



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

October 2, 2018

Mari-Anne Pisarri
Pickard Djinis and Pisarri LLP
1990 M Street, NW, Suite 660
Washington, D.C. 20036

**Re: SS&C Technologies, Inc. (“SS&C”)
Securities Exchange Act Release No. 76514 (Nov. 24, 2015)**

Dear Ms. Pisarri,

In your letter dated July 17, 2018 (the “Request”),¹ you request assurance that the Division of Trading and Markets (“Staff”) will not recommend enforcement action to the Commission for operating as an unregistered clearing agency if SS&C commences operating its electronic trade confirmation and central trade matching service (together, “matching service”) in the United States. In 2015, pursuant to Section 17A of the Securities Exchange Act of 1934 (“Exchange Act”), the Commission approved SS&C’s application for an exemption from registration as a clearing agency.²

Response:

The Request states that SS&C seeks to begin operating as a matching service provider for its own customers, but has not done so because of what it describes as a current impasse in interoperability negotiations between SS&C and DTCC ITP Matching (US), LLC (“DTCC ITP”).³ Based upon the facts and representations that you have made in the Request, but without necessarily concurring in your analysis, Staff would not recommend enforcement action against SS&C if SS&C commenced operating its matching service in the United States for customers of SS&C prior to establishing interoperability with DTCC ITP. Nevertheless, Staff expects that SS&C and DTCC ITP will continue to negotiate in good faith to achieve interoperability.

¹ A copy of the Request is attached.

² Exchange Act Release No. 76514 (Nov. 24, 2015), 80 FR 75388 (Dec. 1, 2015).

³ DTCC ITP is the successor to Omgeo Matching Services – US, LLC (“Omgeo”). In 2001, the Commission approved an application by Omgeo for an exemption from registration as a clearing agency to provide matching services. See Exchange Act Release No. 44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2001).

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This Staff position is based strictly on the facts and circumstances discussed in this letter, and any different facts and circumstances may require a different response. Furthermore, this response expresses the Staff's position regarding enforcement action only and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the activities discussed above may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules. This position is subject to modification or revocation at any time.

If you have any questions regarding this letter, please call me at (202) 551- 5997 or Jeffrey Mooney at (202) 551-5712.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Sabella', with a long horizontal flourish extending to the right.

Christian Sabella
Deputy Director

Attachment

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July 17, 2018

Mr. Christian Sabella, Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F. Street, N.E.
Washington, D.C. 20549

Re: SS&C Technologies, Inc.

Dear Mr. Sabella:

We submit this letter on behalf of SS&C Technologies, Inc. ("SS&C") to request assurance that the Division of Trading and Markets will not recommend enforcement action to the Commission if SS&C operates an electronic trade confirmation ("ETC") and central trade matching service ("CMS" or "matching service") in the United States without first satisfying the interoperability conditions of its exemption from registration as a clearing agency under Section 17A of the Securities Exchange Act of 1934 ("Exchange Act").¹

SS&C makes this request because despite its diligent efforts, its interoperability negotiations with DTCC Omgeo ("Omgeo") are at an impasse. SS&C has submitted a Request for Commission Action pursuant to the SS&C Order and a similar order issued to Omgeo (the "Omgeo Order"),² seeking the Commission's assistance in resolving the stalemate. However, while SS&C waits for these outstanding issues to be addressed, the U.S. clearance and settlement system continues to depend solely on the matching services provided by Omgeo, which has monopolized this market since matching began almost twenty years ago. As the Commission has recognized, reliance on a single matching service provider creates a concentrated processing risk that threatens the entire U.S. financial system.³

¹ *Bloomberg STP LLP; SS&C Technologies, Inc.; Order of the Commission Approving Applications for an Exemption from Registration as a Clearing Agency*, Exchange Act Release No. 34-76514 (November 24, 2015), 80 Fed. Reg. 75388 (December 1, 2105). This order is referred to herein as the "SS&C Order."

² Letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri to the Commission, dated October 25, 2017 ("Section 9 Request"); *Global Joint Venture Matching Services - US, LLC; Order Granting Exemption from Registration as a Clearing Agency*, Exchange Act Release No. 34-44188 (April 17, 2001), 66 Fed. Reg. 20494 (April 23, 2001). See also letter from Mari-Anne Pisarri, Pickard Djinis and Pisarri to the Commission, dated March 7, 2018.

³ SS&C Order at 55, 80 Fed. Reg. at 75401.

The quickest way to mitigate this risk is to bring SS&C's matching service online on a stand-alone basis, without waiting for the linkages between its system and Omgeo's to become operable.

Interoperability Under the Clearing Agency Exemptions

The Commission subjected SS&C's clearing agency registration exemption "to conditions that the Commission believes are necessary and appropriate in light of the statutory requirements of Section 17A" of the Exchange Act.⁴ The Commission explained that these conditions are

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.⁵

The Commission grouped these conditions under two headings: Operational Conditions and Interoperability Conditions. SS&C has satisfied all the initial operational conditions, and these are not at issue in this request.⁶ Although SS&C has made some progress in satisfying the Interoperability Conditions,⁷ it will not be able to complete this task without the Commission intervention SS&C has sought in the Section 9 Request.⁸ At a minimum, the stalemate in the discussions between SS&C and Omgeo make it impossible for SS&C to satisfy the following Interoperability Conditions at this time:

⁴ *Id.*, at 104, 80 Fed. Reg. at 75413-14.

⁵ *Id.* at 104-105, 80 Fed. Reg. at 75414.

⁶ For example, in satisfaction of Operational Condition 1, SS&C underwent an annual Regulation SCI review and filed a report of that review, along with the response by senior management with the SEC on August 19, 2017. SS&C also provided the Commission with copies of the intercompany agreement between SS&C and SS&C Canada (the operator of the matching service), as required by Operational Condition 9.

⁷ For example, SS&C has publicly disclosed the communication protocols, message and file transfer protocols and software, message format standards and message languages and metadata supported by its matching service, as required by Interoperability Condition 5. In accordance with Interoperability Conditions 1, 2, 6, and 10, SS&C and Omgeo have agreed to certain technical specifications of the interface between their CMS, and they have further agreed that: (i) the CMS that has the investment manager (buy side) on its platform will perform the match; (ii) the CMS that has the broker-dealer (sell side) on its platform will transmit the affirmed confirm (delivery order) to the DTC for clearance and settlement; and (iii) the interface charges shall be set at \$0.

⁸ In particular, SS&C has asked the Commission to resolve disputes between SS&C and Omgeo concerning the parties covered by interoperability, the data covered by interoperability and the establishment of a payment mechanism across interoperated matching services. SS&C has also asked the Commission to investigate reports that Omgeo has engaged in predatory pricing activities designed to perpetuate its monopoly over the CMS market.

- Condition 1, which states that "SS&C shall develop, in a timely and efficient manner, fair and reasonable linkages" between its CMS and other registered or exempt CMS that "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."⁹
- Condition 2, which states that "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 . . . to gain a single point of access to SS&C and other matching services."¹⁰
- Condition 6, which says that 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." This condition includes timeframes within which the parties "shall conclude negotiations and reach a binding agreement" to develop, build and operate the interface. The condition permits these timeframes to be extended by mutual written agreement of the parties.¹¹

Both the structure of the conditional exemptive order and the repeated use of the word "shall" in articulating the duty to develop interfaces to link SS&C's matching service with Omgeo's indicate that interoperability is not precatory. This conclusion is further supported by Interoperability Condition 4, which provides that

SS&C shall not engage in any activity inconsistent with the purposes of Section 17A(a)(2) of the Exchange Act, which section seeks the establishment of linked or coordinated facilities for clearance and settlement of transactions.¹²

Given the Commission's views on the importance of "linked and coordinated facilities" under Section 17A, it is not surprising that interoperability is baked into the DNA of the CMS clearing agency exemptions. The first such exemption was issued in 1999 to Thomson Financial Inc.'s Electronic Settlements Group,¹³ which was developing a CMS to compete with the one being

⁹ SS&C Order at 107, 80 Fed. Reg. at 75414.

¹⁰ *Id.*

¹¹ *Id.* at 108-109, 80 Fed. Reg. at 75415. This condition was triggered on April 4, 2016, when Omgeo issued a written request to interoperate. Although the deadline for reaching a binding agreement to develop and build the interface was extended several times, the last extension expired on July 1, 2017.

¹² *Id.* at 108, 80 Fed. Reg. at 75414. (citation omitted).

¹³ *Thomson Financial Technology Services, Inc.; Order Approving Application for Exemption From Registration as a Clearing Agency*, Exchange Act Release No. 34-41377 (May 7, 1999), 64 Fed. Reg. 25948 (May 13, 1999) ("Thomson Order"). At the time of this Order, Thomson Financial Technology Services, Inc. was owned by Thomson Information Services, Inc., which subsequently became Thomson Financial Inc.

developed by the DTC. The SEC conditioned the Thomson Order on various requirements, including an obligation to develop "fair and reasonable linkages" between Thomson's matching service and the DTC, as well as with "other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission."¹⁴

As it turned out, the need for linkages never arose, because the following year, Thomson and the DTC merged their institutional trade processing services into a global joint venture that became known as Omgeo. Because the new entity was not a registered clearing agency, it applied for its own exemptive order. Commenters to this application asked that "before the Commission grants an exemption to [Omgeo], the Commission take steps to safeguard interoperability and competition among service providers."¹⁵ When it crafted the Omgeo Order, the Commission responded to the commenters' concerns by expanding the notion of "linkages" from the Thomson Order into a series of "Interoperability Conditions" that served as the model for the ones imposed on SS&C fourteen years later.

The Commission explained its decision to replicate the Omgeo interoperability conditions in the SS&C Order as follows:

[T]he 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.¹⁶

SS&C believes it is clear that the structure, the wording and the history of the clearing agency exemptive orders all confirm that once interoperability has been requested, the development and construction of an interface permitting SS&C's CMS to interoperate with Omgeo's CMS is a condition precedent to SS&C's ability to operate a matching service without first registering as a clearing agency under Section 17A of the Exchange Act.

The Need for Relief

Notwithstanding the importance of linked and coordinated clearance and settlement systems, requiring SS&C to satisfy the interoperability conditions of its exemptive order at this time is not in the public interest. Since central trade matching was developed almost twenty years ago, the U.S. market for this service has been the exclusive province of the DTC or a DTC affiliate.¹⁷

¹⁴ *Id.*, 64 Fed. Reg. at 25950.

¹⁵ Omgeo Order, text accompanying note 24.

¹⁶ SS&C Order at 83, 80 Fed. Reg. at 75403.

¹⁷ This monopoly was an outgrowth of the DTC's pre-existing monopoly on ETC services, which was conferred by a series of self-regulatory organization rules that required broker-dealers to use the DTC's

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Despite the Commission's efforts to inject competition into this market, first by issuing the Thomson Order, then by conditioning the Omgeo Order on an extensive array of interoperability conditions designed to facilitate the entry of additional CMS,¹⁸ and most recently by issuing the SS&C Order, which provided parallel relief to Bloomberg STP LLP ("Bloomberg"), the competitive landscape is no different today than it was at the turn of the century.

This frozen landscape deprives the clearance and settlement system of the many benefits of competition which, according to the Commission, include "reducing the cost of matching services to broker-dealers and institutional customers;" "increasing the quality or type of services offered;" and "innovation in the market for matching services, resulting in more efficient matching and communications systems."¹⁹ Lack of competition also threatens the safety and soundness of the U.S. markets. The Commission described this threat as follows:

[T]he 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 . . . settlement failures, if widespread, can have a systematic impact on the national clearance and settlement system while imposing significant costs on market participants [T]he Commission maintains the concerns it expressed within [its 1998 interpretive guidance on matching] with respect to concentration of processing risk in a single matching service provider. On balance, the Commission believes that the redundancy created by more interfaces and linkages within the settlement infrastructure increases resiliency. . . . In the event of a disruption in services at Omgeo, the redundancy facilitated by the addition of matching services provided by [Bloomberg] 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.²⁰

Even without interfaces and linkages, the presence of an additional CMS would afford a risk-mitigating redundancy for the U.S. clearance and settlement system. SS&C has a fully operational matching service,²¹ and it has already developed and tested the linkage between that service and the DTC. This interface is ready to go live, meaning that if both parties to a trade and their

services for all depository-eligible trades. See e.g., New York Stock Exchange Rule 387(a)(5), National Association of Securities Dealers Rule 11860(a)(5) and Municipal Securities Rulemaking Board Rule G-15(d)(ii).

¹⁸ At the time the Omgeo Order was issued, at least one other provider -- GSTP AG -- was poised to offer matching and information exchange services in the U.S. This competition never materialized.

¹⁹ SS&C Order at 45, 80 Fed. Reg. at 75399.

²⁰ *Id.* at 55-56, 80 Fed. Reg. at 75401 (footnotes omitted).

²¹ SS&C has offered local and centralized matching facilities, ETC services and standing settlement instructions outside the United States for more than 20 years.

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representatives (e.g., custodians and settlement agents) use SS&C, SS&C can match the trade data and submit a delivery order to the depository for clearance and settlement.

For all these reasons, SS&C asks for assurance that the Staff will not recommend enforcement action to the Commission if SS&C operates its ETC and central matching services in the U.S. without either registering as a clearing agency or first complying with the interoperability conditions of its clearing agency registration exemption.

Thank you and best regards.

Very truly yours,

A handwritten signature in black ink that reads "Mari-Anne Pisarri". The signature is written in a cursive style with a large, sweeping initial "M".

Mari-Anne Pisarri

cc: Thomas Damico
Paul Skuriat
Lewis A. Shaffer