the SS&C application makes the following representations regarding SS&C's operations: (i) SS&C shall obtain contractual commitments from its customers permitting it to provide information to the Ontario Securities Commission, the Commission, and other third parties; (ii) SS&C shall make available SS&C Canada employees in Canada or the United States for interview by the Commission subject to reasonable notice, provided that such action does not impose unreasonable hardship under applicable immigration law on such employees; (iii) as set forth in the intercompany agreement, SS&C shall provide the Commission access to information related to SS&C's matching system and ETC services, including those documents it receives from its service provider, SS&C Canada (the "business activities information"); (iv) SS&C Canada shall provide on the same business day to SS&C at its headquarters in Windsor, Connecticut electronically generated business activities information, in whatever form SS&C shall specify, including regularly and automatically generated and ad hoc

reports, books and records, correspondence, memoranda, papers, notices, accounts, and other such records; and (v) SS&C Canada shall send to SS&C at its headquarters in Windsor, Connecticut, all manually generated business activities information, in whatever form SS&C shall specify, no later than the business day on which the record is generated. Further, SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian Personal Information Protection and Electronic Documents Act or the Ontario Business Records Protection Act.<sup>9</sup> This would allow for the disclosure of personal information by SS&C Canada to SS&C.

Like the BSTP application, the SS&C application proposes to provide matching and ETC services for broker-dealers and institutional customers that will allow such entities to streamline communications and process allocation and post-trade information for fixed-income and equity trades for depository-eligible U.S. securities. According to the SS&C application, SS&C's matching service would allow institutional customers to route an order to a broker, receive an execution notice from the broker, and enter trade details and allocations so that SS&C's matching service can generate a matched confirmation and send an affirmed confirmation to the depository at DTC. SS&C's matching service will offer both block level matching and detail level matching. Standing settlement instructions are provided through the Delivery Instruction Database, which is fully integrated into SSCNet, and provides a repository for settlement instructions across asset classes, including foreign exchange and term deposits. SSCNet is also integrated into the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") Network, allowing users to communicate with parties outside the SSCNet platform. Users can select the output format for batch communications (SSCNet proprietary, SWIFT, ISITC, or DTC affirmation format), as well as when the batch should be submitted. Once a transaction is exported from SSCNet, central time stamping and a full audit trail are available for all transactions, with transaction histories maintained online for a minimum of 45

<sup>9</sup> SS&C has stated that as the draft intercompany agreement is governed by Connecticut law, and as SS&C's external counsel are not qualified to practice in Connecticut, in providing these opinions they have assumed that the provisions of the intercompany agreement have the same meaning under Connecticut law as they would under Ontario and Canadian law.

days and accessible in an online archive for up to ten years.

Other than the matching service, the SS&C application states that SS&C will not perform any other functions of a clearing agency requiring registration under Section 17A of the Exchange Act, such as net settlement, maintaining a balance of open positions between buyers and sellers, marking securities to the market, or handling funds or securities.

### III. Discussion

#### A. Statutory Standards

##### 1. Requirements for a National System for Clearance and Settlement

Section 17A of the Exchange Act directs the Commission to facilitate the establishment of (i) a national system for the prompt and accurate clearance and settlement of securities transactions and (ii) linked or coordinated facilities for clearance and settlement of securities transactions.<sup>10</sup> In facilitating the establishment of the national clearance and settlement system, the Commission must have 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.<sup>11</sup>

##### 2. Standard for Approval of an Application for an Exemption From Registration as a Clearing Agency

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with the Commission.<sup>12</sup> It also states that, upon the Commission's motion or upon a clearing agency's application, the Commission may conditionally or unconditionally exempt a clearing agency from any provision of Section 17A of the Exchange Act or the rules or regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities and funds.

In the Matching Release,<sup>13</sup> the Commission concluded that an entity providing matching services as an intermediary between broker-dealers and institutional customers is a clearing agency within the meaning of Section

3(a)(23) of the Exchange Act,<sup>14</sup> and therefore subject to the registration requirements of Section 17A of the Exchange Act.<sup>15</sup> The Commission also noted that an entity that limited its clearing agency functions to providing matching services might not have to be subject to the full range of clearing agency regulation. In addition, the Commission stated that it anticipated an entity seeking an exemption from clearing agency registration for matching services would be required to (i) provide the Commission with information on its matching service and notice of material changes to its matching service; (ii) establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades; (iii) allow the Commission to inspect its facilities and records; and (iv) make periodic disclosures to the Commission regarding its operations.<sup>16</sup> Accordingly, as noted in the Matching Release, a clearing agency whose clearing agency functions are limited to providing a matching service generally would be required to register as a clearing agency but could apply for an appropriate exemption.<sup>17</sup>

#### B. Comments Received and Commission Response

The Commission received thirty comment letters in response to the BSTP and SS&C notices from twenty-three commenters, including two comment letters from BSTP and one from SS&C.<sup>18</sup> Although the Commission received only three comment letters on the SS&C application, the comments received in

response to both applications are discussed together below because the matching services proposed in each application are substantially similar and therefore raise many of the same issues regardless of which application a particular comment letter addresses. In addition, a majority of the comments submitted in response to the BSTP application address the question of whether there should be multiple providers of matching services, and those comments are therefore relevant to the Commission's consideration of both the BSTP and SS&C applications.

Commenters include individuals and firms representing buy-side and sell-side market participants, in both front and back-office capacities, with expertise in equities and fixed income, asset management, post-trade strategy, and operations. Four of the comment letters were submitted by the Depository Trust and Clearing Corporation ("DTCC"),<sup>19</sup> which is the holding company for three clearing agencies registered with the Commission, including DTC (the central securities depository ("CSD") for the U.S. securities markets), as well as Omgeo, an exempt clearing agency that currently provides matching and ETC services for the U.S. equity markets (collectively "the DTCC complex").<sup>20</sup> Excluding BSTP and SS&C, eighteen commenters expressed explicit support for the BSTP application and three additional commenters submitted comments on the BSTP application expressing support for competition in the provision of matching services.<sup>21</sup> One commenter expressed views that it

<sup>14</sup> Section 3(a)(23) defines a "clearing agency" as, among other things:

[A]ny 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.

See 15 U.S.C. 78c(a)(23).

<sup>15</sup> Specifically, the Commission concluded that matching services constitute comparison of data respecting the terms of settlement of securities transactions. See Matching Release, *supra* note 13, at 17943.

<sup>16</sup> See *id.* at 17947 n.28. In addition, the Commission provided a temporary exemption from the clearing agency registration requirements to clearing agencies that provide (1) matching, (2) trade compression, (3) collateral management, and (4) other non-central counterparty clearance and settlement services for security-based swaps. See Exchange Act Release No. 34-64796 (July 1, 2011), 76 FR 39963 (July 7, 2011) (order pursuant to Section 36 of the Exchange Act 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).

<sup>17</sup> See Matching Release, *supra* note 13, at 17947.

<sup>18</sup> See *supra* note 7.

<sup>19</sup> The DTCC June letter also includes as an attachment an economic analysis of BSTP's application produced by Cornerstone Research. See DTCC June Letter at ex. I, available at <http://www.sec.gov/comments/600-33/60033-28.pdf> ("Cornerstone Report"). The Cornerstone Report augments many of the comments in the DTCC comment letters with several specific economic considerations that are related to those arguments. These comments and considerations are addressed throughout this order.

<sup>20</sup> The other two registered clearing agencies within the DTCC complex are (i) the National Securities Clearing Corporation ("NSCC"), which provides central counterparty ("CCP") services to its members for the clearing of transactions in a number of cash market products, including equity securities, bonds, and exchange-traded products, and (ii) the Fixed Income Clearing Corporation ("FICC"), which provides CCP services for transactions in U.S. government and certain mortgage-backed securities.

<sup>21</sup> For commenters expressing explicit support for the BSTP application, see AllianceBernstein, Altieri, Anonymous, Capital Market Solutions, Connolly, Denci, Dore, Fidessa, James, Lang, Matthews, McCafferty, Northern Trust, Puskuldjian, Ransford, Scuteri, SIFMA AMF, and Traiana.

For commenters to the BSTP application expressing support more generally for competition in the provision of matching services, see Ambros, Durant, and Naratil.

<sup>10</sup> See 15 U.S.C. 78q-1(a)(2)(A).

<sup>11</sup> See *id.*

<sup>12</sup> See 15 U.S.C. 78q-1(b)(1).

<sup>13</sup> See Exchange Act Release No. 34-39829 (Apr. 6, 1998), 63 FR 17943 (Apr. 13, 1998) (providing interpretive guidance and requesting comment on the confirmation and affirmation of securities trades and matching) ("Matching Release").

would support additional providers of matching and ETC services if they met certain criteria.<sup>22</sup> The remaining commenter, DTCC, endorsed the approach described in the Matching Release, stating that (i) a firm limiting its clearing agency activities to matching services should be eligible for an exemption from registration as a clearing agency and (ii) this is consistent with the goals of Section 17A of the Exchange Act, expressed general support for competition in the provision of matching services,<sup>23</sup> and raised several concerns with the BSTP and SS&C applications, as discussed below. In addition, in its letter, SS&C states that it is in complete agreement with BSTP on matters where DTCC's concerns are substantially the same between the BSTP and SS&C applications, such as DTCC's concerns raised regarding the question of how access to DTC for settlement of matched trades should proceed.<sup>24</sup> Similarly, DTCC states that it stands by its statements and positions in the DTCC June letter, submitted in response to the BSTP May letter, and incorporates those arguments by reference in response to the SS&C letter.<sup>25</sup>

The discussion below first summarizes DTCC's proposed model for access to DTC submitted as part of its comments regarding the BSTP and SS&C applications. The discussion next provides an overview of comments organized by the particular subject matter raised across the respective comment files, and provides BSTP's and

SS&C's responses as well as the Commission's assessment and response within each subject matter section. The Commission notes here that many of DTCC's current arguments are inconsistent with prior representations it made when it sought for Omgeo—and Omgeo was granted, based on those representations—an exemption from registration to provide matching services. Those representations are discussed in detail below.

#### 1. DTCC's Proposed Model for Access to DTC

In order to evaluate many of the particular issues raised by the commenters, the Commission first generally notes DTCC's proposal for structuring access to DTC, which is referenced throughout the Commission's consideration of comments below. According to DTCC, the optimal access model, referred to below as the "single access" model, would enable the industry to continue to rely on the existing systems (including certain systems currently located in Omgeo) to serve as the unique point of access to what DTCC describes as "the existing infrastructure," in particular DTC and the bank and broker-dealer custodians/settlement agents for the sending of matching confirmations and settlement instructions.<sup>26</sup> In other words, a single access model would require BSTP and SS&C to access this existing infrastructure uniquely through Omgeo and not via independent linkages to DTC.

DTCC believes that this approach would promote the safe and efficient clearance and settlement of securities transactions while permitting the securities industry to reap the benefits of the reliable, centralized infrastructure that has developed over the past forty years.<sup>27</sup> DTCC states that the single access model would permit BSTP and SS&C to avail themselves of Omgeo's extensive community of custodians and settlement agents without the costs and risks that would be incurred if each custodian and settlement agent had to create, operate, and maintain a separate interface and infrastructure with BSTP and SS&C.<sup>28</sup> DTCC also notes that this would provide a more rapid, less expensive option for BSTP and SS&C to begin providing matching services.<sup>29</sup> DTCC states that the single access model furthers the purposes of Section 17A of the Exchange Act, citing previous

Commission statements that (i) a clearing agency 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, and that (ii) clearing agencies may require reasonable assurances of another clearing agency's ability to meet its obligations, provided such requirement does not impose an inappropriate burden on competition.<sup>30</sup>

The Commission evaluates the merits of the BSTP and SS&C applications on their own terms under the statutory standard described above. The Commission is not opining on the general issue of whether a multiple access model is always preferable to a single access model.

#### 2. Efficiency

Under Section 17A of the Exchange Act, Congress directs the Commission to facilitate a prompt system for clearing and settling transactions, and the Congressional findings in Section 17A state that inefficient procedures for clearance and settlement impose unnecessary costs on investors and persons facilitating transactions.

The Commission received multiple comments addressing whether the expected effect of the BSTP and SS&C applications would result in various inefficiencies, with a particular focus on the possibility of unnecessary costs and processing inefficiencies. BSTP states in its comment letter that the BSTP application promotes processing efficiencies by proposing to bring automation to some segments of the marketplace that today use manual procedures and by enabling straight-through processing throughout the entire trade lifecycle, which BSTP states will contribute to increases in same-day affirmation rates and increases in settlement rates.<sup>31</sup> Similarly, SS&C states in its comment letter that the SS&C application promotes processing efficiencies by streamlining the post-trade communication flow between institutional customers, broker-dealers, custodians, and interested parties, providing for real-time communications and matching services that highlight trade discrepancies early in the trade lifecycle, which SS&C states will lead to timely affirmations and a reduction in failed deliveries.<sup>32</sup> In addition, nine commenters identified increases in efficiency in the confirmation/affirmation process itself as an

<sup>22</sup> See Citi; see also *infra* note 137 and accompanying text (discussing the specific criteria set forth by the commenter).

<sup>23</sup> See DTCC April letter at 1–2 (endorsing the approach described in the Matching Release); DTCC September Letter at 2; DTCC June letter at 2–3; DTCC May letter at 2–3; DTCC April letter at 2, 12–14 (each stating that competition in service offerings may permit useful innovation and product alternatives, to the benefit of industry participants and ultimately to investors, and proposing a method of facilitating access to DTC through Omgeo for BSTP and SS&C).

<sup>24</sup> See SS&C letter at 4. Accordingly, as to DTCC's comments, the Commission understands that SS&C would be in agreement with BSTP as to concerns about access to DTC and the related discussions of efficiency; competition, choice, and innovation; systemic risk; operational risk; and interoperability with Omgeo. Concerns raised about BSTP's governance arrangements and BSTP's request for relief under Rule 10b–10 would be specific to BSTP. Concerns raised about the cross-border aspects of the SS&C application would be specific to SS&C.

<sup>25</sup> See DTCC September letter at 2 n.5. In considering and addressing DTCC's comments, the Commission has considered each application with respect to all of DTCC's comments except where DTCC's comments were addressed specifically to BSTP's governance arrangements, BSTP's request for relief under Rule 10b–10, and the cross-border aspects of the SS&C application, as noted previously above. See *supra* note 24.

<sup>26</sup> See DTCC September letter at 2; DTCC June letter at 2–3; DTCC May letter at 2; DTCC April letter at 3.

<sup>27</sup> See *id.*

<sup>28</sup> See DTCC April letter at 12–13.

<sup>29</sup> See *id.*

<sup>30</sup> See DTCC September letter at 2; DTCC May letter at 8–9.

<sup>31</sup> See BSTP May letter at 3.

<sup>32</sup> See SS&C letter at 2.

anticipated benefit of having multiple matching service providers.<sup>33</sup>

However, DTCC raises multiple concerns, summarized below, about the effect of the applications on the efficiency (both in terms of unnecessary costs and processing inefficiencies) of the settlement system for U.S. equities. The Commission understands that DTCC is primarily concerned with the following matters: (i) whether it is efficient for BSTP and SS&C to have direct access (rather than mediated access) to DTC for submission of delivery orders; (ii) whether new matching service providers might negatively affect current trade confirmation/affirmation rates; (iii) how control numbers for trades can be managed efficiently in a marketplace with multiple matching service providers; and (iv) whether the costs that DTCC and market participants might incur to incorporate new matching service providers into the market infrastructure can be supported by the anticipated benefits. The Commission evaluates each of these concerns in turn.

#### i. Access to DTC

With respect to the access model proposed by each of the BSTP and SS&C applications, DTCC states that allowing both BSTP and SS&C to access DTC directly under a “multiple access” model would impose additional costs on the industry, including the cost of building access to DTC for each applicant and the related cost of building parallel access to custodians and settlement agents.<sup>34</sup> In addition, DTCC also states that developing a post-trade processing system, including a settlement instructions database, that is completely independent of Omgeo (including the Omgeo ALERT database that centrally maintains account information and standing settlement instructions to enrich allocation messages for settlement at DTC) would raise interface costs for industry participants and increase the technological complexity of the infrastructure for the national clearance and settlement system.<sup>35</sup> DTCC also notes that failed trades are currently resolved and reconciled through Omgeo, not DTC.<sup>36</sup> As an alternative to a multiple access model, DTCC proposed

a single access model, summarized above in Part III.B.1.

DTCC’s current arguments supporting a single access model that runs through Omgeo cannot be reconciled with DTCC’s own prior representations surrounding the formation of the joint venture between DTCC and Thomson Financial (Global Joint Venture or “GJV,” later renamed Omgeo), which was granted an exemption from registration to provide matching services in the Omgeo order.<sup>37</sup> The Commission finds that DTCC must continue to abide by prior representations it made that led the Commission to approve the Omgeo order.

For purposes of background, as a condition precedent to the GJV’s formation, DTC submitted a proposed rule change to transfer DTC’s existing ETC and matching engine to Omgeo as its contribution to the GJV.<sup>38</sup> The Commission received thirty-six comment letters in response to both the DTC 00–10 proposal and the notice that preceded the Omgeo order, seventeen of which requested that the Commission take steps to safeguard interoperability and competition among service providers in order to prevent any entity from gaining an unfair monopoly.<sup>39</sup>

The Commission believes that providing a summary of key comments on the DTC 00–10 proposal is helpful in explaining the Commission’s assessment of DTCC’s objections to the BSTP and SS&C applications because the past comments raise many of the same issues raised in the comments to this order. One of the commenters cited

<sup>37</sup> See Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001) (“Omgeo order”).

<sup>38</sup> See Exchange Act Release No. 34–43541 (Nov. 9, 2000), 65 FR 69591 (Nov. 17, 2000) (notice of filing by DTC of a proposed rule change relating to the combination of the DTC’s TradeSuite institutional trade processing services with Thomson-Financial ESG’s institutional trade processing services) (“DTC 00–10 proposal”); see also Exchange Act Release No. 34–44189 (Apr. 17, 2001), 66 FR 20502 (Apr. 23, 2001) (Commission order approving DTC’s proposed rule change relating to the combination of DTC’s TradeSuite institutional trade processing services with Thomson-Financial ESG’s institutional trade processing services) (“DTC 00–10 approval order”).

In the above proposed rule change, the transfer involved TradeMessage (automated exchange of messages such as block trade notices of execution, allocation instructions, trade confirmations, and affirmations), TradeMatch (electronic comparison of investment manager allocations with broker-dealer trade confirmations), TradeSettle (supplier of account and settlement data using DTC’s Standing Instructions Database, and router of settlement instructions to custodian banks and clearing agents), and TradeHub (router of messages).

<sup>39</sup> See Omgeo order, *supra* note 37, at 20504.

by the Commission in the DTC 00–10 approval order, TradingLinx, focused its concern on the transfer of TradeMessage and TradeSettle,<sup>40</sup> which was notable given that the Commission was primarily focused on the transfer of the matching service functionality. The TradingLinx letter pointed out that, at the time, all vendors had free, open access to the data contained in DTC’s Standing Instructions Database (“SID”), which houses settlement instructions for the industry. TradingLinx worried that transferring SID to a for-profit entity might change the cost or level of access to SID data. DTCC submitted a comment in response, stating that TradingLinx’s concerns were misplaced because (i) vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of GJV; (ii) vendors acting on behalf of customers of the DTC TradeSuite family of services have access to SID; (iii) those vendors can enter data in and receive data from SID on behalf of broker-dealers, investment managers, and custodians who are common customers of the vendors and DTC; and (iv) the staffs of DTCC and GJV have determined that the same open access by customers’ vendors to SID will continue with respect to the unified database after GJV commences operations.<sup>41</sup>

Another commenter on the DTC 00–10 proposal, GSTP AG, expressed concerns that combining elements of DTC with a commercial entity could result in denial of access to DTC for matching service competitors, and/or pricing for access to DTC settlement and depository services that might preference GJV over matching service competitors.<sup>42</sup> DTCC responded by reiterating the assurances it made in its response to TradingLinx, stating that GJV will at the option of its customers either enter settlement instructions on their behalf into the DTC settlement system (or any other settlement system with which the GJV interfaces) or make the settlement instructions available to the customers or their vendors so that the customers or vendors can enter the instructions into a settlement system.<sup>43</sup>

<sup>40</sup> See letter from Justin Lowe, Chief Executive Officer, and Robert Raich, Chief Financial Officer, TLX Trading Network (Dec. 18, 2000), available at <http://www.sec.gov/rules/sro/60032/60032-13.pdf>.

<sup>41</sup> See letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (Jan. 4, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-18.pdf>.

<sup>42</sup> See letter from Burkhard H. Gutzeit, Chairman, and G. Steven Crosby, Acting Chief Executive Officer, GSTP AG (Jan. 3, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-16.pdf>.

<sup>43</sup> See letter from Carl H. Urist, Managing Director and Deputy General Counsel, DTCC (Jan. 12, 2001),

<sup>33</sup> See AllianceBernstein at 1; Altieri; Capital Market Solutions; Connolly; James; Lang; Northern Trust; SIFMA AMF at 2; Traiana.

<sup>34</sup> See DTCC April letter at 11; Cornerstone Report at 6, 23.

<sup>35</sup> See *id.* at 17–19. The Commission notes that DTCC’s concerns about the costs of building linkages are addressed in Part III.B.2.iv below.

<sup>36</sup> See *id.* at 14 n.43.

GSTP AG then responded with requests (also cited by the Commission in the Omgeo order) that, before these issues can be resolved, it be clearly understood which functions will continue to be performed exclusively by DTC and which will be performed by the GJV, noting that (i) DTC offers through TradeSuite a service to all U.S. settlement agents who have an account with DTC for settlement whereby the trades confirmed and/or affirmed are relayed to the settlement agent involved in the trade; (ii) this feature of the service is an integral part of the clearance and settlement process as it is used by all settlement agents to update their records and by the DTC to proceed with the settlement; and (iii) fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC, and not the GJV, continue to provide this service.<sup>44</sup>

DTCC's subsequent response indicated that DTC would limit its activities to following the settlement instructions authorized by its participants, whether those instructions were submitted by GJV or GSTP AG.<sup>45</sup> The Commission ultimately approved the DTC-00-10 proposal after DTC submitted an amendment to the rule filing stating that DTC shall not favor any single provider of matching services, including GJV, over any other matching services in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders.<sup>46</sup>

Subsequent to approval of the Omgeo order, DTC also submitted proposed rule change SR-DTC-2001-11, proposing to authorize DTC to accept and act upon instructions provided by a central matching provider other than Omgeo. The Commission's approval order discussed two significant factors relevant to DTCC's comments regarding access to DTC.<sup>47</sup> First, the approval

available at <http://www.sec.gov/rules/sro/60032/60032-24.pdf>.

<sup>44</sup> See letter from Burkhard H. Gutzeit, Chairman, and G. Steven Crosby, Acting Chief Executive Officer, GSTP AG (Jan. 30, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-33.pdf>.

<sup>45</sup> See letter from Richard B. Nesson, Managing Director and General Counsel, DTCC (Mar. 9, 2001), available at <http://www.sec.gov/rules/sro/60032/60032-38.pdf>.

<sup>46</sup> See DTC 00-10 approval, *supra* note 38, at 20505.

<sup>47</sup> See Exchange Act Release No. 34-44905 (Oct. 4, 2001), 66 FR 51987 (Oct. 11, 2001) (order approving DTC rule change authorizing DTC to act

order noted that DTC neither engaged in matching institutional trade information nor communicated to its participants or others prior to settlement that a transaction has been matched.<sup>48</sup> Pursuant to the order, then, DTC and Omgeo had clear and distinct functions: Omgeo was to provide matching services and DTC was to facilitate settlement. Second, the approval order noted that (i) DTC assumed a matching service provider would make arrangements for the communication of trade information to the DTC participants expected to settle a matching transaction by book-entry delivery at DTC, and (ii) DTC was prepared to accept from a matching service provider a file of deliver order instructions to settle transactions between DTC participants that had authorized it to accept such instructions from the matching service provider.<sup>49</sup>

In approving the proposed rule change, the Commission stated its belief that the DTC rule change was consistent with the Exchange Act because it would allow DTC to act upon deliver order instructions received from a matching service provider.<sup>50</sup> The Commission observes that this is precisely the arrangement now contemplated by the BSTP and SS&C applications—one where BSTP and SS&C, as matching service providers, can communicate settlement instructions to DTC without Omgeo as an intermediary. Given the series of representations made by DTCC in support of approving the DTC rule changes that facilitated the creation of Omgeo and approval of the Omgeo order itself, the Commission views DTCC's current suggestion that the Commission now require a single access model for new matching service providers to be inconsistent with DTCC's prior representations.

Even apart from DTCC's prior inconsistent representations, the Commission is also unpersuaded that the prospect of incurred costs merits denial or modification of the applications insofar as they propose a multiple access model. Matching service providers cannot settle transactions since they necessarily require access to the central securities depository for the United States, and as such access to the central securities depository is distinct from access to other post-trade processes (such as providing a standing

upon instructions provided by a central matching service provider).

<sup>48</sup> See *id.* at 51987.

<sup>49</sup> See *id.* at 51987-88.

<sup>50</sup> See *id.* at 51988.

instructions database).<sup>51</sup> The Commission further believes that multiple points of access to DTC have value with respect to redundancy (discussed further below). The Commission also finds that DTCC's objections to costs generated by multiple points of access—which the Cornerstone Report did not estimate—are speculative.<sup>52</sup> Moreover, these types of costs should not be unexpected in light of the Omgeo order, as described in more detail below. Further, if the Commission were to require each matching service provider to access DTC through Omgeo, such dependency could allow Omgeo to impose surcharges or other costs on its competitors that are not imposed on Omgeo itself, which the Commission believes could lead to unnecessary costs. Even if no fees were imposed, the structure could also limit innovation in the provision of matching services by other matching service providers. BSTP and SS&C also cautioned against such an outcome. BSTP describes in its comment letter that any new matching service provider required to rely on Omgeo would find itself in the untenable position of being dependent on a competitor's infrastructure, cooperation, and fee structure to operate its business and would likely find that such circumstances create an insurmountable barrier to entry.<sup>53</sup> Similarly, SS&C infers from DTCC's position that Omgeo would impose the same charges on competing matching services as they do on clients today and states that, should the Commission accept this position, SS&C doubts that any service would find it economically viable to enter the market for post-trade services to compete with Omgeo.<sup>54</sup>

The Commission notes that the BSTP and SS&C applications did not specify whether BSTP or SS&C planned to develop their own duplicate standing instructions database. In cases where BSTP and SS&C can choose whether to depend on an existing system or develop their own, the Commission expects that market forces will determine whether utilizing existing services or systems will be dictated by an assessment of the business costs and benefits related to such choices. The Commission believes that such decisions are not predetermined.

<sup>51</sup> As noted above, SS&C has its own Delivery Instruction Database. See *supra* Part II.B (describing SS&C's proposed service).

<sup>52</sup> See, e.g., Cornerstone Report at 30 (stating that there are aspects of central matching services that may be best provided by a single provider).

<sup>53</sup> See BSTP August letter at 4.

<sup>54</sup> See SS&C letter at 3.

Finally, the Commission notes that DTCC has adopted a multiple access model for trade data submitted to one of its other registered clearing agencies, NSCC. Currently, NSCC receives trade data directly from exchanges, qualified special representatives, correspondent clearing agencies, and Omgeo.<sup>55</sup> Because trade information is coming from separate market participants directly into NSCC, the Commission believes that this example further suggests that a DTCC registered clearing agency can receive data directly from Omgeo and multiple other entities in an effective and efficient manner that is consistent with the Exchange Act.<sup>56</sup>

#### ii. Effect on Trade Confirmation/Affirmation Rates and Industry Efforts To Shorten the Settlement Cycle

DTCC states that the multiple access model contemplated by the BSTP and SS&C applications may decrease the promptness of the current matching services infrastructure by increasing the time necessary to route confirmations and affirmations between customers and service providers.<sup>57</sup> In the Cornerstone Report, DTCC cites research suggesting that certain components of the market's infrastructure, which may include the national system for clearance and settlement, have characteristics where the optimal structure is to provide clearing and settlement services via a single, regulated entity rather than multiple competing firms.<sup>58</sup> DTCC

states that broker-dealers using multiple matching services would be required to either modify existing systems to account for multiple matching service providers or invest in multiple systems, one for each such matching service provider, to obtain trade confirmations and transmit settlement instructions.<sup>59</sup> DTCC also states that this duplication in systems would likely lead to additional costs and risks of error to the detriment of industry participants and their customers, who may face additional burdens to make timely deliveries, impairing their ability to comply with Rule 10b-10 and Regulation SHO.<sup>60</sup> Further, DTCC states that BSTP's entry may induce participants to move from Omgeo's to a less efficient sequential model, which according to data from Omgeo yields significantly lower affirmation rates in the majority of DTC eligible transactions.<sup>61</sup> DTCC states that the combined effect of these potential consequences could also impair industry efforts to shorten the settlement cycle.<sup>62</sup>

After carefully considering these comments, the Commission believes that, on balance, approval of the BSTP and SS&C applications is more likely to promote rather than impair promptness in the market for matching services, particularly with respect to the effect on confirmation/affirmation rates and industry efforts to shorten the settlement cycle. First, the Commission acknowledges that obtaining access to new matching service providers may require market participants to modify existing systems or purchase new

provided by a single depository than by multiple competing depositories. *See id.* at 4.

<sup>59</sup> *See id.* at 19; DTCC April letter at 8. This section focuses specifically on aspects of this concern related to efficiency, such as the potential need for broker-dealers to obtain trade confirmations and transmit settlement instructions using multiple systems. The costs of establishing linkages are addressed below in Part III.B.2.iv. The potential for an increase in systemic or operational risk are addressed, respectively, in Parts III.B.4 and III.B.5.

<sup>60</sup> *See* Cornerstone Report at 7; DTCC April letter at 8 (noting that maintaining multiple systems for compliance with Rule 10b-10 would require not only referencing two sources for providing trade instructions but also two sources for receiving, downloading, and maintaining such trade confirmations under the applicable recordkeeping rules, resulting in unnecessary duplication, additional costs, and an increased risk of errors).

BSTP requested that the Commission clarify the need for a matching service provider to obtain no-action relief under Rule 10b-10 in order to provide ETC and matching services. The Commission notes that BSTP has obtained such no-action relief from the Division of Trading and Markets. In addition, the Commission notes that SS&C obtained no-action relief from the Division of Trading and Markets in 2008.

<sup>61</sup> *See* Cornerstone Report at 6.

<sup>62</sup> *See* DTCC April letter at 16.

systems to facilitate access to those matching service providers. But the Commission notes that these costs would be borne only by market participants presented with new products or services that they anticipate will offer benefits not available via the existing market infrastructure or via existing matching service providers that justify bearing these costs. DTCC's concern that these systems may be duplicative ignores that duplicative services may carry benefits that market participants seek, such as providing a new access point to DTC, a new interface with features not provided by Omgeo, or access to new markets or market participants not accessible through Omgeo.

BSTP states that its matching service will receive trade execution information in real time, thereby enabling users to immediately identify and address processing exceptions on the trade date. BSTP states that it will provide a variety of efficiency tools that it believes are not currently offered to market participants to help them manage settlement exceptions, including tools for exception monitoring and instant chat functionality.<sup>63</sup> The Commission believes that streamlining the confirmation/affirmation function helps facilitate prompt settlement because, as the use of manual processes for entry of information decreases, the opportunity to improve same-day (*i.e.*, prompt) affirmation rates for U.S. equities increases. The Commission also believes that the tools BSTP intends to offer will increase the ability of market participants and their custodians to manage settlement exceptions.

Second, the Commission does not find DTCC's argument that matching services fall among those components of the market's infrastructure having characteristics where the optimal structure is to provide them via a single entity rather than multiple competing firms to be so compelling as to justify denial or modification of the applications. DTCC comments, including comments in the Cornerstone Report, fail to establish or otherwise substantiate in any specific detail how the fixed costs of operating a matching service are so high as to generate inefficiencies if borne by more than one provider.<sup>64</sup> As BSTP notes in its

<sup>63</sup> *See* BSTP application at S-3, S-5; *see also* BSTP May letter at 8.

<sup>64</sup> The Cornerstone Report states that interoperability is the key to competition in central matching services and notes that there are conditions in the respective orders that are designed to facilitate interoperability. The Cornerstone Report concludes that there are significant complexities associated with pricing in

<sup>55</sup> *See generally* NSCC & Industry Working Group, Trade Clearance Input Concept Paper (August 2014), available at <http://www.dtcc.com/news/2014/september/16/dtcc-publishes-concept-paper-on-trade-clearance-input> (discussing NSCC's system for capturing trades).

<sup>56</sup> The history of ETC services reflects a similar multiple access approach. To facilitate settlement in a registered securities depository following use of an ETC service, DTC coordinated with the Midwest Securities Trust Company ("MSTC") and the Philadelphia Depository Trust Company ("Philadep") to ensure that DTC participants on one side and sole participants in either MSTC or Philadep on the other side could collectively achieve ETC by linking DTC's automated settlement system for institutional transactions with similar systems developed in coordination with MSTC and Philadep. *See* Exchange Act Release No. 34-19227 (Nov. 9, 1982), 47 FR 51658, 51659-60 (Nov. 16, 1982). The Commission noted that these linked systems facilitated communications without regard to the parties' choice of depository, thereby promoting uniformity in clearance and settlement procedures. The Commission also noted at the time that the linkages should reduce unnecessary costs associated with settlement, such as from delayed or lost affirmation and settlement instructions. *See id.* at 51660-61.

<sup>57</sup> *See* DTCC April letter at 13.

<sup>58</sup> *See* Cornerstone Report at 4, 20-21 (describing the roles that economies of scale and network effects play in the provision of clearing services). DTCC also notes, for example, that there appears to be little dispute that the core depository services currently provided by DTC are more efficiently



comment letter, the Cornerstone Report concedes that the research supporting this argument concerns providers of CSD and CCP services, not confirmation/affirmation platforms or matching services.<sup>65</sup> The Commission believes that this difference in clearing agency activity is significant and notes that the characteristics of a matching service provider are distinct from those of a clearing agency providing CSD or CCP services. The Commission's treatment of the different entities within the DTCC complex helps to illustrate this point. For instance, clearing agencies that provide CSD and CCP services, such as DTC and NSCC, are registered with the Commission, act as SROs under Section 19 of the Exchange Act, submit rule filings for Commission review and approval, and remain subject to the full set of requirements applicable to clearing agencies under Section 17A of the Exchange Act, as well as the rules and regulations thereunder. Matching service providers like Omgeo are, in contrast, exempt clearing agencies that the Commission has authorized to provide certain services, subject to specific conditions as set forth in an exemptive order. The different approaches reflect the Commission's view that different types of clearing entities have different operating structures with different attributes that reflect different regulatory goals and objectives. The Commission believes that differences stemming from the types of clearing entity or service provided in this case support allowing multiple entities to act as matching service providers, and may lead to increases in efficiency in the market for matching services.<sup>66</sup>

DTCC also suggests that access to multiple matching service providers may increase the time necessary to route confirmations and affirmations between customers and service providers, which may interfere with market participants' ability to satisfy their obligations under Regulation SHO. DTCC also states that duplication of systems may result in multiple providers of Rule 10b-10 confirmations, resulting in unnecessary duplicate systems, additional costs, and

an interoperating central matching services marketplace, and that more careful analysis is needed to ensure that these complexities are resolved in a manner consistent with the Commission's mandate. See Cornerstone Report at 26-29.

<sup>65</sup> See BSTP August letter at 1 (citing Cornerstone Report at n.58).

<sup>66</sup> The Commission believes that these gains in efficiency may stem from increased competition and innovation in the market for matching services, as discussed below in Part III.B.3.

an increased risk of errors.<sup>67</sup> The Commission also finds these arguments too speculative. First, as BSTP notes in its comment letter, the Cornerstone Report identifies a particular scenario whereby delays in the affirmation or matching process in connection with a long sale of securities occurs at NSCC and leads to delivery failures, which could occur within the existing market structure and is not specifically caused by the existence of multiple matching service providers.<sup>68</sup> The Commission agrees that this example is not unique to an environment with multiple matching service providers and therefore finds the Cornerstone Report's assertions highly speculative. Second, the operational and interoperability conditions included in the Omgeo order are designed to limit communication errors or other delays by setting conditions with respect to interoperability among multiple matching service providers.<sup>69</sup> Regulation SCI,<sup>70</sup> which also applies to exempt clearing agencies subject to ARP,<sup>71</sup> further seeks to establish standards for connectivity, reliability, and resiliency to minimize the types of disruptions contemplated by DTCC. Third, the Commission notes that the examples of potential Regulation SHO violations presented in the Cornerstone Report, similar to the Rule 10b-10 comments discussed above, are speculative and more fundamentally unrelated to the concerns about efficiency raised by DTCC because, as BSTP also notes, the absence or presence of multiple confirmation service providers was not material or even relevant to the violations in question.<sup>72</sup> The Commission therefore believes that these DTCC comments are too speculative and attenuated to be persuasive.

<sup>67</sup> See *supra* notes 59-60 and accompanying text. The Commission notes that it has addressed comments expressing concerns about duplicate systems above. In addition, the costs of establishing linkages are addressed below in Part III.B.2.iv. The potential for increases in systemic or operational risk are addressed, respectively, in Parts III.B.4 and III.B.5.

<sup>68</sup> See BSTP August letter at 5.

<sup>69</sup> These conditions are also included below for BSTP and SS&C. See *infra* Part IV.A.2.ii (for BSTP) and Part IV.B.2.ii (for SS&C).

<sup>70</sup> See Exchange Act Release No. 34-73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014).

<sup>71</sup> Application of Regulation SCI to exempt clearing agencies is discussed in Part III.B.8.

<sup>72</sup> Specifically, as BSTP describes, one involved violations that persisted over four years and the other involved allegations of knowingly and willfully ignoring requirements. See BSTP August letter at 5 & n.19. The Commission notes that neither has circumstances implicating either the presence of multiple service providers or the linkages between them.

In response to DTCC, BSTP counters that Omgeo actually impedes the move to a shortened settlement cycle by reducing the incentives for new providers to enter the market and thereby attract market participants to use matching services. BSTP states that it intends to service, among others, investment managers, brokers, and custodians that currently rely on manual processes for post-trade matching of trade and allocation information. In particular, BSTP states that it will enable such investment managers to gain the benefits of an electronic matching service while continuing to use their existing workflows (fax, email, PDF, etc.) to send allocation instructions to their executing brokers, an important segment of market participants necessary to shorten the settlement cycle.<sup>73</sup> In contrast to the concerns raised by DTCC, BSTP states that transmission of matched settlement data without a direct electronic link to DTC would introduce a layer of inefficiency and complexity that would impair efforts to move to a shortened settlement cycle.<sup>74</sup> Consistent with BSTP's position, five other commenters also expressed the view that increasing the number of matching service providers, by increasing efficiency, would likely also facilitate moving to a shortened settlement cycle.<sup>75</sup> The Commission does not believe that expanding the scope of market participants engaged in matching services will impede industry efforts to shorten the settlement cycle because, in this situation, the availability of multiple matching service providers will provide market participants with more venues to match their trades in a timely, efficient manner, thereby increasing the potential for a higher global rate of affirmed trades within the current settlement cycle.<sup>76</sup>

### iii. Management of Control Numbers

Related to DTCC's concerns regarding efficient access to DTC, DTCC also raises concerns about how, under a multiple access model, control numbers

<sup>73</sup> See BSTP May letter at 8. BSTP also notes that increased resiliency is necessary to move to a shortened settlement cycle. See *id.* Comments related to resiliency (*i.e.*, operational risk) are addressed in Part III.B.5.

<sup>74</sup> See BSTP August letter at 4. Comments regarding access to DTC were addressed above in Part III.B.2.i.

<sup>75</sup> See AllianceBernstein at 1; Capital Market Solutions; Puskuldjian; SIFMA AMF at 1; Traiana.

<sup>76</sup> See Exchange Act Release No. 34-49405 (Mar. 11, 2004), 69 FR 12922, 12926 (Mar. 18, 2004) (noting that it is generally accepted that a substantial portion of the risks in a clearance and settlement system is directly related to the length of time it takes for trades to settle and that, in other words, time equals risk).

used to identify trades throughout the trade lifecycle would be assigned. First, DTCC explains that DTCC TradeSuite ID, which is part of Omgeo, provides control numbers to market participants upon receiving the trade data input from the executing broker-dealer.<sup>77</sup> DTCC states that issuing control numbers from DTC, rather than TradeSuite ID, would require substantial system changes, either through building a new system within DTC or transferring the TradeSuite ID control number issuance capability to DTC.<sup>78</sup> Second, DTCC notes that there are potential benefits to centralizing this data. For example, DTCC states that 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 when appropriate.<sup>79</sup>

The Commission agrees that there are potential benefits to centralizing trade data in a single repository. Indeed, BSTP states that the creation of the control number, the transmission of the control number to the parties involved in settlement, and the transmission of settlement instructions to DTC are critical components of post-trade processing, and, as such, are elements of the national clearance and settlement system that ought to be provided on a fair and non-discriminatory basis by DTC.<sup>80</sup> BSTP further notes, however, that even if the Commission were to continue to allow DTC to outsource issuance of control numbers to Omgeo, DTC could simply allow BSTP to generate its own control numbers on DTC's behalf. BSTP states that, whatever the approach, it is capable of enriching a confirmation with a control number, thereby providing the same benefit of efficiently and effectively settling trades, as provided by the existing infrastructure.<sup>81</sup>

DTC rule change SR-DTC-2001-11 was approved to allow DTC to accept and act upon instructions provided by a matching service provider, and if centralization of trade data is necessary for such settlement, DTC has

undertaken, in its capacity as a registered clearing agency and SRO, to perform such services.<sup>82</sup> Further, centralization of trade data remains possible under a multiple access model supported by consistent data standards and identifiers. In this regard, BSTP notes that DTC could ensure that control numbers generated by BSTP are distinguishable from those generated by Omgeo by requiring, for example, use of a "B" prefix for the former and an "O" prefix for the latter.<sup>83</sup>

#### iv. Costs of Linkages

DTCC states that both the DTCC complex and market participants would face increased costs if the multiple access model contemplated by the BSTP and SS&C applications were implemented, and that the risks and costs of building and testing these connections would multiply exponentially as additional matching service providers enter the market.<sup>84</sup> DTCC states that the Commission should therefore allow the industry to avail itself of the systems and controls that have already been established through Omgeo, an industry-owned utility.<sup>85</sup> First, DTCC states that DTC would have to develop, build, and maintain new systems to interoperate with BSTP and SS&C. DTCC states that it would have to modify its internal systems and network management infrastructure and build in capabilities to prepare for the possibility of additional central matching services with direct access to DTC, and that BSTP and SS&C would also incur substantial costs.<sup>86</sup> DTCC states that, as DTC's systems become more complex, DTC's maintenance requirements would also become more complex and costly, costs which would be borne by industry participants and ultimately investors. According to DTCC, these additional costs would also 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.<sup>87</sup>

<sup>82</sup> See *supra* Part III.B.2.i.

<sup>83</sup> See BSTP May letter at 14 n.41.

<sup>84</sup> See DTCC April letter at 11.

<sup>85</sup> See DTCC April letter at 11; Cornerstone Report at 18-19.

<sup>86</sup> Specifically, DTCC states that BSTP and SS&C would be required to (i) implement a redundant fault tolerant network design, including interfaces that ensure robust security protocols and processes based on DTCC standards, and (ii) build access to the custodian/settlement agent community to implement the multiple access model, imposing significant time, cost and other resources on BSTP, SS&C, and the custodians/settlement agents, costs that DTCC states would inevitably be passed on to investors. See DTCC April letter at 11.

<sup>87</sup> See *id.* at 12.

Second, DTCC states that market participants involved in the settlement of trades matched by BSTP and SS&C would need to develop, build, and maintain new interfaces and reengineer internal systems to receive and process messages from BSTP and SS&C. DTCC also states that market participants would inevitably bear at least some of the costs incurred by DTC, BSTP, and SS&C, as those costs are passed on to investors.<sup>88</sup>

With respect to the implementation of new network designs and interfaces, and the provision of access, the Commission is unpersuaded that the prospect of additional expenses merits denial or modification of the applications. The Commission acknowledges that the entry of BSTP and SS&C into the market for matching services may initially result in additional investments by BSTP, SS&C, Omgeo, and DTC, as well as potentially a number of other market participants who rely upon such entities in various capacities. Neither DTCC nor any of those entities quantified the associated costs, however. The Commission expects that, as for-profit entities, neither BSTP nor SS&C would choose to bear these costs, including costs passed through from DTC, unless either believed it could do so profitably. While there may be initial costs required to establish new linkages, these new linkages will introduce competition and choice into the market for matching services, providing new opportunities for innovation that may reduce costs to market participants in the long run, as discussed further below. Indeed, there was unanimity in the comments by market participants about the impact on costs passed down to them: twenty-three market participants or industry groups commented on the BSTP application and expressed no concerns about costs being passed on to them. Rather, as noted previously, many of the commenters stated the opposite—that the introduction of new matching service providers would reduce costs to industry.<sup>89</sup>

With respect to implementation difficulties, the Commission is unpersuaded that the prospect of expenditures merits denial or modification of the applications. As previously discussed, both Omgeo and DTC agreed to a number of conditions that anticipated, and were designed to facilitate, the possibility of new matching service providers.<sup>90</sup> The

<sup>88</sup> See *id.* at 11; Cornerstone Report at 24.

<sup>89</sup> See, e.g., *infra* note 94 and accompanying text regarding reduced costs.

<sup>90</sup> See *supra* notes 37-50 and accompanying text.

<sup>77</sup> See DTCC April letter at 15.

<sup>78</sup> See *id.*; see also Cornerstone Report at 19-22. The Commission notes, however, that, in its comments regarding the timeframes for building and operating interfaces, DTCC identifies assignment of control numbers as one of the functionalities it will need to develop with BSTP and SS&C to ensure interoperability consistent with the conditions of the Omgeo order. See *infra* Part III.B.7.ii.

<sup>79</sup> See DTCC April letter at 7.

<sup>80</sup> See BSTP May letter at 14.

<sup>81</sup> See *id.*

Commission notes that neither DTCC nor the Cornerstone Report provided concrete descriptions of which critical projects would be delayed, or for how long. Further, as a registered clearing agency, DTC has obligations under Section 17A(b)(3)(F) of the Exchange Act to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, which it cannot abrogate due to cost. To the extent that DTCC reprioritizes projects, entities within the DTCC complex registered pursuant to Section 17A of the Exchange Act must continue to meet their legal and regulatory obligations.

### 3. Competition, Choice, and Innovation

Section 17A of the Exchange Act directs the Commission, in facilitating the establishment of the national clearance and settlement system, to have due regard for, among other things, maintenance of fair competition among clearing agencies.<sup>91</sup> Below is an overview of comments related to competition. The Commission also received comments about choice and innovation, which are discussed below.

One commenter states explicitly that approving the BSTP application would be consistent with the objectives of Section 17A of the Exchange Act and investor protection by promoting the integrity of the financial markets.<sup>92</sup> DTCC, however, states that it is unclear whether the national clearance and settlement system can effectively sustain competition among multiple matching services and that the outcome of such competition may be that a for-profit entity becomes the primary provider of matching services. DTCC questions whether a for-profit entity like BSTP or SS&C can ensure that pricing decisions will be undertaken in a way that benefits the long-term best interest of the industry.<sup>93</sup>

There was unanimous support for new entrants to provide matching services. Several commenters anticipated that additional providers of matching services would yield benefits, namely increases in competition, choice, and innovation within the market for matching services.<sup>94</sup> Twelve commenters identified as a related benefit a reduction in costs to market

participants generally.<sup>95</sup> In addition, four commenters cited BLP's role in BSTP's proposed matching service and BLP's overall reputation as positive aspects of the BSTP application.<sup>96</sup> BSTP states that its application will promote fair competition, consistent with Section 17A(a)(2)(A),<sup>97</sup> and SS&C similarly notes that its application would allow for competition in the area of institutional trade matching.<sup>98</sup> In its comment letters, DTCC generally expressed support for the promotion of competition in service offerings to customers, including ETC and matching services to registered broker-dealers, investment managers, and custodians/settlement agents. DTCC states that competition in service offerings, including ETC and matching services to registered broker-dealers, investment managers, and custodians/settlement agents, may permit useful innovation and product alternatives, to the benefit of industry participants and ultimately to investors.<sup>99</sup>

Despite general agreement on the benefit of competition among matching service providers, DTCC and the applicants disagreed on the specific terms under which new entrants would compete with Omgeo, the only current matching service provider. DTCC states that the conditions on access and pricing in the BSTP and SS&C notices should be reconsidered. While noting that the conditions are substantially the same as those imposed on Omgeo, DTCC offers several bases for modification: Changes in the marketplace (including DTCC's 2013 purchase of Thomson Financial's outstanding ownership interest in Omgeo), differences in the ownership and governance of Omgeo and the

applicants, differences in the related services offered by applicants' affiliates, differences in the pricing structures of Omgeo and the applicants, and changes in law and regulation since 2001.<sup>100</sup> DTCC states that the pricing and access conditions in the Omgeo order derived largely from concerns that central matching, which at the time was provided by DTC as an industry utility, would be performed by a separate for-profit entity in Omgeo. According to DTCC, 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. Therefore, Omgeo represented in its request for an exemption that it would not impose prohibitions or limit access to its services by potential customers, though it might terminate a subscription for failure to pay fees. According to DTCC, now that Omgeo is a wholly-owned subsidiary of DTCC, it does not compete with BSTP or SS&C for customers, while BSTP and SS&C are for-profit entities and therefore subject to the incentive to limit access to competitors.<sup>101</sup> DTCC says the Commission should impose on BSTP, and where applicable BLP, pricing and access conditions appropriate to the specific roles of each within the national market system and the national clearance and settlement system.<sup>102</sup>

In response to DTCC's comments above, SS&C comments that it is not for DTCC to determine the affordability of its offering but rather for the marketplace to decide. SS&C states that it is fully committed to honoring the pricing and access conditions set forth in the SS&C application and notice. SS&C also notes that while Omgeo may not compete for customers in the United States, it does in other jurisdictions, including Canada, where Omgeo and SS&C are already direct competitors.<sup>103</sup>

DTCC also raises several competition concerns specific to the BSTP application. First, DTCC questions whether BSTP might bundle its matching service with other BLP services, raising potential antitrust concerns by creating a disincentive for BLP customers to use Omgeo's matching service. DTCC states that BLP should clarify its intentions with regard to

<sup>91</sup> See AllianceBernstein at 1 (noting that reduced costs would be a natural economic byproduct of the increased availability of service providers, promoting trading and liquidity in the market); Ambos (noting that Omgeo's matching service potentially charged its group three times, as broker-dealer, outsourcer, and custodian, which the commenter stated may not be necessary if BSTP offers a matching service); Capital Market Solutions (noting that the ability to choose between matching services on a per-trade basis will help firms test services without having to invest in a large upfront cost); Connolly (noting that competition keeps prices at market rates); James; Lang (noting that adding a capable competitor in the post-trade processing space will lead to innovation which will ultimately result in lower transaction costs); Puskuldjian; Ransford; Scuteri (noting that competition allows the free market to dictate fair pricing); SIFMA AMF at 2; Traiana; see also Dore (noting that the absence of competition results in a lack of fee transparency).

<sup>92</sup> See Altieri; Connolly; James; Ransford.

<sup>93</sup> See BSTP May letter at 4; see also 15 U.S.C. 78q-1(a)(2)(A).

<sup>94</sup> See SS&C letter at 1.

<sup>95</sup> See DTCC June letter at 2; DTCC May letter at 2; DTCC April letter at 2.

<sup>100</sup> See DTCC April letter at 18-19.

<sup>101</sup> See DTCC April letter at 18-19; DTCC May letter at 16; Cornerstone Report at 5-6.

<sup>102</sup> See DTCC April letter at 19; Cornerstone Report at 5-6. For purposes of the below discussion, the Commission assumes that DTCC would seek to impose the same on SS&C and its parent company and/or affiliates.

<sup>103</sup> See SS&C letter at 5.

<sup>91</sup> See 15 U.S.C. 78q-1(a)(2)(A).

<sup>92</sup> See SIFMA AMF at 2.

<sup>93</sup> See Cornerstone Report at 5-6, 29-30.

<sup>94</sup> See AllianceBernstein at 1; Altieri; Anonymous; Connolly; Denci; Dore; Durant; Fidessa; James; Lang; Matthews; McCafferty; Naratil; Northern Trust; Puskuldjian; Scuteri; SIFMA AMF at 1-2; Traiana.

bundled pricing and that the Commission should clarify whether BSTP may offer different prices to distinct groups of customers while requiring fair access to BSTP's matching service. DTCC also requests that any determination to grant BSTP an exemption be expressly conditioned on BSTP not engaging either in tying of its matching service to other BLP services or in bundled pricing with respect to its matching service. DTCC requests that BSTP be required to make its matching service "separately available" to someone who does not wish to purchase any other BLP service.<sup>104</sup> Second, DTCC questions whether BSTP might deplete Omgeo's high-volume customer base, requiring Omgeo to either (i) raise prices on its remaining customers to cover its fixed costs or (ii) leave prices unchanged, thereby through DTCC subsidizing BLP's operations. DTCC stated that BSTP, as a for-profit entity, should not be allowed to provide matching services in an anti-competitive manner by targeting solely larger, more actively trading end-users while not permitting fair access to smaller, less active end-users. In this regard, DTCC also states that BSTP should not be allowed to condition use of its matching service on customers renting Bloomberg Terminals.<sup>105</sup>

In response to the multiple comments summarized above, BSTP comments that DTCC's assertion of potential antitrust concerns has no merit and that DTCC does not offer any logical explanation of how approving the BSTP application, and thereby introducing Omgeo's first competitor, could harm competition, but notes that it may affect Omgeo's current monopoly and DTCC's own business interests.<sup>106</sup> BSTP also responds that there is nothing unusual or pernicious in the fact that BSTP will be a for-profit business, noting that many SEC-regulated entities, including those operating pursuant to exemptions, are for-profit. Indeed, BSTP further notes that, in the Omgeo order, the Commission observed that Omgeo would be operated on a for-profit basis.<sup>107</sup>

Lastly, DTCC states that the Commission should require conditions on access to BSTP's FailStation product that are similar to those required for Omgeo's ALERT service and contained in the Omgeo order. DTCC cites BSTP's own description of FailStation as an industry utility that aggregates failed trade and settlement pre-matching data

from all trade counterparties in real time into a single report for the investment manager, custodian, and broker. DTCC draws parallels between access to FailStation and access to ALERT, noting that commenters expressed concerns about access to ALERT after the creation of Omgeo, and the conditions were included to provide assurances that other central matching services and persons that represent or otherwise provide services to customers (*i.e.*, end-users) of Omgeo would have access to ALERT on fair and reasonable terms.<sup>108</sup> BSTP responds that FailStation is a product offered by Bloomberg Finance LP and is made available to all market participants who wish to purchase it, and accordingly there is no reason to impose a regulatory obligation on BSTP to ensure FailStation remains accessible to market participants. In discussing the comparisons made by DTCC between FailStation and Omgeo's ALERT service, BSTP states that the two are completely different services because ALERT is a database of customer relationship information and settlement data that is shared by institutions, broker-dealers, and custodians. According to BSTP, FailStation is, by contrast, a tool that allows users of BSTP's service to monitor and manage pre- and post-settlement exceptions for a particular trade in real time.<sup>109</sup>

Because of the interconnected nature of DTCC's many concerns raised above regarding the appropriateness of the access and pricing conditions contained in the BSTP and SS&C notices, the Commission will address them together. With respect to the absence of access and pricing conditions within the BSTP and SS&C applications reflective of their role in the marketplace, the Commission is unpersuaded that the prospect of bundling services, cross-subsidization of services, profitability, restrictions on access to unrelated services, and other like concerns merits denial or modification of the applications. To clarify, the Commission disagrees with DTCC's characterization of the historical purpose of these conditions under the Omgeo order as being tied to any particular applicant's ownership model or any particular marketplace structure.<sup>110</sup> As the Commission stated in the Omgeo order, the Commission intended to require substantially the same conditions for other matching service providers,<sup>111</sup> and did not distinguish among future hypothetical

applicants on the basis of their non-profit or for profit status, governance structures, affiliated companies, or other factors related to the marketplace as a whole. Instead, these conditions were intended to assure that matching service providers other than Omgeo receive equal treatment by DTC, an affiliate of Omgeo.<sup>112</sup> Additionally, the Commission does not see how Omgeo's status as a subsidiary of DTCC affects whether it will compete with BSTP and SS&C. That Omgeo does not compete with any other matching service provider currently is solely a reflection of its position as the only current matching service provider in the U.S. market. Moreover, DTCC's comments, including its concern the BSTP may deplete Omgeo's high-volume customer base, demonstrate that DTCC does anticipate competing with BSTP and SS&C for customers, in line with the Commission's expectation that market forces resulting from the introduction of multiple matching service providers would necessarily drive customer choice in this regard.

The Commission also disagrees with DTCC's attempts to draw a parallel between the role that DTC and associated settlement system products (such as ALERT) play in the national clearance and settlement system and the role that Bloomberg Terminals, FailStation, and other BLP products play in the national clearance and settlement system. Despite any promotional claims that such products are industry utilities, from a regulatory perspective, Bloomberg Terminals, FailStation, and other BLP products primarily provide functionality for executing trades rather than clearing and settling trades. DTC, in contrast, as a registered clearing agency and the CSD for U.S. equities, is a critical element of the national system for clearance and settlement. In addition, the arguments presented by DTCC raising concerns over the potential for BSTP to bundle are speculative and the Commission believes that allowing market forces to determine whether bundling, Bloomberg Terminals access, or any other factor influences either high- or low-volume customer choice to be appropriate at this juncture.

With respect to modifying the conditions as applied to SS&C and BSTP, the Commission believes that market conditions continue to support consistent treatment across matching service providers. The Commission believes that a potential overlap in targeted customer bases between the

<sup>104</sup> See DTCC April letter at 20 & n.63.

<sup>105</sup> See *id.* at 19 & n.59.

<sup>106</sup> See BSTP May letter at 22.

<sup>107</sup> See *id.* at 19–20 n.59.

<sup>108</sup> See DTCC April letter at 20 & n.63.

<sup>109</sup> See BSTP May letter at 26 & n.83.

<sup>110</sup> See, e.g., DTCC April letter at 18–19; see also DTCC May letter at 16.

<sup>111</sup> See Omgeo order, *supra* note 37, at 20498.

<sup>112</sup> See *id.*; see also *supra* note 43 and accompanying text.

applicants and Omgeo is not a sufficiently compelling reason to support modifying the conditions because the conditions were included to facilitate competition and that necessarily implied competition for customers.

With respect to innovation, both BSTP and SS&C state that their applications will promote new data processing techniques and technology-driven solutions. For example, SS&C states that its service stands out in terms of its flexibility,<sup>113</sup> while BSTP states that its offering stands out in terms of potential synergies with other tools currently used.<sup>114</sup> Congressional findings cite to techniques that create the opportunity for more efficient, effective, and safe procedures, and the Commission believes that the description of services in the BSTP and SS&C applications may promote such opportunities, which are consistent with the public interest and the protection of investors.

On balance, the Commission believes that the access and pricing conditions in the BSTP and SS&C notices would promote fair competition. New entrants such as BSTP and SS&C could foster competition in the provision of matching services by competing with Omgeo by reducing the cost of matching services to broker-dealers and institutional customers or increasing the quality or type of services offered. Competition, in turn, could foster innovation in the market for matching services, resulting in more efficient matching and communications systems.

#### i. Impact of Applicants' Workflows on Competition, Choice and Innovation

Competition, choice, and innovation are not only addressed by commenters in the context of the general prospect of new entrants BSTP and SS&C, but also within the context of the discussion raised by DTCC regarding BSTP and SS&C's multiple access model workflow and DTCC's alternative single access model workflow. DTCC states that the Commission should distinguish competition in central matching from competition in access to settlement and related functions (*e.g.*, providing internal control numbers and sending matching confirmation and settlement instructions to settlement agents and DTC). The Commission has previously described DTCC's position that the single access model is the optimal way to support competition in matching in

Part III.B.2.i.<sup>115</sup> DTCC states that requiring BSTP and SS&C to send trade instructions to DTC solely through the existing infrastructure would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act because it would be justified by the benefits to the clearance and settlement system resulting from greater visibility for DTC and its participants into pre-settlement trade activity, enabling firms to correct errors before fails occur and reducing the number of places in the trade lifecycle where an error in settlement could occur without imposing additional costs on industry, as DTCC states the multiple access proposal would.<sup>116</sup>

In response, BSTP states that using Omgeo, as DTCC proposes, creates an unjustified barrier to entry, discouraging vendors from entering the matching services business because of the limited scope of services they would be able to provide outside Omgeo and because a competitor, Omgeo, would continue to control certain basic matching services functions. For example, BSTP states that such a workflow would place a competitor between the matching service provider and DTC, and between the matching service provider and custodians and settlement agents.<sup>117</sup> BSTP states that DTCC's recommendation to use Omgeo reflects a fundamental conflation of DTCC's commercial interests as an unregulated holding company with the regulatory obligations of its subsidiaries, including DTC and Omgeo. BSTP further notes that the Cornerstone Report focuses primarily on how the approval of the BSTP application could affect Omgeo and Omgeo's business model, which BSTP states is itself rooted in a *de facto* monopoly over matching services. BSTP notes that DTC is subject to the full range of requirements under Section 17A of the Exchange Act while Omgeo is subject to the terms of the Omgeo order. BSTP states that DTCC fails to distinguish between its own corporate business interests and the requirements applicable to DTC under the Exchange Act and Omgeo under the Omgeo order.<sup>118</sup> BSTP also states that mandating usage of Omgeo would hamper innovation because it would preserve the status quo, eliminating incentives for DTCC and its affiliates to

innovate or to upgrade or improve infrastructure.<sup>119</sup>

BSTP states that direct access to DTC is essential to the matching services concept and critical to the national system for clearance and settlement. BSTP states that DTCC's recommendation for a single-access model draws a fundamentally incorrect and inappropriate dichotomy by highlighting the distinction between matching services and access to settlement functions because it suggests that a matching service consists only of the internal function of comparing data and not the function of transmitting an affirmed confirmation to DTC. BSTP notes that previous Commission statements have clarified that a matching service seeking an exemption from registration as a clearing agency would be required to establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades.<sup>120</sup> According to BSTP, this recognizes that the capability of a matching service to send affirmed trades directly to DTC is critical to a safe and sound process for clearing and settling trades in the national clearance and settlement system, and that mandating the use of Omgeo would frustrate and impair the benefits that matching services bring to market participants.<sup>121</sup>

BSTP also states that mandating the use of Omgeo would be inconsistent with DTC's obligations as a registered clearing agency. Citing Section 17A(b)(3)(F) and (I) of the Exchange Act, BSTP states that DTC has an obligation to maintain rules that foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, that remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and that do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. BSTP states that mandating the use of Omgeo would be inconsistent with these obligations because DTCC would have the Commission adopt a requirement that favors one or more of DTCC's wholly-owned subsidiaries when Section 17A imposes an affirmative obligation to facilitate the development of matching services in a manner that

<sup>119</sup> See *id.* at 7.

<sup>115</sup> See DTCC June letter at 2–3; DTCC May letter at 2; DTCC April letter at 3.

<sup>116</sup> See DTCC April letter at 14 n.45.

<sup>117</sup> See BSTP May letter at 6–7.

<sup>118</sup> See *id.* at 8–9.

<sup>120</sup> See *id.* at 9. For discussion of previous Commission statements on the requirements that an entity seeking an exemption to provide matching service would need to satisfy, see the Matching Release, *supra* note 13, at 17947 n.28.

<sup>121</sup> See BSTP May letter at 10.

<sup>113</sup> See BSTP letter at 3–4.

<sup>114</sup> See SS&C letter at 3.

does not burden competition and that facilitates the linking of clearance and settlement facilities.<sup>122</sup>

BSTP notes that access to DTC was a major concern when the Commission issued the Omgeo order, and the Commission has above already assessed DTC's arguments regarding efficient access to DTC against the historical background to the Omgeo order and related DTC rule filings.<sup>123</sup> For example, citing DTCC's comment letters from that period, BSTP states that, in moving TradeSuite to Omgeo, DTCC promised that vendors acting on behalf of DTC participants will be able to transmit settlement instructions directly to DTC without the involvement of Omgeo.<sup>124</sup> BSTP also cites DTCC's comment letter stating that it shall not favor any single matching service provider over any other in terms of the quality and caliber of the interface to DTC's clearing agency or settlement functions, quality of connectivity, receipt of delivery and payment orders, speed or processing of delivery and payment orders, capacity provided, or priority assigned in processing delivery and payment orders. BSTP also cites DTCC's statement that DTC's longstanding practice of providing members of the financial industry with equal, standardized access to DTC's services will continue after the formation of Omgeo, and that such practice is required by Section 17A of the Exchange Act and subject to Commission oversight.

Further, BSTP states that mandating the use of Omgeo would require DTC to propose an unjustifiable rule change. BSTP notes that, as a registered clearing agency, DTC is a rules-based organization, and BSTP further notes that DTCC has cited to no rule that would require matching services to use Omgeo to access DTC. BSTP states that, if DTC wished to adopt such a requirement, it would be required to submit a proposed rule change, subject to notice, public comment, and Commission review and approval. BSTP notes that DTC has not submitted such a proposed rule change and further notes its belief that any such proposed rule change would be unsupported under the Exchange Act.<sup>125</sup>

SS&C states in its letter that it is in complete agreement with BSTP's response on matters where the concerns raised by DTCC are substantially the same between the BSTP and SS&C applications, including the single versus

multiple access question.<sup>126</sup> Separately, SS&C also notes that, under DTCC's proposal for a single access model, competition as it relates to institutional post-trade processing would be confined to central matching while all other key ancillary services would remain outside this scope, subject to DTCC control as part of Omgeo. As noted previously, SS&C infers from DTCC's position that Omgeo would impose the same charges on competing matching services as they do on clients today and states that, should the Commission accept this position, SS&C doubts that any service would find it economically viable to enter the market for post-trade services to compete with Omgeo.<sup>127</sup>

The Commission is unpersuaded that, in considering the prospect of competition among matching service providers, it must find that a single, direct link to DTC through Omgeo is the only outcome sufficient to support approval of the BSTP and SS&C applications. As discussed previously, the Commission has already approved DTC rule change SR-DTC-2001-11, which authorized DTC to accept from a matching service provider a file of deliver order instructions to settle transactions between DTC participants that have authorized DTC to accept such instructions from the matching service provider.<sup>128</sup> The Commission notes that DTCC states that its Investment Management System ("IMS") may receive deliver orders from multiple sources, including Omgeo as well as other matching service providers.<sup>129</sup>

Further, the Commission is unpersuaded that it should deviate from this existing regulatory framework because of DTCC's proposed vision for how competition among matching service providers could work. As discussed above, the Commission notes that it has previously described its expectation that an entity seeking an exemption as a matching service provider would be required to establish an electronic link to a registered clearing agency that provides for the settlement of its matched trades.<sup>130</sup> The Commission specifically expressed concern about the concentration of risk

that occurs in an entity that performs matching services instead of dispersing that risk more broadly to broker-dealers and their institutional customers. The Commission's concerns regarding concentration of risk—whether through aggregation of activity in multiple matching service providers, or further aggregation of trade enrichment activity under a single access model—remain unchanged from those expressed in the Matching Release, even if multiple links to DTC result in some implementation costs.

#### 4. Systemic Risk

Within the concept of requiring linked or coordinated facilities for clearance and settlement of securities transactions is the implication that any one facility that is connected to other facilities could generate externalities that can affect the system as a whole. If such externalities can create disruptions to the national system for clearance and settlement, then the prospect of such systemic risk implicates facilitating the establishment of linked or coordinated systems.

The Commission received multiple comments addressing the expected effect of the BSTP and SS&C applications on systemic risk. BSTP notes in its comment letter that the BSTP application promotes investor protection by providing a prompt and accurate matching service that eliminates a single point of dependency in the current market infrastructure for matching services, thus enhancing the robustness of the clearance and settlement system.<sup>131</sup> As noted above, BSTP also highlights that its application promotes efficiency by enabling straight-through processing throughout the entire trade lifecycle, which it states will contribute to increases in same-day affirmation rates and in settlement rates.<sup>132</sup> As to SS&C, as noted above, SS&C states that it is in agreement with BSTP on those points that overlap between the BSTP and SS&C applications.<sup>133</sup>

Multiple commenters agree with BSTP and SS&C. Ten commenters note that increasing the number of matching service providers would remove the single point of dependency present in the existing market infrastructure for matching services, decreasing the risks associated with a single point of failure.<sup>134</sup> Similarly, four commenters

<sup>126</sup> See SS&C letter at 4.

<sup>127</sup> See SS&C letter at 3. For prior discussion of these expected surcharges, see Part III.B.2.i, and *supra* notes 53–54 and accompanying text.

<sup>128</sup> See *supra* notes 47–50 and accompanying text.

<sup>129</sup> See DTCC, Inventory Management System, available at <http://www.dtcc.com/asset-services/settlement/inventory-management-system> (last accessed Nov. 2, 2015) (discussing IMS transaction types, including code "MITS"—matched institutional deliveries sent to IMS from Omgeo or another matching utility).

<sup>130</sup> See Matching Release, *supra* note 13, at 17947 n.28.

<sup>131</sup> See BSTP May letter at 3; see also BSTP August letter at 2–4.

<sup>132</sup> See *id.*; see also *supra* note 31 and accompanying text.

<sup>133</sup> See *supra* note 24 and accompanying text.

<sup>134</sup> See AllianceBernstein at 1; Ambos; Capital Market Solutions; Connolly; Denci; Fidessa;

<sup>122</sup> See *id.*

<sup>123</sup> See *supra* notes 37–50 and accompanying text.

<sup>124</sup> See BSTP May letter at 10.

<sup>125</sup> See *id.* at 12.

cite improved confirmation/affirmation rates overall as anticipated benefits of having multiple matching service providers,<sup>135</sup> and one of those commenters also notes the related benefit of a likely reduction in settlement fails.<sup>136</sup> An additional commenter supports the approval of additional providers of matching services where the matching service (i) supports standardized message formats and processing procedures, (ii) adheres to interoperability principles with current and future providers, (iii) accommodates increased volume on a scalable basis sufficient to function as a continuity of business alternative in the event other providers experience operational issues or failure, (iv) facilitates a shortened settlement cycle, and (v) supports straight through processing.<sup>137</sup>

In its comment letters and in the Cornerstone Report, however, DTCC raises multiple concerns about the effect of the applications on systemic risk. Central to the disagreement between the applicants and DTCC is whether BSTP and SS&C should have direct access to DTC. Further, to the extent that BSTP and SS&C have direct access to DTC, DTCC states that such linkage arrangements may increase systemic risk to the market's settlement infrastructure. DTCC also disagrees with commenters stating that the BSTP and SS&C applications will alleviate the single point of dependency problem that exists in the current market infrastructure, stating that a single market participant is unlikely to subscribe to two separate matching service providers and therefore not increase the resiliency that results from redundant systems.<sup>138</sup> In addition, DTCC raises other concerns regarding the solvency of BSTP, SS&C, their respective parent companies, and their respective affiliates; the resiliency of SS&C, its parent company, and its affiliates; and the volume limits represented in the SS&C application.

Northern Trust; Ransford; Scuteri; SIFMA AMF at 2.

<sup>135</sup> See Capital Market Solutions; Lang; Matthews; Puskuldjian.

<sup>136</sup> See Puskuldjian.

<sup>137</sup> See Citi at 1–2. The Commission notes that the aspects of this comment are addressed throughout this order: Concerns related to standardized messaging formats and processing procedures are discussed in Parts III.B.2.i, iii, and iv; concerns related to the sufficiency of an applicant to provide a business continuity alternative are discussed in Part III.B.5; concerns related to interoperability are discussed in Part III.B.7; and concerns related to a shortened settlement cycle and straight-through processing are discussed in Part III.B.2.ii.

<sup>138</sup> See Cornerstone Report at 4–5.

#### i. Single Point of Dependency

First, BSTP states that Omgeo represents a single point of failure for matching services because it is the only means of accessing DTC for settlement.<sup>139</sup> BSTP states that a resilient environment is needed in matching services, which can be achieved through the introduction of additional matching service providers if they are allowed to establish separate, redundant connections to DTC and market participants.<sup>140</sup> BSTP states that centralization of records is worrisome and that introducing an additional venue for storing records will benefit the marketplace by alleviating reliance on a single entity.<sup>141</sup> BSTP notes that a single access model would prevent the establishment of separate, direct connections to DTC and therefore eliminate the benefit that multiple pathways would provide, such as alleviating message traffic congestion during high volume trading periods (such as near the time of market close). In its comment letters, BSTP states that it will provide increased resiliency by providing an alternative means for affirmed confirmations to be transmitted to DTC, custodians, and settlement agents.<sup>142</sup>

DTCC counters that allowing both BSTP and SS&C to access DTC directly would increase systemic risk relative to a single access model because a single access model has fewer interfaces within the market infrastructure that provides matching services, meaning fewer potential points of failure, less complexity, and therefore less risk to the national clearance and settlement system.<sup>143</sup> DTCC also notes that, under the current model, when a broker-dealer executes an institutional trade, they provide a trade record and Omgeo assigns a control number to be used throughout the trade lifecycle, allowing DTC, market participants, and regulators to track the phases of one or more trades over time.<sup>144</sup> In addition, the Cornerstone Report states that a multiple access model can only reduce the single-point-of-dependency problem during a matching service provider outage when the two parties to a trade

<sup>139</sup> See BSTP May letter at 6.

<sup>140</sup> See BSTP August letter at 3–4. BSTP cites to recent events in which the presence of multiple service providers and points of connectivity helped facilitate trading on alternate trading venues when the primary listing venue suffered a disruption. See *id.* at 4 & n.12.

<sup>141</sup> See *id.* at 17.

<sup>142</sup> See *id.* at 8.

<sup>143</sup> See DTCC April letter at 11, 13; Cornerstone Report at 6, 23.

<sup>144</sup> See DTCC April letter at 7; DTCC May letter at 3–15.

have access to multiple matching service providers and can easily transition from using one to using the other.<sup>145</sup> The Cornerstone Report also states that, even if a second market entrant could feasibly provide matching services, further complexities may arise when additional entrants become matching service providers.<sup>146</sup>

The Commission notes that it has already addressed several arguments related to efficiency concerns regarding access to DTC in Part III.B.2.i. On the single point of dependency question, the Commission agrees with BSTP and disagrees with DTCC. As DTCC correctly notes, the risk that the clearance and settlement system would fail during times of market stress, such as the 1987 market break, has been described as the single most important threat to the U.S. financial system, and that settlement failures, if widespread, can have a systemic impact on the national clearance and settlement system while imposing significant costs on market participants.<sup>147</sup> As described above, the Commission maintains the concerns it expressed within the Matching Release with respect to concentration of processing risk in a single matching service provider.<sup>148</sup> On balance, the Commission believes that the redundancy created by more interfaces and linkages within the settlement infrastructure increases resiliency, as suggested by BSTP. In the event of a disruption in services at Omgeo, the redundancy facilitated by the addition of matching services provided by BSTP and SS&C makes it more likely that market participants can continue to match and settle trades than if Omgeo stands as a necessary intermediary for settlement at DTC.

The Commission acknowledges, as noted by DTCC, that in order for one matching service provider to facilitate redundant access to DTC in the event Omgeo or another matching service provider experiences a disruption, customers will need to have access to multiple matching service providers. The Commission notes that, unlike participants in a CCP, customers of a matching service provider are not subject to requirements to determine suitability for membership. Because obtaining access to a matching service provider is not subject to determinations regarding suitability for membership, the Commission expects that customers could gain access to a secondary matching service provider with enough

<sup>145</sup> See Cornerstone Report at 23–24.

<sup>146</sup> See *id.* at 41.

<sup>147</sup> See DTCC April letter at 1–2, 3.

<sup>148</sup> See Matching Release, *supra* note 13, at 17946.

ease to meaningfully reduce disruption to the marketplace, as compared to a scenario where access to DTC is not redundant.

With respect to the direct links proposed by the BSTP and SS&C applications, the Commission is unpersuaded that the prospect of increased technical complexity merits denial or modification of the applications. As BSTP notes in its comment letter, technological improvements since approval of the Omgeo order have increased the ability to establish safe and secure communication links.<sup>149</sup> Further, BSTP states that there is nothing new or unique about the activities that will be required of DTC to establish an interface with BSTP. BSTP states that it would expect to use the same protocol as Omgeo, and notes that the comment letters demonstrate that market participants do not view linkage requirements as disadvantageous.<sup>150</sup> According to BSTP, whether the trade instructions are in a proper format requires only the use of an agreed protocol. BSTP further states that BSTP's matching service will use industry standard communication, message, and file-transfer protocols and will be able to ensure that the trade instructions sent to DTC are in the proper format.<sup>151</sup> BSTP states that, like many industry participants, its affiliates also currently maintain as part of their day-to-day operations multiple connections with a variety of pre- and post-trade services (including Omgeo) using FIX and other standardized protocols.<sup>152</sup> As BSTP correctly notes, even DTCC acknowledges that Omgeo currently interfaces with over 60 vendors, including a BSTP affiliate, on behalf of its customers.<sup>153</sup>

The Commission acknowledges that there may be externalities associated with a settlement infrastructure where multiple competing matching services link to DTC. Such externalities could manifest if, for example, a systems failure at BSTP reduces the ability of DTC to process transaction information received from Omgeo or SS&C. In such a scenario, BSTP may not fully internalize the costs of errors in its systems because a portion of these costs

are imposed on its competitors. The Commission believes, however, that the interoperability conditions, along with the requirements in Regulation SCI for SCI entities to coordinate the testing of business continuity and disaster recovery plans on an industry-wide basis,<sup>154</sup> help to mitigate the risk that one or more matching services with access to DTC could establish systems that significantly externalize the consequences of systems malfunctions to the national system for clearance and settlement.

In addition, DTCC notes two other benefits of its single-access model: (i) 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; and (ii) exclusive reliance on Omgeo for access to DTC, NSCC, and the custodians/settlement agents would permit DTCC to facilitate future developments in the operational systems used to generate trade instructions for clearance and settlement, thereby reducing risk of system disruptions or system incompatibilities that result in trade failures.<sup>155</sup> The Commission does not see why these benefits cannot materialize if the BSTP and SS&C applications are approved. BSTP, for example, is proposing to include as part of its matching service other services that provide information to custodians and other stakeholders earlier in the settlement process than currently provided, which may also reduce the number of problem transactions. Similarly, approving the BSTP and SS&C applications does not prevent DTCC from facilitating future developments in the operational systems used to generate trade instructions for clearance and settlement. On the contrary, with three matching service providers, the number of entities that may be working to facilitate new developments in the generation of trade instructions will be increased.

Second, DTCC states it is essential that only one entity issue control numbers because multiple issuers of control numbers would greatly increase the likelihood of settlement errors.<sup>156</sup> DTCC therefore recommends that

regardless of where a trade is centrally matched, the broker be required to send a trade record and obtain a control number for that trade from Omgeo in a manner that facilitates the single access model, as the electronic confirmation and matching process is currently conducted.<sup>157</sup> DTCC further states that centralizing time-stamped trade records in this way allows DTC and settlement agents to more efficiently and effectively settle trades that have failed to settle on the scheduled date while allowing market participants to reconstruct trades or unwind positions as appropriate. DTCC notes that the time-stamped audit trail has allowed DTC and its affiliates to reconstruct trades after September 11, 2001, the bankruptcy of Lehman Brothers in 2008, and the "flash crash" in 2010, among other significant market events. DTCC also states that this centralized record allows DTC, market participants, and regulators to piece together events that cause market stress and has provided enormous benefit to regulators in examining trading history among investment managers and broker dealers.<sup>158</sup> DTCC states that, under a multiple access model, these efforts would be severely hampered, perhaps even lost.<sup>159</sup> It states that, because DTCC's audit records are centralized, the industry can evaluate affirmation and settlement rates industry-wide because only a single entity has the records of all institutional trades from execution through settlement. Bifurcating this process, according to DTCC, would make it more difficult to monitor improvements and spot trends in affirmation and settlement rates, including, in particular, spotting the points in transactions where failure is most likely to occur.<sup>160</sup>

BSTP acknowledges that, ideally, there should be one issuer of control numbers and that, because it is essential to the safe and sound settlement of securities transactions, it is the responsibility of DTC to provide control numbers as a registered clearing agency.<sup>161</sup> BSTP states that the creation of control numbers, the transmission of control numbers to the parties involved in settlement, and the transmission of settlement instructions to DTC are critical components of post-trade processing and, as such, are elements of the national clearance and settlement system that must be provided on a fair

<sup>149</sup> See BSTP May letter at 11.

<sup>150</sup> See *id.* at 13 (citing to SIFMA AMF for the point that additional service providers will permit firms to improve upon contingency strategies and disaster recovery models as well as allow firms to diversify their support model and mitigate risk by moving trade volume to other service providers if one is experiencing interruptions or outages).

<sup>151</sup> See *id.* at 15.

<sup>152</sup> See *id.*

<sup>153</sup> See *id.* at 12 n.37.

<sup>154</sup> See 17 CFR 242.1004(c). Application of Regulation SCI to exempt clearing agencies is addressed in Part III.B.8.

<sup>155</sup> As an example, DTCC cites a recent approved rule change in support of DTC's settlement matching initiative, intended to reduce uncertainty in the settlement of institutional transactions at DTC. See DTCC April letter at 14 n.44.

<sup>156</sup> See *id.* at 15.

<sup>157</sup> See *id.*

<sup>158</sup> See DTCC April letter at 7.

<sup>159</sup> See *id.* at 8.

<sup>160</sup> See *id.*

<sup>161</sup> See BSTP May letter at 14.



and non-discriminatory basis by DTC.<sup>162</sup>

BSTP explains that, contrary to DTCC's claim that a specific time for obtaining a control number should be incorporated into BSTP's application, incorporating a control number in the matching process is well understood. BSTP cites the Matching Release in explaining that the control number is obtained from DTC during the process of confirming the terms of a trade with the broker-dealer involved in the trade.<sup>163</sup> As mentioned above in Part III.B.2.iii, BSTP notes that DTC could ensure that control numbers generated by BSTP are distinguishable from those generated by Omgeo.<sup>164</sup> BSTP also notes that a control number is required to be obtained by qualified vendors of ETC services, and notes that FINRA Rule 11860 does not require the use of the Omgeo-centric existing infrastructure by qualified vendors.<sup>165</sup>

The Commission has previously addressed the concerns regarding issuance and management of control numbers above in Part III.B.2.iii, including DTCC's concerns regarding centralization of trade data. The Commission does not view the prospect of a multiple access model as being inconsistent with the ability to have a centralized source of control numbers. Consequently, the Commission finds the systemic risk concerns cited by DTCC on this matter to be unpersuasive.

Lastly, the Cornerstone Report raises concerns that, because of the potential increase in systemic risk resulting from the approval of multiple matching service providers, market participants' ability to comply with Regulation SCI may be impaired.<sup>166</sup> The Commission views this argument as speculative and unpersuasive. Neither DTCC nor the Cornerstone Report identify how a market participant, or even which

market participant, might find it harder to comply with Regulation SCI in the wake of the Commission approving new matching service providers. Neither DTCC nor the Cornerstone Report estimate any costs that might result from such changes either. Further, the Commission notes that industry-wide testing required under Regulation SCI should not be negatively impacted by whether the number of participants in any particular market segment ebbs and flows from one year to the next. The Commission believes the benefit of removing a single point of dependency, as discussed above, is consistent with the public interest and the protection of investors and supports the approval of new matching service providers.

#### ii. *Solvency of Applicants*

DTCC raises concerns about how the sudden insolvency of either BSTP or SS&C might raise systemic risk concerns in the event that market participants, who had come to rely on the availability of BSTP and SS&C as matching service providers, were no longer able to use their matching services.<sup>167</sup> DTCC states that the benefits of the BSTP and SS&C applications may ultimately be fleeting because BSTP and SS&C are private companies that may become insolvent or choose to forego or discontinue providing matching services after a short time if providing such services does not prove to be profitable or otherwise advisable.<sup>168</sup> DTCC suggests that insolvency is more likely for BSTP and SS&C because they are for-profit companies, and notes that the potential insolvency of either of their parent or affiliate companies could raise the same concerns. DTCC implies that, as an industry-owned utility, Omgeo does not carry the same level of risk. DTCC states that if either BSTP or SS&C ceased to provide matching services after the industry had become reliant on it to perform such services, the likelihood of failed trades could increase and the industry may need to undergo an extensive reintegration period to onboard market participants. Accordingly, DTCC believes that BSTP, SS&C, and their parent and affiliate companies should each be required to provide additional assurances regarding insolvency.

BSTP responds that it has devoted substantial resources to developing its matching service, is committed to that matching service, and is adequately capitalized. In addition, BSTP states that, as part of obtaining an exemption

from registration as a clearing agency, BSTP has agreed to provide the Commission annual audited financial statements, and states that no additional assurances regarding financial strength should be necessary.<sup>169</sup> Similarly, SS&C responds that DTCC's concerns are speculative and unfounded. SS&C notes that it is a public company and therefore publishes audited financial statements which are also supplied to the Commission. SS&C states that no further assurances regarding financial strength are necessary.<sup>170</sup>

With respect to the future potential insolvency of the applicants, their parents, and their affiliates, the Commission believes such speculation does not merit denial or modification of the applications at this time. DTCC provides no rationale for why, as for-profit entities, BSTP and SS&C, or their parent companies or affiliates, are more likely to become insolvent than Omgeo or DTCC. Indeed, the Commission notes that DTCC's own Cornerstone Report suggests that, in a market with multiple matching service providers, Omgeo may find itself no longer financially viable.<sup>171</sup> Should the prospect of insolvency of a matching service provider materialize, the Commission can consider modifying or revoking an exemption from registration under certain procedures, addressing the specific conditions as they arise.

Further, the Commission is mindful that, during an extended service outage, the failure of a single matching service provider could cause significant disruption to the financial markets. In this regard, denying the BSTP and SS&C applications would preserve such risk and leave it concentrated in a single entity because Omgeo is currently the only matching service provider for the U.S. equity markets. The Commission believes that approving the BSTP and SS&C applications could help mitigate this risk.

#### iii. *Resiliency of Applicants*

DTCC expressed concerns regarding whether BSTP and SS&C 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, noting that Omgeo has developed with its customers both direct proprietary links to existing systems as well as web-based linkages and interfaces hosted by third party order management systems and

<sup>162</sup> See BSTP August letter at 5 (citing statements regarding the issuance of control numbers made in the Cornerstone Report at 21).

<sup>163</sup> See *id.* at 14 n.42 (citing 63 FR at 17944–45).

<sup>164</sup> See *id.* at 14 n.41.

<sup>165</sup> See *id.* at 14 n.40. BSTP also clarifies that it will be authorized under FINRA Rule 11860 to be utilized for the electronic confirmation and affirmation of all depository-eligible transactions if the Commission grants an exemption. See *id.* at 25–26. In the Matching Release, the Commission stated that, in the process of considering whether to grant an exemption, an entity would have to meet the requirements to become a qualified vendor under the relevant SRO rules because they are necessary elements in providing a matching service. See Matching Release, *supra* note 13, at 17947 n.27.

<sup>166</sup> See Cornerstone Report at 32–35, 36–37. The Commission notes that this particular issue raised in the Cornerstone Report is directed at whether BSTP and SS&C specifically can comply with Regulation SCI. Concerns regarding general compliance by exempt clearing agencies with Regulation SCI related are addressed in Part III.B.8.

<sup>167</sup> See DTCC April letter at 17–18 (as to BSTP); DTCC May letter at 15 (as to SS&C).

<sup>168</sup> See *id.* at 12 n.37.

<sup>169</sup> See BSTP May letter at 20.

<sup>170</sup> See SS&C letter at 4.

<sup>171</sup> See Cornerstone Report at 22.

vendors.<sup>172</sup> DTCC states that the proprietary linkages can handle tremendous trading volumes, as has been demonstrated repeatedly in the past, including during the 2010 “flash crash.”<sup>173</sup>

The Commission is satisfied that both the BSTP and SS&C applications provide sufficient assurances regarding their proposed risk management framework. First, as SS&C notes in its comment letter, SS&C Canada and SSCNet have represented that they are staffed adequately with qualified and experienced industry veterans that have been in the post-trade services industry for decades and notes that it has long advocated for responsible growth when it comes to staffing numbers, facilities, and infrastructure. SS&C also represented that it has consistently applied stress and capacity disciplines during its history to ensure the soundness of its post-trade application.<sup>174</sup> Similarly, BSTP represented that it has planned for adequate systems capacity and conducts stress testing. It also represented that BSTP and its affiliates have a comprehensive business continuity management program to ensure a timely response to, and effective recovery from, unanticipated business interruptions that may affect facilities, technology, and/or people. BSTP represented that, to minimize business interruption events, BSTP will undertake continuous monitoring and identification of potential risks and take action designed to mitigate the impact of these risks.<sup>175</sup>

The Commission discusses concerns specific to BSTP and SS&C’s operational risk management frameworks below in Part III.B.5. Concerns raised by DTCC in response to the cross-border nature of the SS&C application are addressed in Part III.B.5.i below as well.

#### iv. Volume Limits in the SS&C Application

DTCC notes that the SS&C application represents that SS&C will only match up to one percent of the U.S. aggregate daily volume of securities trades and would seek an amendment 180 days prior to exceeding that limit, which means that SS&C may have to refuse to provide matching services to some trades in some instances, which may create problems for market participants that are uncertain whether their trades would be accepted for matching by

SS&C.<sup>176</sup> The Commission is mindful of this concern, and requested an amendment, which SS&C submitted on November 9, 2015 to remove the representation regarding volume limits. The Commission agrees that volume limitations may create uncertainty as to whether SS&C’s matching service is able to match trades, increasing the risk that a trade may fail in the event that SS&C has unexpectedly exceeded the volume limits represented in its application. Therefore, the Commission does not believe that volume limitations are necessary for the SS&C application to be consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

#### 5. Operational Risk

Under Section 17A of the Exchange Act, applicants must demonstrate that they are so organized and have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. Questions of capacity have previously been addressed in Parts III.B.2.ii, in connection with facilitating access to DTC, and III.B.4.iii, in connection with questions about the applicants’ resiliency. Nevertheless, several comments raised concerns related to particular operational risks, and the Commission considers such concerns below.

With respect to operational risk management, DTCC notes that its own regulated affiliates have each been subject to business continuity standards higher than those set forth in Regulation SCI.<sup>177</sup> DTCC states that BSTP, SS&C, and their parent companies should be held to the same standard. DTCC also states that the Commission should also hold the parents and affiliates of BSTP and SS&C to the same standards of internal controls, security, and business continuity as the Commission holds other critical participants in the national clearance and settlement system to the extent those parents and affiliates are relied upon to perform matching services because that would best serve the public interest and the protection of investors.<sup>178</sup> In addition, because BSTP seeks to license from BLP the operations and systems to conduct its matching service, DTCC states that both BSTP and BLP should be subject to the full panoply of legal and regulatory requirements under Regulation SCI, and that BLP should be required to make

available its books and records, as well as its operating systems, to inspection by the Commission upon request.<sup>179</sup> Similarly, because SS&C seeks to rely on SS&C Canada for the operations and systems to conduct central matching, DTCC states that both SS&C and SS&C Canada should be subject to the full panoply of legal and regulatory requirements under Regulation SCI and ARP.<sup>180</sup> DTCC notes that both BSTP and SS&C would have relatively small staffs to oversee their matching services.<sup>181</sup>

BSTP responds that it is staffed with an adequate number of qualified and experienced personnel to operate BSTP. BSTP notes that its staff includes industry veterans who know the marketplace and are well suited to operate BSTP and ensure that BSTP complies with all applicable regulatory standards, including stringent business continuity, information security, and capacity testing plans and procedures.<sup>182</sup> With respect to Regulation SCI, BSTP notes that DTCC’s regulated affiliates (namely, DTC, NSCC, and FICC) are subject to high standards because they are registered clearing agencies and have been designated as systemically important under Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act. BSTP notes that Omgeo is not a registered clearing agency and has not been designated systemically important, and therefore the standards applicable to DTCC’s registered clearing agency subsidiaries do not apply to Omgeo.<sup>183</sup>

SS&C responds that, if granted an exemption, all parts of the SSCNet matching service would be subject to Regulation SCI. SS&C states that there is no legal basis for Regulation SCI to apply to the broader SS&C complex, however, because those affiliates and subsidiaries are not within the scope of entities subject to Regulation SCI under the conditions proposed in the SS&C notice. SS&C further states that SSCNet will be subject to and intends to comply with all of the standards specified by the Commission that are applicable to exempt clearing agencies.<sup>184</sup> SS&C also adds that DTCC’s proposed single access model would pose greater security and confidentiality risks than a multiple access model because transactions involving non-Omgeo clients would have to be routed through the existing

<sup>172</sup> See DTCC May letter at 17; DTCC April letter at 22.

<sup>173</sup> See DTCC May letter at 17 & n.42.

<sup>174</sup> See SS&C letter at 5.

<sup>175</sup> See BSTP May letter at 22.

<sup>176</sup> See DTCC May letter at 17 n.41.

<sup>177</sup> See *infra* note 246.

<sup>178</sup> See DTCC May letter at 3; DTCC April letter at 7, 21–22.

<sup>179</sup> See DTCC June letter at 4–5; DTCC April letter at 21–22 & n.67.

<sup>180</sup> See DTCC September letter at 3; DTCC May letter at 17.

<sup>181</sup> See DTCC April letter at 21; DTCC May letter at 16–17.

<sup>182</sup> See BSTP May letter at 21.

<sup>183</sup> See *id.* at 25.

<sup>184</sup> See SS&C letter at 5.

Omgeo infrastructure, thereby exposing confidential information to a competitor (Omgeo) that otherwise is not a party to the transaction.<sup>185</sup>

The Commission addresses concerns specific to the cross-border nature of SS&C's operations below. More generally, the Commission notes that there has been a long history of parent and affiliate companies providing facilities management and operational support for clearing entities, and this has been accepted by the Commission in the past. For example, in 1972 the New York Stock Exchange and Amex founded the Securities Industry Automation Corporation ("SAIC") to handle such services for their clearinghouses.<sup>186</sup> SAIC later became the facilities manager for NSCC, which is now a clearing agency within the DTCC complex. In this regard, BSTP's staffing arrangements and reliance on affiliates are similar to Omgeo and the other registered clearing agencies within the DTCC complex. The Commission also believes that subjecting BSTP and SS&C to Regulation SCI pursuant to the conditions in this order addresses the concern about business continuity standards and is consistent with Regulation SCI's approach to exempt clearing agencies subject to ARP. The Commission also believes that whether Regulation SCI should apply to such affiliates and/or parent companies is a function of the provisions and definitions in Regulation SCI considered and adopted by the Commission.

Further, as noted elsewhere in this order,<sup>187</sup> the Commission believes that BSTP and SS&C should be held to the same regulatory requirements as Omgeo because each entity is providing the same type of service. That the DTCC complex as a whole may be subject to heightened standards for, in this case, resiliency and business continuity under Section 17A of the Exchange Act and Regulation SCI stems from, among other things, its role as holding company for three registered clearing agencies that provide CCP and CSD services.<sup>188</sup> As previously mentioned and discussed further in Part III.B.8, BSTP and SS&C, like Omgeo, are exempt clearing agencies subject to the Commission's ARP and therefore SCI entities under Regulation SCI. The Commission believes that the requirements under Regulation SCI are sufficient to help ensure that BSTP and

SS&C are held to high standards for internal controls, redundancy, security, and business continuity.

DTCC states that BLP's historic treatment of intellectual property raises concerns regarding BSTP's safeguards in this area, as well as in maintaining the privacy of users and the confidentiality of data within its databases. DTCC notes that BSTP plans to license its software, hardware, administrative, operational, and other support services from BLP, and therefore stated that the Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through BSTP's ETC and matching service.<sup>189</sup> BSTP responds that, in raising concerns about BSTP's ability to maintain privacy of users and confidentiality of data, DTCC cites to BLP's enhancement of access controls to prevent inappropriate access to BLP's client data. BSTP states that, if anything, these enhanced access controls provide added assurance that BSTP data will be held securely. BSTP notes that BLP is a preeminent data service provider, and that BLP and BSTP have information security policies and procedures in place that meet or exceed industry standards.<sup>190</sup>

The Commission has evaluated the aspects of the BSTP application relating to operational risk management and internal controls. DTCC's arguments made about the prospect of confidentiality or privacy breaches are speculative and unsubstantiated by any past conduct or previous violations. The BSTP application indicates that BSTP has planned for adequate systems capacity and that it conducts stress testing. The Commission notes that BSTP and its affiliates have a business continuity management program to ensure a timely response to, and effective recovery from, unanticipated business interruptions that may affect facilities, technology, and/or people. The Commission also notes that the BSTP application indicates BSTP staff includes industry veterans knowledgeable of the marketplace and well suited to operate BSTP.

As with BSTP, the Commission has reviewed the staffing, reliance on affiliates for operational systems, internal controls, and related aspects of the SS&C application. Again, DTCC's arguments made about the prospect of confidentiality or privacy breaches are speculative and unsubstantiated by any past conduct or previous violations, and SS&C has been providing local and centralized matching facilities and ETC

services for twenty years.<sup>191</sup> SSCNet is currently operating as a real time and batch-based system, so its proposed functionality under the SS&C application is not purely hypothetical. Further, as mentioned above, requiring trade data from SS&C customers to pass through Omgeo in order to arrive at DTC, as contemplated by DTCC's suggested single access model, could create conditions more favorable for confidentiality breaches than if such data was not routed through a competitor.

In addition, as discussed above, BSTP and SS&C, as SCI entities, will be subject to Regulation SCI. For example, Rule 1001(b) of Regulation SCI requires an SCI entity to have policies and procedures reasonably designed to ensure that their SCI systems operate in a manner that complies with the Exchange Act and rule and regulations thereunder and the entity's rules and governing documents, as applicable.<sup>192</sup>

#### i. Cross-Border Aspects of the SS&C Application

DTCC notes that the SS&C application indicates all matching service activities will be performed by SS&C Canada. DTCC states that SS&C's reliance on a foreign subsidiary to perform critical functions distinguishes the SS&C application from the circumstances underlying, and the regulatory impact of, Omgeo's current exempt status, and raises concerns for the safety and soundness of the national clearance and settlement system.<sup>193</sup>

On a general level, DTCC states that the Commission must satisfy itself of the following: (i) that the role of SS&C Canada would not weaken the regulatory framework applicable to SS&C's activities; and (ii) that the proposed framework in which SS&C is the regulated entity but SS&C Canada performs the actual matching function would not create a risk of disconnectedness or regulatory impairment with respect to the Commission's oversight of the national clearance and settlement system. In addition, DTCC states that the Commission should carefully scrutinize SS&C's undertakings with respect to operational, interoperability, and access matters, and its own ability to monitor the effects of SS&C's overall activities on the national system for clearance and settlement.<sup>194</sup>

<sup>185</sup> See SS&C letter at 4–5.

<sup>186</sup> See *Bradford Nat'l Clearing Corp. v. SEC*, 590 F.2d 1085, 1097 (D.C. Cir. 1978).

<sup>187</sup> See, e.g., *supra* notes 110–112 and accompanying text.

<sup>188</sup> See, e.g., *supra* note 65–66 and accompanying text.

<sup>189</sup> See DTCC April letter at 18.

<sup>190</sup> See BSTP May letter at 22.

<sup>191</sup> See SS&C letter at 4.

<sup>192</sup> See *id.* at 72437–38.

<sup>193</sup> See DTCC September letter at 3; DTCC May letter at 10.

<sup>194</sup> See DTCC May letter at 11.

On a more specific level, DTCC states several concerns relating to choice of law, jurisdiction, privacy of information, and timely access to records.<sup>195</sup> One concern is that the Commission 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.<sup>196</sup> DTCC also raises concerns with respect to conflicts between U.S. and Canadian privacy and securities laws and states that SS&C should be required to employ Connecticut counsel to offer its views on whether Connecticut law would interpret the Canadian privacy statutes to permit SS&C Canada to provide trade information to SS&C daily without concerns about being in violation of those statutes.<sup>197</sup> DTCC also states that SS&C needs to demonstrate that Canadian law applicable to the treatment and production of relevant data and client information would not impede or impair the production and provision of information required by regulators.<sup>198</sup>

Further, DTCC states that it understands that certain activities of

<sup>195</sup> See DTCC September letter at 3.

<sup>196</sup> See DTCC May letter at 12.

<sup>197</sup> See *id.* at 13. DTCC notes that the intercompany agreement between SS&C and SS&C Canada described in the SS&C application states that 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 it receives from SS&C Canada. DTCC further notes that the SS&C application states that SS&C has confirmed with external counsel that implementation of the intercompany agreement would not violate the Canadian privacy statutes, which specifically are the Canadian Personal Information Protection and Electronic Document Act and the Ontario Business Records Protection Act. DTCC also states that, according to the SS&C application, because the intercompany agreement is governed by Connecticut law and SS&C's external counsel are not qualified to practice in Connecticut, SS&C has only assumed that Connecticut courts would interpret the intercompany agreement the same as the applicable Canadian courts. DTCC explains that if SS&C's external counsel were incorrect in their assumption, 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, which would make it difficult for SS&C to oversee SS&C Canada's operations and may prevent the Commission from having ready access to trade records. See *id.*

<sup>198</sup> See *id.* DTCC says that, 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. In addition, DTCC says that SS&C should address whether other Canadian law could result in the 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 regulators. See *id.*

SS&C Canada are regulated by the Ontario Securities Commission ("OSC") and the Autorité des marchés financiers ("AMF"), and therefore SS&C should demonstrate that its reliance on SS&C Canada for the purposes contemplated in the SS&C application are not in conflict or inconsistent with existing requirements under applicable Canadian provincial securities laws.<sup>199</sup> DTCC also notes that SS&C's Form 10-K indicates that 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. DTCC states that the Commission should therefore require further due diligence by SS&C in this area.<sup>200</sup>

In addition, DTCC states that the SS&C application does not discuss any due diligence performed by SS&C with respect to SS&C Canada and SS&C Canada's capabilities in supporting SS&C or its abilities to discharge the services and obligations contemplated in the intercompany agreement.<sup>201</sup> In this regard, DTCC cites the IOSCO Principles on Outsourcing of Financial Services for Market Intermediaries (2005) as noting various risks related to cross-border outsourcing, for which financial institutions should conduct enhanced due diligence.<sup>202</sup> DTCC states that 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.<sup>203</sup>

Finally, DTCC notes that, pursuant to the SS&C application, SS&C Canada will operate the matching and ETC service on behalf of SS&C. DTCC believes

<sup>199</sup> See *id.*

<sup>200</sup> See *id.* at 14.

<sup>201</sup> See *id.* at 11.

<sup>202</sup> See *id.* at 11–12. DTCC notes, for instance, that when considering cross-border outsourcing, the outsourcing firm 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. See *id.* at 11. DTCC states that special outsourcing risks also include individual firm concentration risk and the associated exit strategy risk (e.g., over-reliance on the outsourced provider and a lack of relevant skills within SS&C itself), that concentration risk includes the potential sale of SS&C Canada by SS&C, and that access risk includes both the risk of timely access by SS&C and its auditors and regulators to data, records, or assets and conversely risk of access by SS&C Canada employees to SS&C client account data, records, and assets. See *id.* at 11–12.

<sup>203</sup> See *id.* at 12.

operational support may be provided to an exempt clearing agency by a non-U.S. affiliate but states that the SS&C application raises issues related to such support. DTCC states, for example, that pursuant to its application, the policies and procedures of SS&C Canada are overseen by its officers and directors and subject to control by SS&C Holdings. DTCC believes that SS&C Canada's policies and operations related to matching should be overseen by SS&C itself.<sup>204</sup>

DTCC notes, 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, as previously noted above.<sup>205</sup> Specifically, DTCC says that SS&C's plan to rely on SS&C Canada and other off-shore affiliates within the SS&C complex for operational performance of its matching and ETC service, along with other related services, raises concerns about SS&C's ability to appropriately protect its intellectual property and to maintain the privacy of users and confidentiality of data within its databases. DTCC says that the Commission should require extensive firewalls and other internal controls to prevent the misuse of clearing data obtained through SS&C's electronic confirmation and matching service, including the misuse of such data in providing other services within the SS&C complex.<sup>206</sup>

SS&C responds that the various assertions described above regarding the oversight of SS&C Canada by SS&C are unfounded and that SS&C has complete oversight of and visibility into the operations of SSCNet. SS&C further states that SS&C Canada and the SSCNet application fall under the scrutiny and review of a number of SS&C's U.S.-based executive committees providing direct oversight, including its Operating Committee, its Security Committee, and a U.S.-based internal audit department that reports to the U.S.-based Audit Committee. It also states that the SSCNet division reports to the U.S.-based Senior Vice President, Institutional and Investment Management; its development division reports to the U.S.-based Senior Vice President, Chief Development Officer; and its Information Technology Services division reports to the U.S.-based Chief Technology Officer. SS&C also notes that Omgeo operates in many

<sup>204</sup> See *id.* at 14.

<sup>205</sup> See *id.* at 3.

<sup>206</sup> See *id.* at 15.

jurisdictions outside the United States, including Canada, on the same basis.<sup>207</sup>

SS&C also responds that DTCC incorrectly asserts that some or all applications offered by SS&C are comingled with each other and that intellectual property, privacy of users, and confidentiality of data is lacking. SS&C states that it is a leading global data service provider that deploys information security policies, procedures, and controls that meet or exceed industry standards and that SS&C has never experienced a breach of security or privacy.

The Commission is satisfied that the cross-border aspects of the SS&C application have been sufficiently addressed without requiring denial or modification of the application. First, as described in Part II.B, the SS&C application includes a series of representations designed to ensure that the Commission can fulfill its regulatory obligations with respect to SS&C. SS&C is a U.S. person incorporated in Delaware with a Connecticut business registration that dates back to 1996. According to its application, SS&C will enter into an intercompany agreement with SS&C Canada governing the availability of information related to matching services. As a subsidiary of SS&C, SS&C Canada will be subject to the control of its parent company. Further, as described in the SS&C letter, SS&C's executive committees such as the Operating Committee and the Security Committee provide direct oversight of SSCNet.<sup>208</sup> The Commission believes that control of SS&C Canada by a U.S. parent and the contractual arrangements outlined in SS&C's application are sufficient to allow the Commission to exercise oversight of SS&C consistent with the Exchange Act.

Second, the Commission has entered into a memorandum of understanding concerning consultation, cooperation, and the exchange of information related to the supervision of cross-border regulated entities with the AMF and the OSC. The MOU notes that it is intended to express each authority's willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of investor protection, fostering the integrity of and maintaining confidence in the capital markets, and reducing systemic risk.<sup>209</sup>

More generally, as previously discussed, the Commission is familiar with arrangements whereby a registered entity contracts out functions to other entities that may or may not be directly regulated by the Commission, and may or may not be located within the U.S. In the absence of a concrete obstacle—for example, a specific foreign statute blocking access currently in effect, or a history of instances of non-compliance by an entity—DTCC's arguments about cross-border risks depend on purely speculative concerns. For example, such prospects are not grounded in a particular fact pattern identified by DTCC or other commenters, and do not demonstrate that SS&C is hindered in its ability to comply with the conditions below.

Finally, we note that as with the Omgeo order, this order includes provisions for modification if necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.<sup>210</sup> The Commission may also limit, suspend, or revoke this exemption if it finds that SS&C has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.<sup>211</sup> Thus, should concerns about SS&C arise in the future, the Commission retains sufficient tools to ensure that SS&C acts consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

## 6. Governance of BSTP

DTCC states that the composition of BSTP's board of directors as described in the BSTP application raises concerns about the overlap between BSTP and its for-profit parent BLP because only one of the board's four members is an industry representative, which could compromise BSTP's independence from BLP and the extent to which BSTP is capable of playing a neutral role as an industry utility.<sup>212</sup>

According to BSTP, while BSTP's parent, BLP, will provide BSTP with software, hardware, administrative, operational, and other support services, BSTP has established a separate board of directors to oversee its operations and will hold ultimate legal responsibility

over its operations.<sup>213</sup> BSTP states that its governance arrangements are designed to help ensure that BSTP will be operated in a manner that is consistent with the public interest and the protection of investors by establishing specific governance principles and fitness standards for qualification of each member of the board of directors.<sup>214</sup> BSTP also states that it intends to establish an advisory board consisting of industry members and users of BSTP, including representatives from broker-dealers, investment managers, and custodians, and that it intends to continue engaging with the securities industry and market participants as a further means of ensuring that BSTP operates in a manner that is consistent with the public interest and the protection of investors.<sup>215</sup>

The Commission is mindful of DTCC's concerns but disagrees. As BSTP notes, DTCC provides no support from the Omgeo order that matching service providers be non-profit entities or that for-profit entities be subject to special controls by virtue of that status.<sup>216</sup> Omgeo itself was 49.9-percent owned by a for-profit entity at its formation.<sup>217</sup> The Commission recognizes that, as originally conceived, five of nine voting managers on Omgeo's board of managers were industry representatives,<sup>218</sup> which reflects a higher ratio of industry representatives than BSTP's board of directors. The Commission also notes that BSTP has represented that it will make efforts to incorporate industry representatives into BSTP's decision-making process. Specifically, the Commission believes that the advisory board would provide useful industry input into the decisions made by BSTP's board of directors. In addition, the Commission believes that BSTP's proposed industry working group will help ensure that the users of BSTP's matching service will have significant input into BSTP's service offerings and operations. Further, as with the Omgeo order and as noted above with respect to SS&C, this order includes provisions for modification if necessary or appropriate in the public interest, the protection of investors, or

<sup>213</sup> See BSTP May letter at 20.

<sup>214</sup> See *id.*

<sup>215</sup> See *id.* at 20–21. Specifically, BSTP stated that, in designing BSTP's matching service, BSTP met with over 30 investment managers, created and obtained input from two working groups (one comprised of representatives from seven industry-leading custodians and one comprised of representatives from fifteen prominent broker-dealers). See *id.* at 20 n.62.

<sup>216</sup> See *id.* at 19.

<sup>217</sup> See Omgeo order, *supra* note 37, at 20495.

<sup>218</sup> See *id.*

<sup>207</sup> See SS&C letter at 4.

<sup>208</sup> See SS&C letter at 4.

<sup>209</sup> See Memorandum of Understanding Concerning Consultation, Cooperation and the Exchange of Information Related to the Supervision of Cross-Border Regulated Entities, Sept. 2011,

available at [http://www.sec.gov/about/offices/oia/oia\\_bilateral/canada\\_regcoop.pdf](http://www.sec.gov/about/offices/oia/oia_bilateral/canada_regcoop.pdf).

<sup>210</sup> See *infra* Parts IV.A.3 (for BSTP) and IV.B.3 (for SS&C).

<sup>211</sup> See *id.*

<sup>212</sup> See DTCC April letter at 17.

otherwise in furtherance of the purposes of the Exchange Act. The Commission may also limit, suspend, or revoke this exemption if it finds that BSTP has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Thus, should concerns about BSTP arise in the future, the Commission retains sufficient tools to ensure that BSTP acts consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

DTCC additionally states that BSTP should be subject to stricter corporate governance controls similar to those imposed on Omgeo, and that BSTP's board should be required to maintain fair representation of its ETC and matching service customers.<sup>219</sup> The Commission disagrees and continues to believe that an entity such as BSTP that limits its clearing agency functions only to providing matching services need not be subject to the full panoply of clearing agency regulation.<sup>220</sup> This includes the requirement that the rules of the clearing agency assure a fair representation of its shareholders and participants in the selection of its directors.<sup>221</sup>

In response to DTCC's suggestion that Omgeo is subject to heightened governance requirements, the Commission believes it is appropriate to highlight several reasons for the various legal and other regulatory requirements to which the entities within the DTCC complex are subject, as follows. First, Omgeo is an exempt clearing agency subject to the terms and conditions of the Omgeo order. Second, DTC, by contrast, is a registered clearing agency subject to the full panoply of clearing agency regulation. Accordingly, when the Commission approved transfer of the TradeSuite ID system from DTC to Omgeo, it highlighted the statutory requirement that DTC provide equitable allocation of dues, fees, and other charges among its participants and refrain from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of Section 17A of the Exchange Act.<sup>222</sup> These requirements are obligations of DTC, not Omgeo, and the Commission finds no basis for

imposing obligations on BSTP and SS&C that have not been imposed on Omgeo.

#### 7. Interoperability Among Matching Service Providers

##### i. Sufficiency of the Interoperability Conditions

Several commenters expressed views on the need for interoperability to ensure that a market structure with multiple matching service providers can facilitate the anticipated benefits described above. Specifically, four commenters emphasized the importance of facilitating interoperability between matching services. Two commenters stated that interoperability is vital to ensure that industry participants may choose their service providers free of any dependency and to support use by the full spectrum of potential users.<sup>223</sup> Another similarly stated that interoperability must be mandatory given the number of institutions active in this space while also noting that it may result in increased implementation costs to current and future matching services.<sup>224</sup> A fourth stated that, in its experience connecting to securities and derivatives clearing and settlement services globally, fair and open approaches have been valuable in encouraging continued investments by market participants and vendors, reinforcing the cycle of innovation and meaningful cost reduction in global markets.<sup>225</sup> Two commenters further stated that the conditions proposed in the BSTP notice, which are the same as those proposed in the SS&C notice (and substantially the same as those contained in the Omgeo order),<sup>226</sup> were appropriate and adequate to facilitate interoperability and regulatory oversight.<sup>227</sup>

The Commission agrees that interoperability among matching service providers is critical to facilitating the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. In 2001, the Commission issued the Omgeo order mindful of concerns about interoperability. Accordingly, the Omgeo order included interoperability conditions designed to address concerns that, as the sole provider of matching services, Omgeo could improperly gain a monopoly in post-trade processing.<sup>228</sup> The interoperability conditions were

designed to address these competition concerns and help ensure that Omgeo's exemption was consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.<sup>229</sup> In particular, the Commission notes that the conditions set forth in the Omgeo order help facilitate the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions, ensure choice among service providers, reduce costs to the users of matching service providers, and facilitate the entry of new matching service providers that might encourage innovation in the provision of matching services.

The Commission is satisfied that the BSTP and SS&C applications, which include substantially the same interoperability provisions as those set forth in the Omgeo order, will continue to facilitate these same goals. The Commission notes that both BSTP and SS&C expressed support for interoperability in their comment letters,<sup>230</sup> and that BSTP and SS&C also state that their applications will promote linkages and standardization, consistent with Section 17A(a)(1)(D) of the Exchange Act.<sup>231</sup> Specifically, SS&C states that it has a long history of linking with upstream accounting and order management systems used by institutional customers, service bureaus used by broker-dealers, and direct linkages into custodian platforms for those banks directly on its platform. It has also created interfaces with services that are seen as competitors such as SWIFT, SCRL, FX matching platforms, and vendors offering local matching engines. SS&C states it was also a charter member of ISITC North America (then the Financial Models Company) and that the promotion of standards and interoperability has long been a cornerstone of the company's philosophy.<sup>232</sup> Similarly, BSTP states that it will use industry standard communication protocols (e.g., TCP/IP, SNA) and message and file transfer protocols (e.g., FIX, WebSphere MQ), as well as support the FIX global post-trade processing guidelines. BSTP states that, as a result, it will be able to accept a market participant's preferred means of

<sup>229</sup> See *id.* at 20498.

<sup>230</sup> See BSTP May letter at 4 (citing interoperability as one way in which the BSTP application promotes standards and linkages consistent with Section 17A of the Exchange Act); SS&C letter at 3 (stating that the promotion of uniform standards and interoperability have long been cornerstones of SS&C's company philosophy).

<sup>231</sup> See BSTP May letter at 4; SS&C letter at 2–3; see also 15 U.S.C. 78q–1(a)(1)(D).

<sup>232</sup> See SS&C letter at 3.

<sup>219</sup> See DTCC April letter at 17; Cornerstone Report at 29.

<sup>220</sup> See Matching Release, *supra* note 13, at 17947.

<sup>221</sup> See 15 U.S.C. 78q–1(b)(3)(C).

<sup>222</sup> See Omgeo order, *supra* note 37, at 20498 n.39.

<sup>223</sup> See Citi at 2; Fidessa.

<sup>224</sup> See Northern Trust.

<sup>225</sup> See Traiana.

<sup>226</sup> See generally Omgeo order, *supra* note 37.

<sup>227</sup> See SIFMA AMF at 1–3; Northern Trust.

<sup>228</sup> See Omgeo order, *supra* note 37, at 20496–97, 20498.

sending and receiving data, thereby minimizing the development cost needed to use BSTP's matching service.<sup>233</sup>

## ii. Timeframes for Building and Operating Interfaces

DTCC states that the timeframes for building and operating interfaces, as set forth in the Omgeo order and included for BSTP and SS&C as part of this order, do not take into account the amount and complexity of the work that would need to be done to accommodate BSTP and/or SS&C's entry into the market structure for matching services and likely would be insufficient to enable the operational accuracy and reliability for the proper operation of an interface.<sup>234</sup> DTCC states that it would need to analyze requirements for and provide interoperability specifications to BSTP and/or SS&C to facilitate the formation of an interface, but such specifications cannot be determined until a functioning interface has been designed, developed, and tested.<sup>235</sup> DTCC further states that because functionality related to central matching interoperability does not currently exist within Omgeo or elsewhere within DTCC, DTCC would need to analyze its existing systems to ensure those systems, processes, and workflows would not be compromised by connecting to BSTP and/or SS&C.<sup>236</sup> DTCC indicates that the functionality to be considered would include, among others, (i) matching rules, (ii) reconciliation routines, (iii) exception management, (iv) control number assignments, and (v) account matter file requirements.<sup>237</sup>

DTCC further states that because it does not know the nature of the BSTP and/or SS&C systems, if any, and whether or on what terms BSTP and/or SS&C might be eligible for an exemption from the Commission, it would be unreasonable to expect DTCC to devote resources to such issues until it has sufficient certainty about the nature of the interfaces that would need to be developed, if any.<sup>238</sup> DTCC also notes that additional time would also be needed if multiple matching service providers are simultaneously developing interfaces with each other, adding another layer of complexity that

would need to be addressed in a risk-mitigating manner.<sup>239</sup>

BSTP responds that there is no justification to delay interoperability of Omgeo with other matching services. BSTP notes that, in the fourteen years since the Commission issued the Omgeo order, neither DTCC nor Omgeo has raised any concerns regarding the terms of that exemption. BSTP notes that the need for DTCC and its subsidiaries to devote resources to comply with the conditions in the Omgeo order is not a valid reason to modify the provisions found in the Omgeo order.<sup>240</sup> Further, BSTP notes that technological improvements since 2001 have increased the ease of establishing safe and secure communication links, suggesting that technological developments do not support modifying or extending the timeframes in the Omgeo order.<sup>241</sup>

SS&C acknowledges that there could be other appropriate timeframes for building and operating interfaces, and SS&C also states that the interoperability conditions contained within the Omgeo order already provide the means for extending those timeframes. SS&C further states that the conditions proposed in the SS&C notice (the same as those contained in the Omgeo order) provide the appropriate mechanisms to allow parties to extend the timeframes, and accordingly SS&C sees no issue with the conditions proposed in the SS&C notice as they relate to timeframes for building and operating interfaces.<sup>242</sup> The Commission agrees with SS&C's observations inasmuch as interoperability condition (6), which appears in the Omgeo order and is applied to BSTP and SS&C below,<sup>243</sup> gives each matching service provider the flexibility to negotiate and determine appropriate timeframes beyond what the orders prescribe, as well as specified channels for appropriate resolution of disputes in certain instances.

Further, the Commission is mindful that Omgeo, BSTP, and SS&C will need time to develop the appropriate interfaces to ensure that their systems are interoperable consistent with the conditions set forth in the Omgeo order and this order below. The Commission agrees with SS&C that, while other timeframes may also be appropriate to build and operate interfaces, the

interoperability conditions provide a mechanism for extending time on which the parties must agree, mitigating the concerns raised by DTCC. Indeed, the conditions help ensure that no one party can unnecessarily delay the process of building and operating interfaces for interoperability. In that regard, to the extent that DTCC was hesitant to devote resources to building and operating interfaces with other matching service providers because of questions as to whether and on what terms BSTP and SS&C would be eligible for an exemption to provide matching services, those questions are fully resolved in this order.

## 8. Application of Regulation SCI to Exempt Clearing Agencies

DTCC requests that the Commission clarify whether and to what extent Regulation SCI has superseded reporting requirements for system outages and other events in the Omgeo order. Specifically, DTCC notes that Rule 1003(a) of Regulation SCI requires SCI entities to report material system changes, including submitting to the Commission a report within thirty calendar days after the end of each calendar quarter describing completed, ongoing, and planned material changes to SCI systems and the security of indirect SCI systems.<sup>244</sup> DTCC requests clarification of the relationship between this requirement and the requirement in operational condition (4) of the Omgeo order requiring Omgeo to provide twenty-days advance notice of material system changes to the Commission.<sup>245</sup>

On November 19, 2014, the Commission adopted Regulation SCI, which requires SCI entities to comply with requirements for policies and procedures with respect to their automated systems that support the performance of their regulated activities.<sup>246</sup> Regulation SCI became effective on February 3, 2015, and, with some exceptions, the compliance date

<sup>244</sup> Rule 1003(a)(1) requires an SCI entity to provide quarterly reports to the Commission, describing completed, ongoing, and planned material systems changes to its SCI systems and the security of indirect SCI systems, during the prior, current, and subsequent calendar quarters. Rule 1003(a)(1) also requires an SCI entity to establish reasonable written criteria for identifying a change to its SCI systems and the security of its indirect SCI systems as material.

In addition Rule 1003(a)(2) requires an SCI entity to promptly submit a supplemental report to notify the Commission of a material error in or material omission from a previously submitted report. See 17 CFR 242.1003.

<sup>245</sup> See *id.* at 17–18 & n.43; DTCC April letter at 22 & n.69.

<sup>246</sup> See Regulation SCI, *supra* note 70, at 72271.

<sup>233</sup> See BSTP May letter at 4.

<sup>234</sup> See DTCC September letter at 2; DTCC June letter at 4; DTCC April letter at 15.

<sup>235</sup> See DTCC April letter at 15.

<sup>236</sup> See *id.* at 15–16.

<sup>237</sup> See *id.* at 16.

<sup>238</sup> See DTCC June letter at 4; DTCC May letter at 10; DTCC April letter at 15–16.

<sup>239</sup> See DTCC May letter at 10.

<sup>240</sup> See BSTP May letter at 17–18; BSTP August letter at 6.

<sup>241</sup> See BSTP May letter at 11.

<sup>242</sup> See SS&C letter at 4.

<sup>243</sup> See Omgeo order, *supra* note 37, at 20499; *infra* Parts IV.A.2.ii (for BSTP) and IV.B.2.ii (for SS&C).

was November 3, 2015.<sup>247</sup> In relevant part, Rule 1000 of Regulation SCI defines an SCI entity to include, among other things, a registered clearing agency and an exempt clearing agency subject to ARP.<sup>248</sup> In particular, the term “exempt clearing agency subject to ARP” includes an entity that has received from the Commission an exemption from registration as a clearing agency under Section 17A of the Exchange Act, and whose exemption contains conditions that relate to the Commission’s ARP Policies, or any Commission regulation that supersedes or replaces such policies.<sup>249</sup> As set forth below, operational condition (1) to this order requires an audit report that addresses all areas discussed in ARP.<sup>250</sup> Accordingly, BSTP and SS&C are each an exempt clearing agency subject to Regulation SCI. Because the Omgeo order contains the same condition,<sup>251</sup> it also is an exempt clearing agency subject to ARP and therefore an SCI entity subject to Regulation SCI.

In response to DTCC’s comment, the Commission notes that operational condition (4) was not a component of the ARP policy statements and therefore has not been superseded by Regulation SCI. Operational condition (4) ensures that the Commission receives 20-days advance notice of systems changes, which the Commission believes is necessary for matching service providers in light of the potential for linkages between matching service providers and the corresponding need for matching service providers to maintain interoperability pursuant to the interoperability conditions of the Omgeo order and this order.<sup>252</sup> Because the ARP policy statements did not explicitly contemplate advance notice of material systems changes, the requirement in operational condition (4) has not been superseded. In light of the similarity between the requirements in operational condition (4) and Rule 1003(a) of Regulation SCI, however, if any matching service provider believes that operational condition (4) should be modified or removed, the proper mechanism for modifying the condition is to file an amendment to the matching service provider’s Form CA–1. The Commission notes that operational

condition (4) is applied to both BSTP and SS&C below.<sup>253</sup>

In addition, because Regulation SCI has superseded the requirements in ARP, the Commission is providing clarification as to the requirements in operational conditions (1) and (2), which appear in the Omgeo order and are applied to BSTP and SS&C below.<sup>254</sup> Operational condition (1) states that before beginning the commercial operation of its matching service, an exempt clearing agency shall provide the Commission with an audit report that addresses all the areas discussed in the Commission’s ARP. Operational condition (2) states, in relevant part, that an exempt clearing agency shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in ARP and that an exempt clearing agency shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel. The Commission finds that Rule 1003(b) of Regulation SCI has superseded these requirements.<sup>255</sup> Accordingly, pursuant to operational condition (1), BSTP and SS&C are required to submit an annual SCI review prior to beginning the commercial operation of their matching services. Pursuant to operational condition (2), Omgeo, BSTP, and SS&C, as SCI entities, are each required to submit an annual SCI review each calendar year consistent with Regulation SCI.

<sup>253</sup> See *infra* Parts IV.A.2.i (for BSTP) and IV.B.2.i (for SS&C).

<sup>254</sup> See *id.*; Omgeo order, *supra* note 37, at 20498.

<sup>255</sup> See Regulation SCI, *supra* note 70, at 72439. Rule 1003(b)(1) of Regulation SCI requires an SCI entity to conduct an “SCI review” of the SCI entity’s compliance with Regulation SCI not less than once per calendar year. An SCI review must contain (i) a risk assessment with respect to an SCI entity’s SCI systems and indirect SCI systems, and (ii) an assessment of internal control design and effectiveness of such systems to include logical and physical security controls, development processes, and information technology governance, consistent with industry standards.

Pursuant to Rule 1003(b)(2), an SCI entity must submit a report of the SCI review to senior management of the SCI entity for review no more than 30 calendar days after completion of such a review. Moreover, under Rule 1003(b)(3), an SCI entity must submit to the Commission, and to the board of directors of the SCI entity or the equivalent of such board, a report of the SCI review and any response by senior management within 60 calendar days after its submission to senior management.

## IV. Evaluation of the Applications

### A. BSTP

In evaluating the BSTP application, the Commission has been guided by the requirements of Section 17A of the Exchange Act. Among other factors, the Commission has considered BSTP’s risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of Section 17A. The Commission has also carefully considered the comments received in response to the BSTP application, as discussed above. The Commission believes that the BSTP application supports the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions.

Accordingly, for the reasons discussed throughout this order, the Commission finds that the BSTP application, including the terms and conditions set forth in the application and reproduced below, is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act, and that BSTP is so organized and has the capacity to be able to facilitate prompt and accurate matching services.

Below are the terms and conditions of BSTP’s exemption.

#### 1. Scope of Exemption

This order grants BSTP an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide an ETC and matching service. The exemption is granted subject to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of Section 17A.<sup>256</sup> This order and the conditions and limitations contained in it are consistent with the Commission’s statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

#### 2. Conditions of Exemption

The Commission is including specific conditions to this exemption designed to facilitate the establishment of a national system for the prompt and

<sup>256</sup> The Commission is granting BSTP an exemption from clearing agency registration, so it will not be considered a self-regulatory organization under Section 3(a)(26) and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act. The Commission is also not imposing a rule change filing requirement as a condition of the exemption.

<sup>247</sup> See *id.* at 72366.

<sup>248</sup> See Regulation SCI, *supra* note 70, at 72437.

<sup>249</sup> See *id.* at 72271.

<sup>250</sup> See *infra* Part IV.A.2.i (for BSTP) and Part IV.B.2.i (for SS&C).

<sup>251</sup> See Omgeo order, *supra* note 37, at 20498.

<sup>252</sup> See *id.*



accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The conditions are designed to promote competition, transparency, consistency, and interoperability in the market for matching services.

#### i. Operational Conditions

(1) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies ("ARP").<sup>257</sup>

(2) BSTP shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARP. BSTP shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

(3) BSTP shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, BSTP shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes, BSTP shall report the systems outage within a reasonable time after the outage has been resolved.

(4) BSTP shall provide the Commission with 20 business days advance notice of any material changes that BSTP makes to the matching service or ETC service. These changes will not require the Commission's approval before they are implemented.

(5) BSTP shall respond and require its service providers (including BLP) to respond to requests from the Commission for additional information relating to the matching service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and the ETC service. The requests for

information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions in any exemptive order issued by the Commission with respect to BSTP's matching service and the ETC service.

(6) BSTP shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC service.

(7) BSTP shall preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. BSTP shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) BSTP shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted in an exemption issued by the Commission.

(9) Before beginning the commercial operation of its matching service, BSTP shall provide the Commission with copies of the service agreement between BLP and BSTP and shall notify the Commission of any material changes to the service agreement.

#### ii. Interoperability Conditions

(1) BSTP shall develop, in a timely and efficient manner, fair and reasonable linkages between BSTP's matching service and other matching services that are registered with the Commission or that receive or have received from the Commission an exemption from clearing agency registration that, at a minimum, allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate effective interfaces with other matching services.

(2) BSTP shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to BSTP ("end-user representative") to gain a single point of access to BSTP and other matching services. Such interfaces must link with each other

matching service so that an end-user client of one matching service can communicate with all end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to BSTP is necessary to develop, build, and operate links or interfaces to BSTP's matching service, as described in these conditions, BSTP shall license such intellectual property to other matching services seeking linkage to BSTP on fair and reasonable terms for use in such links or interfaces.

(4) BSTP shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,<sup>258</sup> which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, BSTP will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from BSTP's matching service.

(5) BSTP shall support industry standards in each of the following categories: communication protocols (e.g., TCP/IP, SNA); message and file transfer protocols and software (e.g., FIX, WebSphere MQ, SWIFT); message format standards (e.g., FIX); and message languages and metadata (e.g., XML). However, BSTP need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, BSTP shall make publicly known those standards supported by BSTP's matching service. To the extent that BSTP decides to support other industry standards, including new and modified standards, BSTP shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with BSTP's system shall be performed by BSTP without any significant delay or service degradation of the linked parties' services.

(6) BSTP shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, BSTP shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services ("interface"). BSTP shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such

<sup>257</sup> See Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I"), and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II"); see also Memorandum from the Securities and Exchange Commission Division of Market Regulation to SROs and NASDAQ (June 1, 2001) ("Guidance for Systems Outages and System Change Notifications"), available at <http://www.sec.gov/divisions/marketreg/sro-guidance-for-systems-outage-06-01-2001.pdf>.

<sup>258</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,<sup>259</sup> BSTP and the requesting other matching service shall conclude negotiations and reach a binding agreement to develop and build an interface within 120 calendar days of BSTP's receipt of the written request. This 120-day period may be extended upon the written agreement of both BSTP and the other matching service engaged in negotiations. For each other matching service with whom BSTP reaches a binding agreement to develop and build an interface, BSTP shall begin operating such interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service. For each interface and within the same time BSTP must negotiate and begin operating each interface, BSTP and the other matching service shall agree to "commercial rules" for coordinating the provision of matching services through their respective interfaces, including commercial rules: (A) Allocating responsibility for performing matching services; and (B) allocating liability for service failures. BSTP shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take input from such participants into account in agreeing to commercial rules. At a minimum, each interface shall enable BSTP and the other matching service to transfer between them all trade and account information necessary to fulfill their respective matching responsibilities as set forth in their commercial rules ("trade and account information"). Absent an adequate business or technological justification, BSTP shall develop and operate each interface without imposing conditions that negatively impact the other matching service's ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the other matching service's ability to compete effectively against BSTP.

(7) In order to facilitate fair and reasonable linkages between BSTP and other matching services, BSTP shall publish or make available to any other matching service the specifications for

any interface and its corresponding commercial rules that are in operation within 20 days of receiving a request for such specifications and commercial rules. Such specifications shall contain all the information necessary to enable any other matching services not already linked to BSTP through an interface to establish a linkage with BSTP through an interface or a substantially similar interface. BSTP shall link to any other matching service, if the other matching service so opts, through an interface substantially similar to any interface and its corresponding commercial rules that BSTP is currently operating. BSTP shall begin operating such substantially similar interface and commercial rules with the other matching service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both BSTP and the other matching service that plans to use that link.

(8) BSTP and respective other matching services shall bear their own costs of building and maintaining an interface, unless otherwise negotiated by the parties.

(9) BSTP shall provide to all other matching services and end-user representatives that maintain linkages with BSTP sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to BSTP through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

(10) BSTP and each other matching service shall negotiate fair and reasonable charges and terms of payment for the use of their interface with respect to the sharing of trade and account information ("interface charges"). In any fee schedule adopted under conditions A.2.ii(10), A.2.ii(11), or A.2.ii(12) herein, BSTP's interface charges shall be equal to the interface charges of the respective other matching service.

(11) If BSTP and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, BSTP and the other matching service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel's establishment of a fee schedule shall be binding on BSTP and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or

BSTP and the other matching service mutually agree to renegotiate.

(12)(A) The following parameters shall be considered in determining fair and reasonable interface charges: (i) The variable cost incurred for forwarding trade and account information to other matching services; (ii) the average cost associated with the development of links to end-users and end-user representatives; and (iii) BSTP's interface charges to other matching services. (B) The following factors shall not be considered in determining fair and reasonable interface charges: (i) The respective cost incurred by BSTP or the other matching service in creating and maintaining interfaces; (ii) the value that BSTP or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to BSTP that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading BSTP's matching service; or (v) the cost of building, maintaining, or upgrading value added services to BSTP's matching service. (C) In any event, the interface charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with BSTP by other matching services.

(13) BSTP shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than BSTP charges its customers for use of its matching service when all counterparties are customers of BSTP. BSTP shall not charge customers any additional amount for forwarding to or receiving trade and account information from other matching services called for under applicable commercial rules.

(14) BSTP shall maintain its quality, capacity, and service levels in the interfaces with other matching services ("matching services linkages") without bias in performance relative to similar transactions processed completely within BSTP's service. BSTP shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade-by-trade basis for (A) completing its matching service when all counterparties are customers of BSTP; (B) completing its matching service when one or more counterparties are customers of other matching services; or (C) forwarding trade information to other matching services called for under applicable commercial rules. BSTP shall retain the data and records for a period not less than six years. Sufficient information

<sup>259</sup> The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this paragraph.

shall be maintained to demonstrate that the requirements of condition A.2.ii(15) below are being met. BSTP and its service providers shall provide the Commission with reports regarding the time it takes BSTP to process trades and forward information under various circumstances within thirty days of the Commission's request for such reports. However, BSTP shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to BSTP.

(15) BSTP shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if BSTP receives trade and account information that BSTP is required to forward to other matching services under applicable commercial rules ("pass-through information") prior to receiving trade and account information from BSTP's customers necessary to provide matching services for a trade in which all parties are customers of BSTP ("intra-hub information"), BSTP shall forward the pass-through information to the designated other matching service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, BSTP shall process the intra-hub information before forwarding the pass-through information.

(16) BSTP shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or transmitting trade and account information to and receiving authorization responses from settlement agents on fair and reasonable terms to other matching services and end-user representatives. Such access shall permit other matching services and end-user representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents for use in their own matching services or end-user representatives' services. The links necessary for other matching services and end-user representatives to access BSTP's databases, systems or methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents will comply with conditions A.2.ii(3), A.2.ii(5), A.2.ii(9), A.2.ii(14) and A.2.ii(15) above.

(17) For the first five years from the date of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall provide the Commission with reports every six months sufficient to document BSTP's adherence to the obligations relating to interfaces set forth in conditions A.2.ii(6) through A.2.ii(13) and A.2.ii(16) above. BSTP shall incorporate into such reports information including but not limited to: (A) All other matching services linked to BSTP; (B) the time, effort, and cost required to establish each link between BSTP and other matching services; (C) any proposed links between BSTP and other matching services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for interface charges; (E) any written complaint received from other matching services relating to its established or proposed links with BSTP; and (F) if BSTP failed to adhere to any of the obligations relating to interfaces set forth in conditions A.2.ii(6) through A.2.ii(13) and A.2.ii(16) above, its explanation for such failure. The Commission shall treat information submitted in accordance with this condition as confidential, non-public information, subject to the provisions of applicable law. If any other matching service seeks to link with BSTP more than five years after issuance of an exemptive order issued by the Commission with respect to BSTP's matching service, BSTP shall notify the Commission of the other matching service's request to link with BSTP within ten days of receiving such request. In addition, BSTP shall provide reports to the Commission in accordance with this paragraph commencing six months after the initial request for linkage is made until one year after BSTP and the other matching service begin operating their interface. The Commission reserves the right to request reports from BSTP at any time. BSTP shall provide the Commission with such updated reports within thirty days of the Commission's request.

(18) BSTP shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by BSTP for any end-user representative.

### 3. Modifications to Exemption

BSTP is required to file with the Commission amendments to its application for exemption on Form CA-1 if it makes any material change affecting its ETC or matching service—as summarized in this order, in its Form CA-1 dated March 15, 2013, or in any

subsequently filed amendments to its Form CA-1—that would make such previously provided information incomplete or inaccurate.

In addition, the Commission may modify by order the terms, scope, or conditions of BSTP's exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that BSTP has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

### B. SS&C

In evaluating the SS&C application, the Commission has been guided by the requirements of Section 17A of the Exchange Act. Among other factors, the Commission has considered SS&C's risk management procedures, operational capacity and safeguards, organizational structure, and ability to operate in a manner that will satisfy the fundamental goals of Section 17A. The Commission has also carefully considered the comments received in response to the SS&C application, as discussed above. The Commission believes that the SS&C application supports the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions.

Accordingly, for the reasons discussed throughout this order, the Commission finds that the SS&C application, including the terms and conditions set forth in the application and reproduced below, is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act, and that SS&C is so organized and has the capacity to be able to facilitate prompt and accurate matching services.

Below are the terms and conditions of SS&C's exemption.

#### 1. Scope of Exemption

This order grants SS&C an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide an ETC and matching service. The exemption is granted subject to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of Section

17A.<sup>260</sup> This order and the conditions and limitations contained in it are consistent with the Commission's statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

## 2. Conditions of Exemption

The Commission is including specific conditions to this exemption designed to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions and the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The conditions are designed to promote competition, transparency, consistency, and interoperability in the market for matching services.

### i. Operational Conditions

(1) Before beginning the commercial operation of its matching service, SS&C shall provide the Commission with an audit report that addresses all the areas discussed in the Commission's Automation Review Policies ("ARP").<sup>261</sup>

(2) SS&C shall provide the Commission with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARP. SS&C shall provide the Commission (beginning in its first year of operation) with annual audited financial statements prepared by competent independent audit personnel.

(3) SS&C shall report all significant systems outages to the Commission. If it appears that the outage may extend for thirty minutes or longer, SS&C shall report the systems outage immediately. If it appears that the outage will be resolved in less than thirty minutes,

SS&C shall report the systems outage within a reasonable time after the outage has been resolved.

(4) SS&C shall provide the Commission with 20 business days advance notice of any material changes that SS&C makes to the matching service or ETC service. These changes will not require the Commission's approval before they are implemented.

(5) SS&C shall respond and require its service providers to respond to requests from the Commission for additional information relating to the matching service and ETC service, and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service and the ETC service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's and the ETC service's operations and compliance with the federal securities laws and the terms and conditions in any exemptive order issued by the Commission with respect to SS&C's matching service and the ETC service.

(6) SS&C shall supply the Commission or its designee with periodic reports regarding the affirmation rates for institutional transactions effected by institutional investors that utilize its matching service and ETC service.

(7) SS&C shall preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, service agreements, reports regarding affirmation rates that are sent to the Commission or its designee, and any complaint received from a customer, all of which pertain to the operation of its matching service and ETC service. SS&C shall retain these records for a period of not less than five years, the first two years in an easily accessible place.

(8) SS&C shall not perform any clearing agency function (such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market) other than as permitted in an exemption issued by the Commission.

(9) Before beginning the commercial operation of its matching service, SS&C shall provide the Commission with copies of the intercompany agreement between SS&C and SS&C Canada and shall notify the Commission of any material changes to the service agreement.

### ii. Interoperability Conditions

(1) SS&C shall develop, in a timely and efficient manner, fair and reasonable linkages between SS&C's matching service and other matching services that are registered with the Commission or that receive or have received from the Commission an exemption from clearing agency registration that, at a minimum, allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate effective interfaces with other matching services.

(2) SS&C shall devise and develop interfaces with other matching services that enable end-user clients or any service that represents end-user clients to SS&C ("end-user representative") to gain a single point of access to SS&C and other matching services. Such interfaces must link with each other matching service so that an end-user client of one matching service can communicate with all end-user clients of all matching services, regardless of which matching service completes trade matching prior to settlement.

(3) If any intellectual property proprietary to SS&C is necessary to develop, build, and operate links or interfaces to SS&C's matching service, as described in these conditions, SS&C shall license such intellectual property to other matching services seeking linkage to SS&C on fair and reasonable terms for use in such links or interfaces.

(4) SS&C shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act,<sup>262</sup> which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions. In particular, SS&C will not engage in activities that would prevent any other matching service from operating a matching service that it has developed independently from SS&C's matching service.

(5) SS&C shall support industry standards in each of the following categories: communication protocols (*e.g.*, TCP/IP, SNA); message and file transfer protocols and software (*e.g.*, FIX, WebSphere MQ, SWIFT); message format standards (*e.g.*, FIX); and message languages and metadata (*e.g.*, XML). However, SS&C need not support all existing industry standards or those listed above by means of example. Within three months of regulatory approval, SS&C shall make publicly known those standards supported by SS&C's matching service. To the extent that SS&C decides to support other

<sup>260</sup> The Commission is granting SS&C an exemption from clearing agency registration, so it will not be considered a self-regulatory organization under Section 3(a)(26) and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act. The Commission is also not imposing a rule change filing requirement as a condition of the exemption.

<sup>261</sup> See Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) ("ARP I"), and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991) ("ARP II"); see also Memorandum from the Securities and Exchange Commission Division of Market Regulation to SROs and NASDAQ (June 1, 2001) ("Guidance for Systems Outages and System Change Notifications"), available at <http://www.sec.gov/divisions/marketreg/sro-guidance-for-systems-outage-06-01-2001.pdf>.

<sup>262</sup> 15 U.S.C. 78q-1(a)(2)(A)(ii).

industry standards, including new and modified standards, SS&C shall make these standards publicly known upon making such decision or within three months of updating its system to support such new standards, whichever is sooner. Any translation to/from these published standards necessary to communicate with SS&C's system shall be performed by SS&C without any significant delay or service degradation of the linked parties' services.

(6) SS&C shall make all reasonable efforts to link with each other matching service in a timely and efficient manner, as specified below. Upon written request, SS&C shall negotiate with each other matching service to develop and build an interface that allows the two to link matching services ("interface"). SS&C shall involve neutral industry participants in all negotiations to build or develop interfaces and, to the extent feasible, incorporate input from such participants in determining the specifications and architecture of such interfaces. Absent adequate business or technological justification,<sup>263</sup> SS&C and the requesting other matching service shall conclude negotiations and reach a binding agreement to develop and build an interface within 120 calendar days of SS&C's receipt of the written request. This 120-day period may be extended upon the written agreement of both SS&C and the other matching service engaged in negotiations. For each other matching service with whom SS&C reaches a binding agreement to develop and build an interface, SS&C shall begin operating such interface within 90 days of reaching a binding agreement and receiving all the information necessary to develop and operate it. This 90-day period may be extended upon the written agreement of both SS&C and the other matching service. For each interface and within the same time SS&C must negotiate and begin operating each interface, SS&C and the other matching service shall agree to "commercial rules" for coordinating the provision of matching services through their respective interfaces, including commercial rules: (A) Allocating responsibility for performing matching services; and (B) allocating liability for service failures. SS&C shall also involve neutral industry participants in negotiating applicable commercial rules and, to the extent feasible, take input from such participants into account in agreeing to commercial rules. At a

minimum, each interface shall enable SS&C and the other matching service to transfer between them all trade and account information necessary to fulfill their respective matching responsibilities as set forth in their commercial rules ("trade and account information"). Absent an adequate business or technological justification, SS&C shall develop and operate each interface without imposing conditions that negatively impact the other matching service's ability to innovate its matching service or develop and offer other value-added services relating to its matching service or that negatively impact the other matching service's ability to compete effectively against SS&C.

(7) In order to facilitate fair and reasonable linkages between SS&C and other matching services, SS&C shall publish or make available to any other matching service the specifications for any interface and its corresponding commercial rules that are in operation within 20 days of receiving a request for such specifications and commercial rules. Such specifications shall contain all the information necessary to enable any other matching services not already linked to SS&C through an interface to establish a linkage with SS&C through an interface or a substantially similar interface. SS&C shall link to any other matching service, if the other matching service so opts, through an interface substantially similar to any interface and its corresponding commercial rules that SS&C is currently operating. SS&C shall begin operating such substantially similar interface and commercial rules with the other matching service within 90 days of receiving all the information necessary to operate that link. This 90-day period may be extended upon the written agreement of both SS&C and the other matching service that plans to use that link.

(8) SS&C and respective other matching services shall bear their own costs of building and maintaining an interface, unless otherwise negotiated by the parties.

(9) SS&C shall provide to all other matching services and end-user representatives that maintain linkages with SS&C sufficient advance notice of any material changes, updates, or revisions to its interfaces to allow all parties who link to SS&C through affected interfaces to modify their systems as necessary and avoid system downtime, interruption, or system degradation.

(10) SS&C and each other matching service shall negotiate fair and reasonable charges and terms of payment for the use of their interface

with respect to the sharing of trade and account information ("interface charges"). In any fee schedule adopted under conditions B.2.ii(10), B.2.ii(11), or B.2.ii(12) herein, SS&C's interface charges shall be equal to the interface charges of the respective other matching service.

(11) If SS&C and the other matching service cannot reach agreement on fair and reasonable interface charges within 60 days of receipt of the written request, SS&C and the other matching service shall submit to binding arbitration under the rules promulgated by the American Arbitration Association. The arbitration panel shall have 60 days to establish a fee schedule. The arbitration panel's establishment of a fee schedule shall be binding on SS&C and the other matching service unless and until the fee schedule is subsequently modified or abrogated by the Commission or SS&C and the other matching service mutually agree to renegotiate.

(12)(A) The following parameters shall be considered in determining fair and reasonable interface charges: (i) The variable cost incurred for forwarding trade and account information to other matching services; (ii) the average cost associated with the development of links to end-users and end-user representatives; and (iii) SS&C's interface charges to other matching services. (B) The following factors shall not be considered in determining fair and reasonable interface charges: (i) The respective cost incurred by SS&C or the other matching service in creating and maintaining interfaces; (ii) the value that SS&C or the other matching service contributes to the relationship; (iii) the opportunity cost associated with the loss of profits to SS&C that may result from competition from other matching services; (iv) the cost of building, maintaining, or upgrading SS&C's matching service; or (v) the cost of building, maintaining, or upgrading value added services to SS&C's matching service. (C) In any event, the interface charges shall not be set at a level that unreasonably deters entry or otherwise diminishes price or non-price competition with SS&C by other matching services.

(13) SS&C shall not charge its customers more for use of its matching service when one or more counterparties are customers of other matching services than SS&C charges its customers for use of its matching service when all counterparties are customers of SS&C. SS&C shall not charge customers any additional amount for forwarding to or receiving trade and account information from other matching

<sup>263</sup> The failure of neutral industry participants to be available or to submit their input within the 120 day or 90 day time periods set forth in this paragraph shall not constitute an adequate business or technological justification for failing to adhere to the requirements set forth in this paragraph.

services called for under applicable commercial rules.

(14) SS&C shall maintain its quality, capacity, and service levels in the interfaces with other matching services (“matching services linkages”) without bias in performance relative to similar transactions processed completely within SS&C’s service. SS&C shall preserve and maintain all raw data and records necessary to prepare reports tabulating separately the processing and response times on a trade-by-trade basis for (A) completing its matching service when all counterparties are customers of SS&C; (B) completing its matching service when one or more counterparties are customers of other matching services; or (C) forwarding trade information to other matching services called for under applicable commercial rules. SS&C shall retain the data and records for a period not less than six years. Sufficient information shall be maintained to demonstrate that the requirements of condition B.2.ii(15) below are being met. SS&C and its service providers shall provide the Commission with reports regarding the time it takes SS&C to process trades and forward information under various circumstances within 30 days of the Commission’s request for such reports. However, SS&C shall not be responsible for identifying the specific cause of any delay in performing its matching service where the fault for such delay is not attributable to SS&C.

(15) SS&C shall process trades or facilitate the processing of trades by other matching services on a first-in-time priority basis. For example, if SS&C receives trade and account information that SS&C is required to forward to other matching services under applicable commercial rules (“pass-through information”) prior to receiving trade and account information from SS&C’s customers necessary to provide matching services for a trade in which all parties are customers of SS&C (“intra-hub information”), SS&C shall forward the pass-through information to the designated other matching service prior to processing the intra-hub information. If, on the other hand, the information were to come in the reverse order, SS&C shall process the intra-hub information before forwarding the pass-through information.

(16) SS&C shall sell access to its databases, systems or methodologies for transmitting settlement instructions (including settlement instructions from investment managers, broker-dealers, and custodian banks) and/or transmitting trade and account information to and receiving authorization responses from settlement

agents on fair and reasonable terms to other matching services and end-user representatives. Such access shall permit other matching services and end-user representatives to draw information from those databases, systems, and methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents for use in their own matching services or end-user representatives’ services. The links necessary for other matching services and end-user representatives to access SS&C’s databases, systems or methodologies for transmitting settlement instructions and/or transmitting trade and account information to and receiving authorization responses from settlement agents will comply with conditions B.2.ii(3), B.2.ii(5), B.2.ii(9), B.2.ii(14) and B.2.ii(15) above.

(17) For the first five years from the date of an exemptive order issued by the Commission with respect to SS&C’s matching service, SS&C shall provide the Commission with reports every six months sufficient to document SS&C’s adherence to the obligations relating to interfaces set forth in conditions B.2.ii(6) through B.2.ii(13) and B.2.ii(16) above. SS&C shall incorporate into such reports information including but not limited to (A) all other matching services linked to SS&C; (B) the time, effort, and cost required to establish each link between SS&C and other matching services; (C) any proposed links between SS&C and other matching services as well as the status of such proposed links; (D) any failure or inability to establish such proposed links or fee schedules for interface charges; (E) any written complaint received from other matching services relating to its established or proposed links with SS&C; and (F) if SS&C failed to adhere to any of the obligations relating to interfaces set forth in conditions B.2.ii(6) through B.2.ii(13) and B.2.ii(16) above, its explanation for such failure. The Commission shall treat information submitted in accordance with this condition as confidential, non-public information, subject to the provisions of applicable law. If any other matching service seeks to link with SS&C more than five years after issuance of an exemptive order issued by the Commission with respect to SS&C’s matching service, SS&C shall notify the Commission of the other matching service’s request to link with SS&C within ten days of receiving such request. In addition, SS&C shall provide reports to the Commission in

accordance with this paragraph commencing six months after the initial request for linkage is made until one year after SS&C and the other matching service begin operating their interface. The Commission reserves the right to request reports from SS&C at any time. SS&C shall provide the Commission with such updated reports within thirty days of the Commission’s request.

(18) SS&C shall also publish or make available upon request to any end-user representative the necessary specifications, protocols, and architecture of any interface created by SS&C for any end-user representative.

### 3. Modifications to Exemption

SS&C is required to file with the Commission amendments to its application for exemption on Form CA–1 if it makes any material change affecting its ETC or matching service—as summarized in this order, in its Form CA–1 dated April 15, 2013, or in any subsequently filed amendments to its Form CA–1—that would make such previously provided information incomplete or inaccurate.

In addition, the Commission may modify by order the terms, scope, or conditions of SS&C’s exemption from registration as a clearing agency if it determines that such modification is necessary or appropriate in the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. Furthermore, the Commission may limit, suspend, or revoke this exemption if it finds that SS&C has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

### V. Conclusion

The Commission believes that the BSTP and SS&C applications demonstrate that BSTP and SS&C will have sufficient operational and processing capabilities to facilitate prompt and accurate matching services and to support the establishment of linked and coordinated facilities for the clearance and settlement of securities transactions. The Commission also notes that BSTP and SS&C’s exemptions will be subject to conditions that are designed to enable the Commission to monitor BSTP and SS&C’s risk management procedures, operational capacity and safeguards, corporate structure, and ability to operate in a manner to further the fundamental goals of Section 17A of the Exchange Act. Therefore, for the reasons discussed

throughout this order, the Commission finds that the BSTP and SS&C applications are consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

IT IS HEREBY ORDERED, pursuant to Section 17A(b)(1) of the Exchange Act,

that the applications for exemption from registration as a clearing agency under Section 17A(b)(1) filed by Bloomberg STP LLC (File No. 600-33) and SS&C Technologies, Inc. (File No. 600-34) be, and hereby are, approved within the scope described in this order and

subject to the terms and conditions contained in this order.

By the Commission.

**Robert W. Errett,**  
*Deputy Secretary.*

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