



DIVISION OF
TRADING AND MARKETS

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 19, 2009

Mr. Norman M. Reed
General Counsel
Omgeo LLC
55 Water Street
New York, NY

Re: **No-Action Request of Omgeo LLC**

Dear Mr. Reed:

In your letter dated March 19, 2009, on behalf of Omgeo LLC (“Omgeo”), you request assurance that the staff of the Division of Trading and Markets would not recommend enforcement action under Rules 17a-3(a)(8) and 17a-4 of the Securities Exchange Act of 1934 (“Exchange Act”) against Omgeo’s broker-dealer customers that depend on Omgeo to transmit confirmations of purchases and sales of securities (the “Broker-Dealer Participants”), if these Broker-Dealer Participants rely on Omgeo to maintain and preserve such confirmations under Exchange Act Rule 17a-4(i),¹ as discussed in your letter.²

Response:

Based on the facts and representations set forth in your letter, the staff of the Division of Trading and Markets will not recommend enforcement action to the Commission under Exchange Act Rules 17a-3(a)(8) and 17a-4 against Omgeo’s Broker-Dealer Participants if they rely on Omgeo maintain and preserve confirmations under Exchange Act 17a-4(i).³

¹ 17 CFR 240.17a-4(i).

² Unless otherwise noted, each defined term in this letter has the same meaning as defined, directly or by reference, in your letter.

³ Securities transaction confirmations prepared by a Broker-Dealer Participant without the involvement of Omgeo as described in your letter would not be covered by this response, and must be made and kept in accordance with Exchange Act Rules 17a-3 and 17a-4. We also note that a Broker-Dealer Participant will continue to have a responsibility to give or send such confirmations pursuant to Exchange Act Rule 10b-10. 17 CFR 240.17a-3, 17a-4, and 10b-10.

Exchange Act Rule 17a-3(a)(8) requires a broker-dealer to make and keep current copies of confirmations of all purchases and sales of securities. A Broker-Dealer Participant would need to retain the required Exchange Act Rule 10b-10⁴ information for each TradeSuite confirmation as a required record under such rule. Broker-Dealer Participants currently transmit to Omgeo all of the disclosures included on each electronic confirmation issued by TradeSuite on a transaction-by-transaction basis. Under the 2008 No-Action Letter, Broker-Dealer Participants will provide Omgeo with the types of disclosures that the Broker-Dealer Participant customarily includes on the back of a paper confirmation, and when an electronically-delivered TradeSuite confirmation is sent to a customer, Omgeo will make the applicable disclosures available to the customer via a URL link stamped on the confirmation. Thus, when Omgeo delivers an electronic confirmation via TradeSuite, a Broker-Dealer Participant will no longer need to transmit to Omgeo the disclosures customarily provided on the back of a paper confirmation for each confirmation Omgeo issues, because the Broker-Dealer Participant will have previously transmitted this information to Omgeo.

We note in particular in taking this position that a Broker-Dealer Participant, therefore, will have sent Omgeo the required Exchange Act Rule 10b-10 information to satisfy their delivery obligations to institutional customers that are customers for purposes of Rule 10b-10, as well as its recordkeeping obligation under Rule 17a-3(a)(8). Under Rule 17a-4(i), the Broker-Dealer Participants will rely on Omgeo to satisfy the requirements of Rule 17a-3(a)(8) to make and keep current a complete copy of each TradeSuite confirmation delivered to a customer, as well as to preserve such confirmations under Rule 17a-4(b)(1).

We also note that Omgeo will preserve the confirmations as is required by Rule 17a-4; and that Omgeo and each Broker-Dealer Participant that engages Omgeo as a third party recordkeeper as described in your letter will enter into an agreement setting forth the obligations and representations of each party under the arrangement, consistent with the representations contained in your letter. We also note that each Broker-Dealer Participant is required by Form BD to promptly notify regulators of any third party books and records maintenance requirements. Finally, we note that Omgeo has made the representations and agreements required by Rule 17a-4(i).

⁴

17 CFR 240.10b-10.

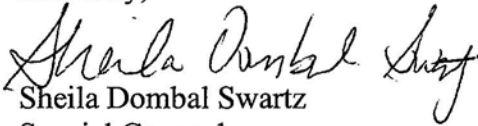
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This position concerns enforcement action under Rules 17a-3(a)(8) and 17a-4 only and is based solely upon the representations you have made and is limited strictly to the facts and conditions described in your letter. Any different facts or circumstances, including any change to the operation of TradeSuite, may require a different response. Finally, we express no view with respect to other questions the proposed activities of Omgeo may raise, including the applicability of any other federal or state laws or the applicability of any self-regulatory rules.

Sincerely,


Sheila Dombal Swartz
Special Counsel



Shaping STP™

Norman M. Reed
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Michael A. Macchiaroli
Associate Director
Division of Trading and Markets
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: **Request for Relief from Rules 17a-3(a)(8) and 17a-4**

Dear Mr. Macchiaroli:

Omgeo LLC ("Omgeo") requests assurance that the staff of the Division of Trading and Markets (the "Division") of the Securities and Exchange Commission (the "Commission") would not recommend enforcement action under Rules 17a-3(a)(8) and 17a-4 under the Securities Exchange Act of 1934 (the "Exchange Act") if, under the circumstances described below, broker-dealers that depend on Omgeo to transmit confirmations of purchases and sales of securities (such broker-dealers, collectively, "Broker-Dealer Participants") rely on Omgeo to maintain and preserve such confirmations under Exchange Act Rule 17a-4(i).¹ In connection with this request, and based on its representations below, Omgeo seeks assurance that, in lieu of filing the written undertakings prescribed by Rule 17a-4(i) for each Broker-Dealer Participant, Omgeo be allowed to rely on the Form BD² requirement that Broker-Dealer Participants promptly notify regulators of any third party books and records maintenance arrangements.

Omgeo is a Delaware limited liability company that is a joint venture between The Depository Trust & Clearing Corporation ("DTCC") and certain subsidiaries of Thomson Reuters. In connection with its TradeSuite service, Omgeo enters into agreements with Broker-Dealer Participants pursuant to which Omgeo agrees to prepare and deliver, and to maintain and preserve copies of, confirmations of purchases and sales of securities of its Broker-Dealer Participants' customers ("Customers"). TradeSuite is the current name of the ID System that

¹ Securities transaction confirmations prepared by a Broker-Dealer Participant without the involvement of Omgeo as described in this letter would not be covered by this request, and must be made and kept in accordance with Exchange Act Rules 17a-3 and 17a-4. We also note that a Broker-Dealer Participant will continue to have a responsibility to give or send such confirmations pursuant to Exchange Act Rule 10b-10, 17 CFR §§ 240.17a-3, 240.17a-4, and 240.10b-10.

² 17 CFR § 240.15b1-1; 17 CFR § 249.501.

was formerly operated by The Depository Trust Company ("DTC").³ Pursuant to a 1983 no-action letter (the "1983 No-Action Letter"),⁴ DTC and later Omgeo has provided, and maintained and preserved copies of, confirmations in satisfaction of Exchange Act Rules 10b-10, 17a-3, and 17a-4. Generally, Rule 10b-10 requires broker-dealers to deliver confirmations to their customers at or before completion of each securities transaction, Rule 17a-3(a)(8) requires broker-dealers to make and keep current copies of confirmations of all purchases and sales of securities, and Rule 17a-4(b)(1) requires broker-dealers to preserve for a period of not less than three years, the first two years in an easily accessible place, all records required to be made pursuant to Exchange Act Rule 17a-3(a)(8).

In the 1983 No-Action Letter, the Division provided Broker-Dealer Participants (referred to in that letter as "ID Brokers") with various alternatives to satisfy their recordkeeping requirements relating to DTC-prepared confirmations. Of relevance to Omgeo's request herein, if a Broker-Dealer Participant chose not to receive a confirmation from DTC, the Division stated that it would not recommend enforcement action to the Commission if the Broker-Dealer Participant retained in compliance with Rule 17a-4 the data it submitted to DTC to enable DTC to deliver a confirmation.⁵ In connection with this relief, DTC agreed to promptly make available to the Commission's examination staff copies of any confirmation prepared by it upon request by the staff. In 2001, the Division stated that DTC's transfer of its TradeSuite service to Omgeo did not affect the staff's positions expressed in the 1983 No-Action Letter.⁶

The ID System, which, as described above, is now known as TradeSuite, has, since 1983, expanded in scope and in the number of users of the service. Although the relief provided to Broker-Dealer Participants in the 1983 No-Action Letter has been helpful to Omgeo and firms relying on that guidance, forthcoming enhancements to TradeSuite relating to electronically-delivered confirmations have caused uncertainty among Broker-Dealer Participants as to the applicability of the 1983 No-Action Letter.

As noted above, under the 1983 No-Action Letter, a Broker-Dealer Participant is not required to receive a confirmation from Omgeo if the Broker-Dealer Participant retains in compliance with Rule 17a-4 the data it submits to Omgeo to enable it to deliver a confirmation. Pursuant to a no-

³ DTCC was created in 1999 as a holding company for DTC and the National Securities Clearing Corporation, each of which is registered as a clearing agency pursuant to Section 17A of the Exchange Act.

⁴ Letter re: The Depository Trust Company (Jan. 31, 1983). See also letter re: The Depository Trust Company (Oct. 29, 1974).

⁵ The staff also permitted a Broker-Dealer Participant to receive a confirmation from DTC in a medium other than hard copy or certain other specified media, and to retain it in the medium received. Finally, the staff stated that if a Broker-Dealer Participant chose to retain the data or confirmation in a medium other than hard copy or another acceptable media, the Broker-Dealer Participant was required, upon request, to make available to the Commission or its staff legible, true and complete copies of the data or confirmation, in readable form.

⁶ Letter re: The Depository Trust Company (Apr. 17, 2001).

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action letter issued to Omgeo last year (the "2008 No-Action Letter"),⁷ however, a Broker-Dealer Participant will no longer be required to transmit to Omgeo all of the disclosures included on each electronic confirmation issued by TradeSuite on a transaction-by-transaction basis. Specifically, under the 2008 No-Action Letter, when Omgeo delivers an electronic confirmation via TradeSuite, the Broker-Dealer Participant will no longer need to transmit to Omgeo the Rule 10b-10 disclosures customarily provided on the back of a paper confirmation for each confirmation issued by Omgeo.⁸ Because of this change to TradeSuite, which will provide significant cost savings to Broker-Dealer Participants and their Customers, it is no longer clear whether the recordkeeping relief contained in the 1983 No-Action Letter will continue to apply.

As Omgeo currently maintains and preserves copies of all of the confirmations it issues for Broker-Dealer Participants, and in the near future, relying on the 2008 No-Action Letter, Omgeo will also maintain and preserve all of the disclosures customarily provided on the back of paper confirmations, Omgeo believes that it is the most appropriate repository to which regulatory authorities can turn to obtain complete copies of a Broker-Dealer Participant's confirmations issued by TradeSuite. Omgeo also continues to adhere to its agreement contained in the 1983 No-Action Letter and the 2008 No-Action Letter to make available to the Commission's examination staff in a prompt manner a copy of any confirmation it issues where requested by the staff. For these reasons, Omgeo believes that permitting a Broker-Dealer Participant to rely on Rule 17a-4(i) with respect to confirmations issued by TradeSuite is a reasonable solution to address the Commission's regulatory objectives under the recordkeeping rules in conjunction with the recent changes to TradeSuite as described in the 2008 No-Action Letter.

Under Rule 17a-4(i), if records required to be maintained and preserved pursuant to Rule 17a-3 and Rule 17a-4 are prepared or maintained on behalf of a broker-dealer by an outside entity, such outside entity must file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the broker-dealer required to maintain and preserve such records. Such outside entity also must agree to surrender such records promptly on request of the broker-dealer, and include the following language in its written undertaking:

With respect to any books and records maintained or preserved on behalf of [BD], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.

⁷ Letter re: Omgeo LLC (Mar. 12, 2008).

⁸ Broker-Dealer Participants will provide Omgeo with the types of disclosures that the Broker-Dealer Participant customarily includes on the back of paper confirmations (*e.g.*, disclosures for fixed income transactions and for equity transactions), and when an electronically-delivered TradeSuite confirmation is sent to a Customer, Omgeo will make applicable disclosures available to the Customer via a URL link stamped on the confirmation.

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Omgeo is fully capable and willing to make the representations and agreements contained in Rule 17a-4(i) with respect to confirmations that it issues through its TradeSuite service on behalf of Broker-Dealer Participants. Omgeo currently has several thousand Broker-Dealer Participants using its TradeSuite service, however, and to provide meaningful cost savings to Customers and Broker-Dealer Participants, Omgeo seeks to affirmatively make the representations and agreements required by Rule 17a-4(i) in this letter.⁹

Further, in lieu of Omgeo filing the written undertakings prescribed by Rule 17a-4(i) for each Broker-Dealer Participant, Omgeo seeks to rely on the obligation contained in Item 8.A. and Schedule D of Form BD, which require each Broker-Dealer Participant to report and keep current details regarding any arrangement that it has with a third party to keep or maintain the Broker-Dealer Participant's books and records. Specifically, Item 8.A. of Form BD requires a broker-dealer to report whether it has an arrangement with any other person, firm, or organization under which any books or records of the broker-dealer are kept or maintained by such other person, firm, or organization. If a broker-dealer responds affirmatively to Item 8.A., the broker-dealer is then required to report details relating to such arrangement(s) on Schedule D, Section IV of Form BD, including the name and address of the person, firm, or organization maintaining the broker-dealer's books or records. By law, a broker-dealer must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.

Under the arrangements described above, the Commission and each applicable Designated Examining Authority for a Broker-Dealer Participant will have notice as to Omgeo's status as recordkeeper for the Broker-Dealer Participant's confirmations and will have ready access to those confirmations through Omgeo based on its representations below.¹⁰

Based on the foregoing, Omgeo makes the following representations to the Commission and requests the Division's assurance that it would not recommend enforcement action under Rules 17a-3(a)(8) and 17a-4 if Broker-Dealer Participants rely on Omgeo to maintain and preserve confirmations of purchases and sales of securities under Exchange Act Rule 17a-4(i) as described above.

⁹ We note that Omgeo is a Commission-regulated entity and that the Commission has ready access to Omgeo and its records. See Exchange Act Release No. 44188 (Apr. 17, 2001). In Release 34-44188, Omgeo agrees to, among other things, respond to requests from the Commission for information regarding its TradeSuite service, and to provide access to the Commission to conduct on-site inspections of all facilities, records, and personnel related to TradeSuite. Omgeo also agrees to preserve a copy or record of all trade details, reports and notices sent to customers pertaining to TradeSuite, and to retain these records for a period of not less than five years, the first two years in an easily accessible place.

¹⁰ Omgeo also will keep, and will be able generate for the Commission upon request, a list of Broker-Dealer Participants for which it acts as such a recordkeeper.

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Representations:

- (i) Omgeo agrees that records of Rule 10b-10 confirmations of a Broker-Dealer Participant that are prepared and issued by Omgeo through its TradeSuite service, which are required to be maintained and preserved by the Broker-Dealer Participant pursuant to Rules 17a-3 and Rule 17a-4, are the property of the Broker-Dealer Participant (except for such additional copies that Omgeo maintains for purposes of its own recordkeeping obligations);
- (ii) Omgeo agrees to surrender such records that are the property of the Broker-Dealer Participant promptly on request of the Broker-Dealer Participant; and
- (iii) Omgeo agrees to permit examination of such records, which Omgeo will maintain in such format as is required by Rule 17a-4, at any time or from time to time during business hours by representatives or designees of the Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.¹¹

* * * * *

We welcome the opportunity to discuss this request with you. If you have any questions regarding this request, please call me at 212-855-3244, or our outside counsel, Jack Drogin and Mark Attar of Schiff Hardin LLP, at 202-778-6422 and 202-778-6427, respectively. On behalf of Omgeo, we appreciate the staff's consideration of this request.

Very truly yours,



Norman M. Reed
General Counsel

cc: Thomas K. McGowan, Assistant Director
Division of Trading and Markets, SEC

Sheila Dombal Swartz, Special Counsel
Division of Trading and Markets, SEC

¹¹ Omgeo and each Broker-Dealer Participant that engages Omgeo as a third party recordkeeper as described above will enter into an agreement setting forth the obligations and representations of each party under the arrangement, consistent with the representations contained in this letter.