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April 29, 2011

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

Re: File Number S7–8–11 / Clearing Agency Standards for Operation and Governance

Dear Ms. Murphy:

MarkitSERV[1] is pleased to submit the following comments to the Securities and Exchange Commission (the "***SEC***" or the "***Commission***") on the proposed rulemaking to implement certain requirements included in Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "***DFA***")[2] titled Clearing Agency Standards for Operation and Governance (the "***Proposed Rule***").[3]

Introduction

MarkitSERV views its role in the global derivatives markets as a facilitator, an entity that makes it easier for derivatives market participants to interact with each other. To facilitate this goal, MarkitSERV provides trade processing, confirmation, matching and reconciliation services for swaps and security-based swaps ("***SB swaps***") across regions and asset classes, as well as universal middleware connectivity for downstream processing such as clearing and reporting. With over 2,000 firms currently using MarkitSERV, including over 21,000 buy-side fund entities, its legal, operational, and technological infrastructure plays an important role in supporting the SB swaps markets in the United States and globally.

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

Executive Summary

The Commission notes that the Securities Exchange Act of 1934 (the "***Exchange Act***") defines Clearing Agency ("***CA***") broadly to contain, in addition to providers of traditional central counterparty ("***CCP***") clearing services, also entities that operate "facilities for the comparison of data regarding the terms of settlement of transactions"[4], *i.e.*, non-CCP entities. The Commission further states in the preamble to the Proposed Rule that: (i) it believes that certain service providers that facilitate SB swap contract management may meet the broad CA definition; (ii) the list in the Preamble of services that may trigger CA registration "is not exhaustive"; and (iii) it urges "every security-based swap lifecycle event service provider" to consider whether their function places them within the CA definition.[5] The Commission appears to base these proposals and determinations

[1] MarkitSERV, jointly owned by The Depository Trust & Clearing Corporation (DTCC) and Markit, provides a single gateway for OTC derivatives trade processing. By integrating electronic allocation, trade confirmation and portfolio reconciliation, MarkitSERV provides an end-to-end solution for post-trade transaction management of OTC derivatives in multiple asset classes. MarkitSERV also connects dealers and buy-side institutions to trade execution venues, central clearing counterparties and trade repositories. In 2010, more than 19 million OTC derivatives transaction sides were processed using MarkitSERV. Please see www.markitserv.com for additional information.
[2] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, 124 Stat. 1376 (2010).
[3] Clearing Agency Standards for Operation and Governance, 76 Fed. Reg. 14472 (published March 16, 2011).
[4] Securities Exchange Act of 1934 § 3(a)(23)(A).
[5] *See* Proposed Rule, 76 Fed. Reg. at 14495 & 14495 n.101.

strictly on the original language codified in a 1975 amendment to the Exchange Act's definition of "clearing agency," [6] and largely on its interpretation of matching activities related to debt and equity securities.[7]

In general, we do not believe that the wide-ranging registration and compliance requirements that the Commission has proposed today for non-CCP service providers in the SB swap markets are justified on the basis of a 40-year old definition from before electronic matching facilities existed. However, we support the Commission's goal of ensuring the proper functioning of the post-trade infrastructure in the SB swap markets and understand the Commission's desire to avoid the existence of any regulatory gaps. Specifically, we believe that requiring providers of independent[8] verification services for SB swaps to register as CAs could be useful in this respect so long as: (a) registration and compliance requirements appropriately reflect current market practices; (b) regulatory requirements applicable to CAs take into account the differences between verification and matching providers ("***non-CCP CAs***") and providers of central counterparty clearing services ("***CCP CAs***"); and (c) registration, compliance and regulatory requirements applicable to similar economically situated entities performing similar functions are applied in a uniform and consistent manner across relevant markets.

However, we are concerned about the impact that the registration, compliance and regulatory requirements as proposed could have on the various existing non-CCP service providers in this market. In particular, we believe that the rules need to be adjusted in some aspects to ensure that providers of comparable and competing independent verification services for SB swaps are regulated in a similar fashion. Our concerns can be summarized as follows:

(A) The Commission's definition of a "matching" CA does not seem inclusive enough to reflect current market practice. While the provision of "matching" services that result in the issuance of a legally binding confirmation would be regarded as registered activity,[9] competing services that employ other techniques would, for no obvious reason, remain unregulated. Also, the proposed rules give the impression that security-based swap execution facilities ("***SB SEFs***") will face lesser registration requirements when offering similar services. We therefore believe that the rules as proposed would result in an undue restraint on competition between the various providers of independent verification services for SB swaps.

(B) Further, the Commission states that "services that only perform a preliminary comparison of transaction data that is followed by the issuance of a legal confirmation" would not need to register as CAs.[10] We are concerned that such provision would not appropriately reflect the essential role that such providers play in the workflow of many swaps and SB swaps. Also, such provision would encourage entities to provide only "preliminary comparisons" which supply a lower level of verification and/or legal certainty than matching

[6] The definition of "clearing agency" was added to the Exchange Act in 1975 by the Securities Acts Amendments of 1975, and, even at that time, included "any person . . . who provides facilities for comparison of data respecting the terms of settlement of securities transactions." *See* Pub, L. 94-29, 89 Stat. 97. The "comparison of data" intended to be captured under the 1975 amendment was clearly different than the high-speed, computer-based verification services which the Commission proposes to include as clearing agencies.

[7] *See* Proposed Rule, 76 Fed. Reg. at 14495 & 14495 n.103 ("A vendor that provides a matching service will actively compare trade and allocation information and will issue the affirmed confirmation that will be used in settling the transaction.") (quoting Exchange Act Release No. 39829 (April 6, 1998), 63 Fed. Reg. 17943 (April 13, 1998)).

[8] The Commission should ensure that any registration requirement for the performance of verification services for SB swaps should only apply to third parties that are independent of the counterparties to the transaction. As such, one can avoid unintentionally requiring registration from the counterparties, who will always perform some kind of verification in the process of confirming transactions themselves.

[9] "An intermediary that captures trade information regarding a securities transaction and performs an independent comparison of that information which results in the issuance of binding matched terms to the transaction is providing matching services and falls within the definition of clearing agency." Proposed Rule, 76 Fed. Reg. at 14495.

[10] Proposed Rule, 76 Fed. Reg. at 14495.

services. Such effect seems at odds with the intention of the DFA and the Commission's own stated desire to ensure the most prudent practice in the SB swaps market.[11]

(C) The Commission references some industry commitments or regulatory requirements to use certain matching services that could compensate for the cost of registration.[12] However, we are not aware of the existence of any such commitments or requirements to use specific matching services for SB swaps.

(D) The activities of non-CCP independent verification service providers are very different from those that are performed by CCPs. If such service providers have to register as CAs they should only be required to comply with Core Principles and other requirements that are appropriately tailored to their activities.

(E) The Commission's requirement for "matching" services to register as CAs finds no parallel in the rules proposed by the CFTC.[13] We strongly believe that the Commissions need to address such gap to avoid undesired effects on competition and opportunities for regulatory arbitrage.[14]

1. The Rules Need to Be Refined to Avoid Creating a Significant Restraint on Competition Between The Various Providers of Independent Verification Services

The Proposed Rule defines "Trade Matching Services" as providers that capture swap transaction data and perform an independent comparison which results in the issuance of binding matched terms.[15] However, the rules also state that "providing preliminary comparisons, such as those provided by certain affirmation and novation service providers that are followed by independent comparisons that result in the issuance of legally binding matched terms, would generally not fall within the definition of CA."[16] Also, the Proposed Rule states that a SB SEF will not be considered to be a CA "solely because it provides facilities for comparison of data relating to the terms of settlement of transactions on the SEF."[17] The Commission requests comment on how to avoid any undue burden on competition. It also asks whether there are any additional entities that should be exempted from the CA definition, or any other services that should be CAs.

We support the Commission's objective of ensuring that entities providing transaction verification services for SB swaps and/or acting as conduits of transaction information to other registered entities (such as CCPs and swap data repositories ("***SDRs***")) are appropriately regulated. However, we believe that the Commission's interpretation of the CA definition and the required registration for matching services, as currently defined, do not adequately reflect current market practice. To ensure that all entities that provide similar, competing services are exposed to comparable registration requirements, we urge the Commission to further refine the proposed rules by taking into account: (i) the different techniques that are employed to verify SB swap

[11] *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. 3859, 3860 (published Jan. 21, 2011) (prudent practice requires that "after coming to an agreement on the terms of a transaction, the parties document the transaction in a complete and definitive record so there is legal certainty about the terms of their agreement in case those terms are later disputed.").
[12] *See* Proposed Rule, 76 Fed. Reg. at 14496 ("Are these costs offset by regulatory requirements or industry commitments to use certain security-based swap service providers that fall within the definition of a clearing agency?").
[13] The CFTC, in §1.3(d), defines a *Clearing organization* or *derivatives clearing organization ("DCO")* as a clearinghouse, clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction (1) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties; (2) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or (3) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.
[14] For example, the CFTC may expand its own definition of a clearing agency to include non-CCP CAs that do not perform the "clearing" function; or similarly bifurcate the definition of a swap execution facility to provide for a sub-category of a trade processing facility that does not perform the "trading" function.
[15] *See* Proposed Rule, 76 Fed. Reg. at 14495.
[16] *Id.*
[17] *See id.* at 14494.

transaction data; (ii) the relevance of the level of legal certainty that is achieved by verification; and (iii) the role of SB SEFs in verifying transaction data.

(i) The Requirement to Register as a CA Should Be Independent of the Technique Employed to Verify the Details of SB Swap Transactions

The process of documenting SB swaps following execution in today's market involves the three functions of trade enrichment, trade affirmation or matching, and attachment to a legal framework. These three steps are present in the "confirmation" of the vast majority of SB swap transactions, regardless of the execution method, whether or not transactions are centrally cleared, and whether or not they are confirmed electronically or through other means.

While the proposed rule only focuses on "matching" services we believe that the Commission needs to take into account that trade affirmation and matching are nothing but two alternative techniques that are employed to lead to the same result, namely enabling the counterparties to a SB swap to reach an agreement on the complete set of transaction details in an efficient and timely manner with the providers of these services performing an "independent verification":

- Trade affirmation is the process whereby one party alleges the details of a SB swap transaction to its counterparty and those details are affirmed by the counterparty if correct. For transactions that are facilitated through an intermediary, *e.g.*, an inter-dealer broker or an electronic trading system, the intermediary may propose the transaction details to both parties, who then affirm them with each other.

- Matching is the process whereby both counterparties to the SB swap transaction allege the transaction details to each other, which are then compared.

- Trade affirmation and matching can be used individually or together, where the parties who receive alleged details of the SB swap transaction will perform a local match to their satisfaction, and then affirm to their counterpart.

Automated confirmation services for swaps and SB swaps such as MarkitSERV provide these services electronically. Our services can be used as a means for the parties to communicate and rectify any discrepancies prior to completing a confirmation. Notably, MarkitSERV provides notification to both parties when the process of affirmation or matching is complete, thereby completing the confirmation process.

As we have stated in a previous response to the Commission[18] MarkitSERV facilitates confirmation of SB swap and swap transactions in several asset classes through various techniques, including affirmation, matching, as well as affirmation with local matching. Each of these methods is widely used by a variety of market participant types. Quarterly metrics[19] show that 99% of the relevant credit derivative transactions were electronically confirmed, mostly using a central matching method. In equity derivatives, 40% of the transactions were electronically confirmed using a mixture of central matching, affirmation and affirmation with local matching. 80% of the relevant interest rate derivative transactions were electronically confirmed, largely using affirmation or affirmation with local matching.

These numbers demonstrate that both affirmation and matching are used extensively for the efficient, automated verification of SB swap and swap transactions. While affirmation currently prevails in some asset classes, matching dominates in others, and a variety of techniques are used in the remainder. In general, parties implement the matching service by submitting transactions as they have already been captured in their trade booking systems, with the resolution of potential mismatches being dealt with by their back office. In

[18] *See* Letter from MarkitSERV to the Commission (Feb. 22, 2011).
[19] Available at http://www.markit.com/en/products/research-and-reports/metrics/metrics.page.

contrast, counterparties will often use the affirmation service to route transactions to their trade capture systems, with submission of the transactions to the service often being performed by the execution venue (for example by an inter-dealer broker). Here, the resolution of trade discrepancies represents a front office task. As such, large volume users of affirmation services with efficient integration generally see a faster time to submission and verification of swap transactions than equivalent users of matching services.

The description of current market practice demonstrates that "affirmation" and "matching" simply constitute alternative methods that both enable counterparties to verify the complete set of transaction details for SB swaps, with the various providers of such verification services directly competing with each other. However, for no obvious reason, the rules as currently drafted would require only those providers that employ a "matching" technique to register as CAs, while others that employ different techniques, such as "affirmation," would be left unregistered.[20] We believe that this approach would impose a significant undue burden on competition in the market for independent verification services by providing entities that only use "affirmation" techniques with a competitive advantage. As a consequence, independent verification services for those SB swaps for which matching is currently the main technique to confirm transactions, *e.g.* Credit Default Swaps ("***CDS***"), could become more costly or, in the extreme, even unavailable. This seems at odds with congressional intent and the public interest.

We therefore urge the Commission to refine the proposed rules by requiring registration of service providers independent of the technique that they employ to achieve verification of the terms of SB swaps, *e.g.*, regardless of whether they perform "matching" or "affirmation."

(ii) Registration as a CA Should Be Required Regardless Of the Degree Of Legal Certainty Created By the Independent Verification Service

As indicated above, the Proposed Rule would only require independent verification service providers to register as a non-CCP CA if their activity results in the issuance of a legally binding contract, while those who only perform "preliminary comparisons" would be left unregistered.[21] We believe that this approach would be counter-productive for a number of reasons:

- First, such requirement risks encouraging the provision of services that do not provide legal certainty while discouraging the provision of those that do, which seems at odds with congressional intent to reduce risk in the swaps markets. It would also put in doubt whether market participants will be supplied with the means that allow them to acknowledge and verify their SB swap transactions in a timely and secure fashion as required by the Commission in other rules.[22]

- Second, providers of independent verification services for SB swaps, regardless of whether their activity only constitutes a preliminary comparison or results in the issuance of a legally binding contract, occupy a crucial position in the routing of the majority of SB swaps. Such entities generate a verified, definitive record of the transaction that is used for subsequent processing and typically establish, maintain and provide connectivity between the various execution venues, counterparties, CCPs, and SDRs to communicate transaction data to these entities. Given that independent verification services act as conduits of SB swap transaction data to other registered entities, their proper functioning is of crucial importance to secure timely central clearing of SB swaps as well as their accurate regulatory and real-time reporting.

[20] *See* Letter from MarkitSERV to the Commission pp. 2-5 (Feb. 22, 2011).
[21] Matching which results in the "issuance of legally binding matched terms"vs "perform preliminary comparisons".
[22] *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. 3859, 3874 (published Jan. 21, 2011).

- Third, such approach would result in an unnecessary restraint on competition as the providers of those independent verification services that result in the issuance of a legally binding contract and those that only perform preliminary comparisons directly compete with each other. A registration requirement that favours one group of services over the other should be avoided.

We therefore urge the Commission to refine the final rules to require the registration of independent verification services for SB swaps regardless of whether their activity results in the issuance of a legally binding contract or only constitutes a "preliminary comparison", as long as their activity results in a verified record of the complete transaction details that is used for subsequent processing.

(iii) SB SEFs That Provide SB Swap Transaction Independent Verification Services Should be Subject to Registration Requirements Comparable to non-CCP CA's

The Commission states that a registered SB SEF would not be considered a CA "solely because it provides facilities for comparison of data relating to the terms of settlement of transactions on the SEF".[23]

We support the view that SB SEFs should not be subject to CA registration requirements merely for performing trade data comparisons as part of the execution process, such as comparison of data for purposes of operating a limit order book. However, we do not believe that SB SEFs should have a blanket exemption from CA registration for activities related to matching or verification services. For example, it is possible that some SB SEFs will wish to provide matching services just like any other provider of matching or verification services. In these instances, SB SEFs should not be exempt from registering as non-CCP CAs. Otherwise, the rules would apply differently to third party entities providing independent verification services than to SB SEFs providing the same services. We therefore believe that any SB SEFs that perform transaction verification services for SB swaps that are similar to the ones described above should also be required to register as CAs.

Based on the foregoing, we believe that the regulations applicable to providers of matching services need to sufficiently reflect the existing market structure for independent verification services for SB swaps, and should ensure a level playing field between providers of similar services. The rules as proposed might impose a material constraint competition in this market that could result in outcomes that are neither in the Commission's nor in the public interest, ultimately endangering the stability of the SB swaps and swaps markets in the U.S. and elsewhere.

We therefore urge the Commission to apply any requirement for providers of independent verification services of SB swaps to register as a CA to all comparable and competing service providers: any requirement for providers of matching services that result in the issuance of a legally binding confirmation to register as a CA should equally apply to those entities that employ techniques other than matching to independently verify SB swap transactions, to those that perform only preliminary comparisons, and to SEFs that provide comparable services. We recommend that the final rules define such group of entities as "Independent Verification Services" ("***IVSs***") which are "entities that act independently from and on behalf of both counterparties of a SB swap to facilitate the agreement of a verified record of the complete transaction details that is used for subsequent processing".

2. There Is No Reason To Believe That The Cost of Operating SB Swap Verification Services as Registered CAs Is Compensated for by Any "Commitments" or "Requirements" to Use Such Services

The Commission requests comments on the costs for matching service providers to register as CAs and operate as self-regulatory organizations ("***SROs***").[24] It also asks whether these costs are "offset by regulatory

[23] Proposed Rule, 76 Fed. Reg. at 14494.

requirements or industry commitments to use certain service providers" that fall within the definition of a CA.[25] Finally, the Commission asks for the implications of registration for these entities for the SB swap markets, and for the availability of their services to market participants.[26]

We believe that the additional cost of operating IVSs as registered non-CCP CAs could be substantial and that, for the following reasons, there is little reason to believe that non-CCP CAs could, as the Commission indicates, potentially offset these additional costs by any industry commitments or regulatory requirements to use these service providers:

- The Commission seems to suggest that industry commitments exist today to use certain providers of matching services. However, we are not aware of any such industry commitments, be it through matching or through affirmation/confirmation techniques. In this context we refer to the industry commitments dated March 31, 2011, which do not contain any requirements for industry participants to use any specific services. In contrast, they create a requirement for some providers to deliver certain services.[27]

- The Commission has, in other proposed rules, decided not to require the use of any specific means to confirm SB swaps transactions. Given that the required confirmation for SB swaps can occur via "email, fax, . . ."[28] we fail to identify any future "regulatory requirement" to use IVSs that could compensate for the potential cost of their registration.

- A bifurcated approach would be required for SB swaps versus non-SB swaps because the registration requirements will be applicable only to SB swaps since there is no similar rule by the CFTC. Notably, this bifurcated approach would make certain legal, operational and technical costs even greater. For example, in the OTC credit and equity derivatives markets, MarkitSERV would be subject to clearing agency requirements for certain types of products such as narrow-based security index transactions, but not broad-based which fall under CFTC jurisdiction, and a question would remain for mixed swaps.

We therefore urge the Commission to reflect in the design of the registration requirements for IVSs that little or no additional revenue can be expected to compensate for the cost of their registration.

3. IVSs That Are Registered as non-CCP CAs Should be Appropriately Regulated, and Should Not Be Subject to Provisions Designed To Apply To CAs That Provide CCP Services

The Commission requests comment on whether there are any requirements that should not apply to CAs that do not perform CCP services.[29] We believe that there are significant differences between CA entities that provide CCP services and non-CCP CAs. Any potential registration requirements for IVSs for SB swaps therefore must be appropriately tailored to the activities of non-CCP CAs and must be accompanied by specific exemptions.

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[24] *See* Proposed Rule, 76 Fed. Reg. at 14496 ("What are the costs associated with requiring the types of entities described above that do not offer CCP services to register as a clearing agency and operate as an SRO?").
[25] *Id.*
[26] *Id.* at 14496-97.
[27] *See* the letter with certain commitments from buy-side and sell-side derivatives signatory institutions addressed to the President of the Federal Reserve Bank of New York on March 31, 2011 (the "**FRBNY Commitment Letter**"). Commitments spelled out in the FRBNY Commitment Letter include the following objectives: (i) increasing standardization; (ii) expanding central clearing; (iii) enhancing bilateral risk management; and (iv) increasing transparency. http://www.newyorkfed.org/newsevents/news/markets/2011/SCL0331.pdf.
[28] *See* Trade Acknowledgment and Verification of Security-Based Swap Transactions, 76 Fed. Reg. at 3864 ("SBS Entities may also continue to rely on facsimile transmission or e-mail to provide trade acknowledgments.").
[29] *See* Proposed Rule, 76 Fed. Reg. at 14496.

We believe that non-CCP CAs are fundamentally different from CCP CAs, and therefore warrant a different regulatory structure. In particular, we believe that non-CCP CAs should not be subject to the governance, access, and conflicts of interest regulations that will apply to CCP CAs because these regulations are all designed to curb potential problems that are inapplicable to non-CCP CAs. For example, issues related to conflicts of interest in general have little relevance to non-CCP CAs. "Participation" in the services of IVSs is driven by industry commitment for product, processing, and legal standardization, and the goals of these entities are to mitigate risk and attain the highest standards of operational efficiency. The implementation of electronic confirmation of swaps, for example is based on an industry collaborative process that is open to all market participants after thoughtful analysis related to product and process based on an overall cost-benefit analysis. We therefore believe that no conflicts of interest will arise relative to participation in these entities that would require the type of scrutiny that will be applied to CAs that offer CCP functions.

Indeed, the Commission provided a limited exemption from registration requirements for Omgeo for similar reasons. In its exemptive order, the Commission stated that "The exemptive 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."[30] The Commission was able to do so because the Exchange Act authorizes the Commission to exempt certain entities from the registration as CA,[31] and the Commission provided exemptions for registered matching services for securities and their derivatives.[32] We believe that such exemptions and requirements are equally appropriate if IVSs for SB swaps are required to register as CAs. As a matter of precedence, then, we believe that the Commission can exempt non-CCP CAs from certain requirements applicable to other CAs.

Therefore, we believe that requirements related to governance, access, and conflicts of interest should not apply to IVSs if they are required to register as CAs.

4. The Commission Should Harmonize Its Registration Requirement For IVSs With The CFTC

Finally, we note that the CA registration requirement proposed by the Commission for matching and verification services finds no parallel in the rules proposed by the CFTC. The performance of these services in the SEC- and CFTC-regulated markets will be nearly identical, however, so there is no practical reason for such a large disparity in treatment of these different entities.

Regulating matching and verification service providers heavily in the SEC-regulated market but not in the CFTC-regulated market will likely create an unlevel playing field between competing providers of these services in the two markets and could, as a result, unintentionally discourage the provision of such services for SB swaps compared to swaps. Matching and verification providers will be drawn to the unregulated market not only because of the lower cost of participation but because of the freedom associated with being an

[30] *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494, 20498 (April 23, 2001).
[31] *See* Exchange Act § 17A(b)(1) (stating that the Commission may conditionally or unconditionally exempt a clearing agency from any provisions of section 17A 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).
[32] The Commission issued Operational Conditions in the Omgeo Exemptive Order which contain requirements that the company provide an audit report that addresses the areas in the SEC's Automation Review Policies (ARPs), provide the Commission with annual risk assessment reports that address the areas in the ARPs; provide the Commission with 20 days' notice of material changes in the regulated activities - prior approval not required; provide the Commission notice of systems outages greater than 30 minutes; to respond to SEC information requests and allow on-site inspections; provide the SEC with periodic reports on affirmation rates; preserve a copy of records for at least 5 years; do not provide clearing agency functions (such as net settlement) not permitted by the SEC exemptive order; and provide the SEC with copies of services agreements with affiliates, and notify of any material changes. Note there were also 19 "Interoperability Conditions". In addition, if there were material changes to statements made in the exemptive order application (such as changes to the Board or ownership structure) they would have to be filed with the SEC." *See* Global Joint Venture Matching Services—US, LLC; Order Granting Exemption From Registration as a Clearing Agency, 66 Fed. Reg. 20494 (April 23, 2001).

unregulated entity. As a result, competition for matching and verification services in the SEC-regulated market may be greatly damaged.

For example, to harmonize the rules, the CFTC may expand its own definition of a DCO to include non-CCP CAs that do not perform the "clearing" function; or similarly bifurcate the definition of a swap execution facility to provide for a sub-category of a trade processing facility that does not perform the "trading" function. Either way, a parallel regulatory structure will be established between the agencies, and similarly economically positioned entities will be similarly regulated under Title VII of the DFA.

Regulating matching and verification services under the SEC but not under the CFTC would also be a stark rejection of the recent Executive Order regarding Improving Regulation and Regulatory Review. In that order, the President stated that "[s]ome sectors and industries face a significant number of regulatory requirements, some of which may be redundant, inconsistent, or overlapping," and therefore requires that, "[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote . . . coordination, simplification, and harmonization."[33] Regulating matching and verification service providers under the SEC but not under the CFTC is just the kind of inconsistent regulatory requirements proscribed by this Order, so we strongly urge the Commission and the CFTC to harmonize their rules.

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MarkitSERV appreciates the opportunity to comment on the Proposed Rule, and would be happy to elaborate or further discuss any of the points raised.

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

Sincerely,

Jeff Gooch
Chief Executive Officer
MarkitSERV

[33] Exec. Order No. 13,563, Improving Regulation and Regulatory Review, 76 Fed. Reg. 3821, 3822 (published January 21, 2011).