

13.3.2 OSC Notice and Request for Comment – Omgeo Canada Matching Ltd. and Omgeo LLC – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

OMGEO CANADA MATCHING LTD. and OMGEO LLC

APPLICATION FOR EXEMPTION FROM RECOGNITION AS A CLEARING AGENCY

A. Background

On March 1, 2011, subsection 21.2(0.1) of the *Securities Act* (Ontario) (OSA) will come into force. It will prohibit clearing agencies from carrying on business in Ontario unless they are recognized as a clearing agency or are exempt from the requirement to be recognized by order of the Ontario Securities Commission (Commission).

Omgeo Matching Ltd. (Omgeo Canada) and Omgeo LLC have jointly applied (the Application) to the Commission for an order pursuant to section 147 of the OSA to exempt Omgeo Canada from the requirement to be recognized as a clearing agency in subsection 21.2(0.1) of the OSA. Among other factors set out in the Application, the exemption is being sought on the basis that, as a matching service utility (MSU) in Ontario, Omgeo Canada performs only limited clearing agency functions and is already subject to a regulatory framework in National Instrument 24-101 – *Institutional Trade Matching and Settlement* (NI 24-101).

As an MSU, Omgeo Canada provides centralized facilities for the institutional trade comparison and matching (affirmation / confirmation) process. An MSU is subject to certain reporting, systems capacity and other requirements under NI-24-101. Omgeo LLC, the parent of Omgeo Canada, provides the systems, infrastructure, personnel and other corporate functions for the operations of Omgeo Canada.

In assessing the Application, staff followed the process set out in OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (Staff Notice). In their Application, Omgeo Canada and Omgeo LLC have addressed relevant criteria described in the Staff Notice.

B. Draft Order

Subject to comments received, staff propose to recommend that the Commission grant an exemption order subject to certain terms and conditions substantially in the form of the draft order attached as Schedule B (Draft Order) to the Application.

Among other things, the Draft Order requires Omgeo Canada to comply with terms and conditions relating to systems and technology, financial reporting, outsourcing and information sharing and regulatory cooperation. Also, Omgeo LLC is required to take such actions as are within its ability to assist Omgeo Canada in meeting the terms and conditions of the order. Moreover, Omgeo Canada must not expand into other clearing agency functions in Ontario without the prior approval of the Commission.

C. Comment Process

The Commission is publishing for public comment the Application and Draft Order. We are seeking comment on any aspect of the Application and Draft Order. You may provide your comments in writing by e-mail on or before **January 24, 2011**, addressed to the attention of the Secretary of the Commission, Ontario Securities Commission, 20 Queen Street West, Toronto, Ontario, M5H 3S8, e-mail: jstevenson@osc.gov.on.ca.

The confidentiality of submissions cannot be maintained as comments received during the comment period will be published.

Questions on this notice may be referred to:

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December 16, 2010

**BY DELIVERY AND
ELECTRONIC FILING**

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Attention: Secretary to the Commission

Dear Sirs/Mesdames:

Re: Application for Exemption from Recognition as a Clearing Agency in Ontario

A. PURPOSE

Omgeo Canada Matching Ltd./Services d'appariement Omgeo Canada Ltée (the "**Applicant**"), an Ontario corporation with its head office located in Toronto, Ontario, is hereby jointly applying with its parent company, Omgeo LLC, to the Ontario Securities Commission (the "Commission") for an order (the "**Clearing Agency Exemption Order**"), pursuant to section 147 of the *Securities Act* (Ontario) (the "**Act**"), exempting the Applicant from the requirement which will come into force in Ontario on March 1, 2011 in subsection 21.2(0.1) of the Act to be recognized as a clearing agency in Ontario (the "**Clearing Agency Recognition Requirement**").

B. BUSINESS OVERVIEW

The Applicant carries on business as a matching service utility in Canada ("**MSU**") as described in, and in accordance with the requirements of, National Instrument 24-101 *Institutional Trade Matching and Settlement* ("**NI 24-101**") and the companion policy thereto ("**CP 24-101**"). An MSU is a provider of centralized automated services and facilities for the institutional trade matching process, i.e., it facilitates the clearing of trades executed by or on behalf of institutional investors, where multiple parties such as a dealer, adviser/investment manager, and custodian, are required to provide information to confirm and agree to the terms and settlement instructions of a trade.

Specifically, the Applicant provides centralized automated facilities for the matching of trades of equity and debt securities and transmits matched trades to a clearing agency for clearing and settlement. For greater certainty, the Applicant does not:

- (a) act as an intermediary in paying funds or delivering securities in connection with trades in securities;
- (b) provide centralized facilities for the clearing of trades in securities, other than limited facilities for comparing data respecting the terms of settlement of a trade;
- (c) provide centralized facilities as a depository of securities; or
- (d) perform central counter-party, multilateral netting and/or guarantor functions.

C. APPLICANT'S CURRENT MSU STATUS IN CANADIAN JURISDICTIONS

The Applicant commenced carrying on business as an MSU in Canada effective as of September 30, 2007 and filed its Notice of Operations (the "**MSU Notice of Operations**") in Form 24-101F3 with the Commission as required by section 10.2(4) of NI 24-101.

The Applicant has applied to the Autorité des marchés financiers (the "**AMF**") for recognition as an MSU in Quebec under the Securities Act (Quebec).

D. MSU REGULATORY AND OVERSIGHT REQUIREMENTS IN UNITED STATES

The Applicant is wholly-owned, directly, by Omgeo LLC. Omgeo LLC carries on business as a global provider of technology and information services (including central trade matching services) to the financial community through its subsidiaries (including the Applicant). Omgeo LLC is already subject to regulatory and oversight requirements in its country of origin/home jurisdiction of

the United States Securities and Exchange Commission (the “SEC”) regarding its central trade matching services in the United States. In this context, it is noteworthy that by order of the SEC dated April 17, 2001 (the “SEC Order”),¹ Omgeo LLC was granted an exemption from registration as a clearing agency in the United States, subject to the terms and conditions in the SEC Order.

E. POTENTIAL ROLE OF MSUs IN THE CANADIAN CAPITAL MARKETS

As noted in CP 24-101, NI 24-101 and CP 24-101 collectively provide a framework in Canadian securities regulation for more efficient and timely processing and settlement of institutional trades and form part of a broader initiative to implement straight-through processing (“STP”) in the Canadian capital markets. Among other things, STP requires that the parties to an institutional trade with or on behalf of an institutional investor (“**trade-matching parties**”) achieve trade matching (i.e., agree on the details of the trade) within the prescribed timelines of NI 24-101. An MSU may help trade-matching parties to accomplish trade matching within the prescribed timelines of NI 24-101, thereby enhancing the operational efficiency and competitiveness of the Canadian capital markets.

F. RELEVANT CRITERIA APPLICABLE TO MSUs

Among other things, Commission Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agency* dated March 19, 2010 (the “**Clearing Agency Notice**”) requires the Applicant to describe how it satisfies the specific criteria outlined in Appendix A of the Clearing Agency Notice (the “**Appendix A Criteria**”) which are relevant to the Applicant’s MSU activities in Ontario. Accordingly, the Applicant has reproduced below the Appendix A Criteria, followed by a description of how the Applicant satisfies each criterion or why the criterion is not relevant to the Applicant because of the nature and scope of the Applicant’s MSU activities in Ontario.

PART 1 GOVERNANCE

1.1 The governance structure and governance arrangements of the clearing agency ensures:

- (a) effective oversight of the clearing agency;

Response: The Applicant is affiliated with a number of wholly-owned subsidiaries of its parent company, Omgeo LLC, in Canada, the United States, the United Kingdom, Japan, Australia, Hong Kong, and Singapore which collectively develop and deploy post-trade, pre-settlement solutions.

The Applicant is a private company which was incorporated under the *Business Corporations Act* (Ontario) on September 28, 2007 and both its registered and head office are located in Toronto, Ontario.

- (b) the clearing agency’s activities are in keeping with its public interest mandate;

Response: This criterion is not relevant to the Applicant because it does not function as a traditional clearing agency and so does not have a public interest mandate.

- (c) fair, meaningful and diverse representation on the governing body (Board) and any committees of the Board, including a reasonable proportion of independent directors;

Response: The Applicant’s board of directors currently comprises three individuals, two of whom are considered to be independent.²

The non-independent director and the officers of the Applicant have extensive experience in providing financial services (including central trade matching services) as a result of their respective roles with Omgeo LLC and the DTCC (defined below).

- (d) a proper balance among the interests of the owners and the different entities seeking access (participants) to the clearing, settlement and depository services and facilities (settlement services) of the clearing agency;

Response: Given the nature and scope of the Applicant’s MSU activities in Canada, it is appropriate that the interests of different Canadian users/subscribers of the Applicant’s matching service utilities (i.e., dealers, advisers, and custodians) are met as a consequence of market forces. Specifically, as a small for-profit private company, the Applicant must maintain a profitable business model within a competitive marketplace which satisfies the needs of

¹ Securities Exchange Act Release No. 44188 (April 17, 2001).

² A director is considered to be independent if such director is not part of the Applicant’s management and does not have a material relationship with the Applicant which would interfere with his/her judgment regarding a conflict of interest matter.

these Canadian users/subscribers, while at the same time avoiding the creation of unreasonable barriers to access, if it hopes to be successfully involved in the clearing and settlement of securities transactions in the Canadian capital markets on a go forward basis.

At the level of its parent company, Omgeo LLC's Board of Managers consists of 12 members, 11 of whom have voting rights (the 12th is Omgeo LLC's CEO, who cannot vote at Omgeo LLC Board meetings). Omgeo LLC's principal shareholders, the Depository Trust & Clearing Corporation (the "DTCC") and Reuters Personal Focus Inc., each have two voting representatives on the Omgeo LLC Board. The DTCC is an industry-owned utility in the United States. As a result, broker-dealers and other users of the DTCC's services, which currently includes custodian banks and large investment managers, are represented on Omgeo LLC's Board through the DTCC. In addition, Omgeo LLC's Operating Agreement requires that the remaining six voting representatives of Omgeo LLC's Board be representatives of the global securities industry who are not directors, officers or other employees of the DTCC or Reuters Personal Focus Inc. or their affiliates ("**Industry Board Representatives**") who are mutually acceptable to both the DTCC and Reuters Personal Focus Inc. The current Industry Board Representatives on Omgeo LLC's Board of Managers includes senior officers of the following companies: Brown Brothers Harriman; Citigroup; Goldman Sachs & Co.; The Northern Trust Company; PIMCO; and Threadneedle (a large asset manager in the United Kingdom).

(e) the clearing agency has policies and procedures to appropriately identify and manage conflicts of interest;

Response: The term "conflict of interest" describes any circumstance that could cast doubt on an individual's ability to act with total objectivity with regard to the Applicant's interests or the interests of the Applicant's MSU users/subscribers. Generally, each director, officer and other employee of the Applicant is expected to avoid any action, involvement, or relationship which could in any way compromise his or her actions on behalf of the Applicant or an MSU user/subscriber, or may interfere with his or her judgment regarding a conflict of interest matter. Conflicts of interest are addressed in Omgeo LLC's Standards of Business Conduct ("**SBC**") which also serves as the Applicant's code of ethics. All of the Applicant's directors, officers and other employees are required to acknowledge that they have read, understood and agree to abide by the SBC upon commencement of their employment or other relationship with the Applicant and annually thereafter. Employees are required to report any violations of the SBC to their manager, a member of Omgeo LLC's Human Resources, the Compliance or Legal Departments or anonymously by telephone or the Internet via Omgeo LLC's whistleblower hotline. The hotline is administered by an independent third party firm, SAI Global. The Applicant may take appropriate action against any individual involved in a conflict of interest matter up to and including termination. Actions, involvements or relationships which could raise a question of conflict of interest include, but are not limited to, the following:

- conducting business on behalf of the Applicant with a member of the individual's family or a business organization in which the individual or a member of his or her family has a significant association, which could give rise to a conflict of interest, without first obtaining a written approval from an officer of the Applicant;
- serving as a director, board member or in an advisory, consultative, technical or managerial capacity for any non-affiliated business organization, government agency or industry group that interacts or does business with the Applicant, is a competitor of the Applicant, or is a client of the Applicant without first obtaining a written approval from an officer of the Applicant;
- accepting any position outside the Applicant involving time "belonging" to the Applicant, or which interferes with the individual's proper performance of his or her duties; and
- taking advantage of any business opportunity which might be of interest to the Applicant.

(f) each director or officer of the clearing agency, and each person or company that owns or controls, directly or indirectly, more than 10 percent of the clearing agency is a fit and proper person; and

Response: The Applicant is wholly-owned, directly, by Omgeo LLC. Omgeo LLC carries on business as a global provider of technology and information services (including central trade matching services) to the financial community through its subsidiaries (including the Applicant).

Omgeo LLC is jointly owned, directly, by the DTCC,³ Reuters Personal Focus Inc.,⁴ and certain affiliated holding companies of Reuters Personal Focus Inc.

The Applicant follows the same protocols as Omgeo LLC prior to nominating a director or officer and takes the following steps to ensure that each nominee is a fit and proper person:

- qualification requirements are established by the Applicant's CEO with input from the Applicant's directors, Omgeo LLC, and Omgeo LLC internal stakeholders as appropriate;
 - an extensive search is conducted targeting relevant market segments and companies;
 - the resulting candidate pool is interviewed by the Applicant's CEO and an internal team of Omgeo LLC stakeholders (peers, subordinates, human resources);
 - the finalist is interviewed by Omgeo LLC's Chairman and Reuters Personal Focus Inc. representatives when appropriate; and
 - extensive reference checking is completed prior to an offer of employment or the commencement of a relationship with the Applicant.
- (g) there are appropriate qualifications, limitation of liability and indemnity provisions for directors and officers of the clearing agency.

Response: The non-independent director and the officers of the Applicant have extensive experience in providing financial services (including central trade matching services) as a result of their respective roles with Omgeo LLC and the DTCC.

PART 2 FEES

2.1 All fees imposed by the clearing agency are equitably allocated. The fees do not have the effect of creating unreasonable barriers to access.

Response: As a for-profit entity comprising an important infrastructure system involved in the clearing and settlement of securities transactions in the Canadian capital markets, the Applicant must maintain a profitable business model within a competitive marketplace, while at the same time avoiding the creation of unreasonable barriers to access.

In view of these objectives, the Applicant imposes fees and other charges for establishing a connection to its systems and using its services as an MSU that are fair and appropriate, do not have the effect of creating unreasonable barriers to access, are informed by Omgeo LLC's experience with setting fees in non-Canadian jurisdictions, and are consistent with prevailing market forces in the Canadian capital markets from time to time.

2.2 The process for setting fees is fair and appropriate, and the fee model is transparent.

Response: Given that the Applicant is in the early stages of establishing its brand as a provider of matching services in Canada, the fee setting process at the present time is largely a natural consequence of Canadian market forces. Specifically, to create and maintain a profitable business model as a small for-profit private company within a competitive marketplace in which it is not the market leader, the Applicant imposes fees and other charges for establishing a connection to its systems and using its services as an MSU that are fair and appropriate, are competitive with its competitors, do not have the effect of creating unreasonable barriers to access, are informed by Omgeo LLC's experience with setting fees in non-Canadian jurisdictions, and are consistent with prevailing market forces in the Canadian capital markets from time to time. In addition, fee structures for regulated services are approved by Omgeo LLC's Board of Managers for all jurisdictions in which Omgeo LLC and its subsidiaries operate with the goal of ensuring broad consistency between markets. Final prices are adapted for major

³ The DTCC, through its subsidiaries, provides clearing, settlement and information services for equities, corporate and municipal bonds, government and mortgage-backed securities, money market instruments and over-the-counter derivatives. In addition, the DTCC is a leading processor of mutual funds and insurance transactions, linking funds and carriers with their distribution networks.

⁴ Reuters Personal Focus Inc. is the principal holding company for the Thomson Reuters Markets Group ("**TR Markets**"), a US \$1.9 billion provider of information and technology solutions to the worldwide financial community. Through the widest range of products and services in the industry, TR Markets helps clients in more than 70 countries make better decisions, be more productive and achieve superior results. TR Markets is part of Thomson Reuters Corporation, a global leader in providing integrated information solutions to business and professional customers. Thomson Reuters Corporation provides value-added information, software tools and applications to more than 20 million users in the fields of law, tax, accounting, financial services, higher education, reference information, corporate e-learning and assessment, scientific research and healthcare. With revenues of US \$8.4 billion, Thomson Reuters Corporation lists its common shares on the New York and Toronto stock exchanges (NYSE: TRI; TSX: TRI).

currencies and local market conditions. The foregoing being said, the Applicant may solicit user feedback when establishing fees in the future, through client committees or other means, as it deems appropriate and as its business needs dictate.

Omgeo LLC's Operating Agreement requires that the Board of Managers determine the pricing structure for all activities for which registration as a clearing agency in the United States, or an exemption from therefrom, is required. Fee structures for regulated services are approved by Omgeo LLC's Board of Managers for all jurisdictions in which Omgeo LLC and its subsidiaries operate with the goal of ensuring broad consistency between markets. Final prices are adapted for major currencies and local market conditions.

The Applicant has a standard form Master Services Agreement ("**MSA**") which includes its current fee schedule and provides a complete list of all fees and other charges imposed, or to be imposed, by the Applicant for use of its services as an MSU in Canada. Moreover, the Applicant provides 30 days advance notice, in writing, of any changes to such fees or charges to users/subscribers prior to their implementation. The advance notice will be increased for all users/subscribers, including those that have already signed the MSA, to 90 days in the near future. The Applicant has provided a copy of the MSA, including its current fee schedules, to the Commission under separate cover.

PART 3 ACCESS

3.1 The clearing agency has appropriate written standards for access to its services.

Response: The Applicant provides the services of an MSU to Canadian dealers, advisers/investment managers, and custodians on a transparent, fair and reasonable basis, and has established appropriate qualification criteria and terms and conditions regarding access to its MSU services, under the MSA which all users/subscribers enter into on the same terms and conditions, except when the Applicant permits very limited amendment of the MSA in two unique sets of circumstances: First, some users/subscribers require clarification of the language in the template. Generally, such changes do not alter the meaning of the MSA terms and conditions, and are quite trivial; second, certain users/subscribers may have charters, constating documents, or be subject to regulatory requirements, that do not permit them to enter into agreements with specific clauses, language or obligations, such as indemnifications or choice of law and venue provisions. Among other things, the MSA and schedules thereto contain sections which: describe the matching service utilities to be provided by the Applicant to users/subscribers; fully disclose all fees and other charges for such MSU services; require users/subscribers to provide full contact particulars; describe billing and payment protocols; and set forth obligations pertaining to confidentiality, liability and damages, indemnification, term and termination, notice, amendment, waiver, severability, assignment, and governing law.

The Applicant has provided a copy of the MSA (including those of its schedules which are relevant to Canadian users/subscribers) to the Commission under separate cover.

There are no specific qualification criteria, or terms and conditions, for access to the Applicant's matching service utilities, other than that the business of a user/subscriber be consistent with the Applicant's Canadian business model and the community it serves in Canada. The Applicant's business is predominately institutional e.g., Canadian broker-dealers, investment advisers and custodians, and is focused on Delivery Versus Payment/Receive Versus Payment transactions.

3.2 The access standards and the process for obtaining, limiting and denying access are fair and transparent. A clearing agency keeps records of:

- (a) each grant of access including, for each participant, the reasons for granting such access, and

Response: The Applicant keeps copies of each MSA entered into by the Applicant and a user/subscriber, and of relevant documentation or correspondence with a user/subscriber which is related to the MSA.

- (b) each denial or limitation of access, including the reasons for denying or limiting access to an applicant.

Response: Since the commencement of its operations as an MSU in Canada, the Applicant has not limited, or denied access to, its matching service utilities to existing or prospective Canadian users/subscribers. Any such limitation or denial would likely only occur as a consequence of a failure of a user/subscriber to pay fees/charges or otherwise comply with the terms and conditions of the MSA. The Applicant and Omgeo LLC monitor compliance with an MSA via Omgeo LLC's automated, electronic screening protocols, including those efforts regarding viruses and other malware, and the Applicant's ongoing direct interactions with users/subscribers. In the event that any such denial or limitation of access occurs in the future, the Applicant will keep copies of records describing each denial or limitation of access, including the reasons for denying or limiting access.

PART 4 RULES AND RULEMAKING

4.1 The clearing agency's rules are designed to govern all aspects of the settlement services offered by the clearing agency, and

- (a) are not inconsistent with securities legislation,

Response: The Applicant provides its matching service utilities to users/subscribers in compliance with applicable securities legislation in Canada.

The Applicant and Omgeo LLC monitor compliance with an MSA via Omgeo LLC's automated, electronic screening protocols, including those efforts regarding viruses and other malware, and the Applicant's ongoing direct interactions with users/subscribers.

- (b) do not permit unreasonable discrimination among participants, and

Response: All users/subscribers enter into the MSA with the Applicant on substantially the same terms and conditions. There are no specific qualification criteria, or terms and conditions, for access to the Applicant's matching service utilities, other than that the business of a user/subscriber be consistent with the Applicant's Canadian business model and the community it serves in Canada.

- (c) do not impose any burden on competition that is not necessary or appropriate.

Response: The terms and conditions of the MSA do not impose any burdens which would limit the ability of a competitor to provide MSU services to Canadian users/subscribers.

4.2 The clearing agency's rules and the process for adopting new rules or amending existing rules should be transparent to participants and the general public.

Response: This specific criterion is not relevant to the Applicant because of the nature and scope of the Applicant's MSU activities in Canada. Specifically, the Applicant provides centralized automated facilities for the matching of trades of equity and debt securities and transmits matched trades to a clearing agency for clearing and settlement, but does not: (i) act as an intermediary in paying funds or delivering securities in connection with trades in securities; (ii) provide centralized facilities for the clearing of trades in securities, other than limited facilities for comparing data respecting the terms of settlement of a trade; (iii) provide centralized facilities as a depository of securities; or (iv) perform central counter-party, multilateral netting and/or guarantor functions. Any "rules" under which the Applicant provides its matching service utilities to Canadian users/subscribers exist as a matter of contract under the MSA and are transparent to such users/subscribers. Because the Applicant does not function as a traditional clearing agency, the Applicant need not have rules or rule-making processes which are transparent to the general public.

4.3 The clearing agency monitors participant activities to ensure compliance with the rules.

Response: The Applicant and Omgeo LLC monitor compliance with an MSA via Omgeo LLC's automated, electronic screening protocols, including those efforts regarding viruses and other malware, and the Applicant's ongoing direct interactions with users/subscribers.

4.4 The rules set out appropriate sanctions in the event of non-compliance by participants.

Response: The MSA sets out appropriate sanctions in the event of non-compliance by users/subscribers for the Applicant's matching service utilities. If these sanctions are not acceptable, a user/subscriber may decide not to enter into the MSA with the Applicant. Moreover, upon the Applicant becoming aware of a failure of a user/subscriber to comply with the MSA, the Applicant first responds by initiating contact with the user/subscriber to confirm and understand the reasons for the failure. If there is a compliance issue, then the Applicant will attempt to work with the user/subscriber to remediate it. If remediation is not possible, or if the breach continues and is material, the Applicant will begin proceedings to suspend or terminate the user/subscriber's access to its matching service utilities pursuant to the relevant processes in the MSA.

PART 5 DUE PROCESS

5.1 For any decision made by the clearing agency that affects an applicant or a participant, including a decision in relation to access, the clearing agency ensures that:

- (a) an applicant or a participant is given an opportunity to be heard or make representations; and

Response: In the event that the Applicant makes any such decisions, it will give a user/subscriber, or prospective user/subscriber, an opportunity to be heard or to make representations in respect of the decision on an informal basis, provided that the Applicant shall always be able to accept or reject a user/subscriber in its discretion.

- (b) the clearing agency keeps a record of, gives reasons for, and provides for appeals or reviews of, its decisions.

Response: Because the Applicant does not function as a traditional clearing agency and so has no public interest mandate, the Applicant need not have formal review or appeal processes.

PART 6 RISK MANAGEMENT

- 6.1 The clearing agency's settlement services are designed to minimize systemic risk.

Response: This criterion is not applicable to the Applicant because the Applicant does not provide settlement services.

- 6.2 The clearing agency has appropriate risk management policies and procedures and internal controls in place.

Response: In view of the limited nature and scope of the Applicant's MSU activities in Canada, the only risk which is relevant to such activities is operational risk. Please see the discussions under "Part 7 – Systems and Technology" and "Part 9 – Operational Reliability" below for descriptions of the Applicant's operational risk management policies, procedures and internal controls.

- 6.3 Without limiting the generality of the foregoing, the clearing agency's services or functions are designed to achieve the following objectives:

- (a) Where the clearing agency acts as a central counterparty, it rigorously controls the risks it assumes.

Response: This criterion is not applicable to the Applicant because the Applicant does not act as a central counterparty.

- (b) The clearing agency minimizes principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

Response: This criterion is not applicable to the Applicant because the Applicant's MSU activities do not require it to minimize principal risk in this manner.

- (c) Final settlement occurs no later than the end of the settlement day. Intraday or real-time finality is provided where necessary to reduce risks.

Response: This criterion is not applicable to the Applicant because the Applicant does not provide settlement services.

- (d) Where the clearing agency extends intraday credit to participants, including a clearing agency that operates net settlement systems, it institutes risk controls that, at a minimum, ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle.

Response: The criterion is not applicable to the Applicant because the Applicant does not extend intraday credit to users/subscribers and so risk controls ensuring timely settlement are not necessary.

- (e) Assets used to settle the ultimate payment obligations arising from securities transactions carry little or no credit or liquidity risk. If central bank money is not used, steps are to be taken to protect participants in settlement services from potential losses and liquidity pressures arising from the failure of the cash settlement agent whose assets are used for that purpose.

Response: This criterion is not applicable to the Applicant because the Applicant does not provide settlement services.

- (f) If the clearing agency establishes links to settle cross-border trades, it designs and operates such links to reduce effectively the risks associated with cross-border settlements.

Response: This criterion is not applicable to the Applicant because the Applicant does not provide settlement services.

- 6.4 The clearing agency engaging in activities not related to settlement services carries on such activities in a manner that prevents the spillover of risk to the clearing agency that might affect its financial viability or negatively impact any of the participants in the settlement service.

Response: This criterion is not applicable to the Applicant. In view of the limited nature and scope of the Applicant's MSU activities in Canada, the only risk which is relevant to such activities is operational risk. Please see the discussions under "Part 7 – Systems and Technology" and "Part 9 – Operational Reliability" below for descriptions of the Applicant's operational risk management policies, procedures and internal controls.

PART 7 SYSTEMS AND TECHNOLOGY

7.1 For its settlement services systems, the clearing agency:

- (a) develops and maintains,
 - (i) reasonable business continuity and disaster recovery plans,

Response: The Applicant's parent company, Omgeo LLC, serves as the Applicant's "back office" and provides software, systems, policies/procedures, protocols, infrastructure, administrative support, and other services which the Applicant utilizes in its MSU operations. Omgeo LLC is subject to regulatory and oversight requirements of the SEC regarding its central matching services in the United States. All generic references to Omgeo in the sections which follow mean Omgeo LLC, or the larger Omgeo group which the Applicant forms a part of, as required by the context.

Among other things, Omgeo LLC provides business continuity planning and infrastructure for all of its non-U.S. subsidiaries (including the Applicant). Omgeo LLC's Business Continuity Program is compliant with regulatory requirements and is governed by the Audit Committee, a sub-committee of Omgeo LLC's Board of Managers.

Omgeo LLC has a comprehensive Business Continuity Program (including both technical and business procedures) that enables the Omgeo group to respond to and recover from a business disruption. The Omgeo group's mission is to resume normal business and client support operations with minimal service impact on clients, in the shortest time possible within regulatory guidelines. Omgeo's Recovery Time Objective is 2 hours.

Overall Strategy

Omgeo LLC's current strategy combines leveraging its global presence in worldwide locations and managing multiple production facilities to support client needs. The Omgeo group's geographic diversity is a key advantage to its ability to minimize business disruptions that could impact an office location or production facility.

A disruption at any office location or production facility would immediately prompt Omgeo LLC's senior management to activate a crisis management process to ensure that client services are resumed as quickly as possible. All areas of the Omgeo group have documented continuity plans to guide them in executing the steps necessary to minimize the impact of a business disruption on Omgeo group clients.

- (ii) an adequate system of internal control,

Response: As part of the Omgeo group, the Applicant utilizes Omgeo Central Trade ManagerSM ("**Omgeo CTM**") and Omgeo OASYS GlobalSM ("**OASYS Global**") to provide its central trade matching services.

Omgeo CTM is a strategic platform for the central matching of cross-border and non-U.S. domestic fixed income, equity, exchange-traded derivative and contract-for-difference transactions. Omgeo CTM is a global solution delivering exception-only processing, real-time settlement instruction enrichment, automated settlement notification to custodians and settlement agents, and, for Canadian domestic trades, notification to CDSX, a clearing and settlement system administered by CDS Clearing and Depository Services Inc. (the "**CDSX System**").

Omgeo CTM users/subscribers achieve same day affirmation rates in the high nineties percentage range which supports trade matching. The link to the CDSX System aids in compliance with NI 24-101 by passing matched trades through to the CDSX System electronically.

Advisers/investment managers using Omgeo CTM can match trades with Omgeo CTM brokers, and with the large community of OASYS Global brokers. OASYS Global processes the majority of the world's cross-border electronic trade confirmation volumes, providing notices of execution, allocation and confirmation services for cross-border and Canadian domestic equity and fixed income trades. The Omgeo CTM – OASYS Global Bridge works behind the scenes to allow Omgeo CTM to interoperate with OASYS Global.

Omgeo CTM and OASYS Global are operated out of three highly secure data centres, with high-availability across two data centres and the third centre providing out of region disaster recovery capability. Omgeo LLC supports a variety of client interfaces and network paths for access to Omgeo CTM and OASYS Global. For support needs, clients have access to the Omgeo Client Contact Center seven days a week, specifically from 12PM Eastern Standard Time (“EST”) Sunday to 4PM EST Saturday.

- (iii) adequate information technology general controls, including controls relating to information systems operations, information security, change management, problem management, network support, and system software support;

Response: The Applicant’s parent company, Omgeo LLC, provides security infrastructure for all of its non-U.S. subsidiaries (including the Applicant).

Omgeo LLC’s Information Security Risk Management Program is operated by the Corporate Information Security (“Omgeo CIS”) group which is dedicated to enabling functional areas, partners, and clients to conduct business and exchange information in a secure environment where risk is carefully managed and protection of assets is both comprehensive and pervasive. Omgeo CIS is composed of three focus areas:

- (I) Information Security Awareness, Training, and Policy Management;
- (II) Threat and Vulnerability Management, and Security Incident Response; and
- (III) Information Security Risk Management.

Omgeo LLC’s policies and standards are influenced by ISO 27001/2 and currently contain over 250 security control standards that are implemented across the Omgeo group by a team of Information Security Leads which, in turn, report into the groups responsible for certain functional areas of Omgeo LLC. Oversight of the Information Security Risk Management Program is performed by Omgeo LLC’s Executive Team and the Audit Committee of Omgeo LLC’s Board of Managers. Oversight of Omgeo LLC’s Information Security Policies and Standards is provided by Omgeo LLC’s Information Security Review Board which consists of cross-functional appointees from Omgeo LLC’s Executive Team.

- (b) on a reasonably frequent basis, and in any event, at least annually, and in a manner that is consistent with prudent business practice,
 - (i) makes reasonable current and future capacity estimates,

Response: The Applicant’s parent company, Omgeo LLC, provides capacity planning and measurement infrastructure for all of its non-U.S. subsidiaries (including the Applicant).

The primary goal of Omgeo LLC’s capacity planning efforts is to ensure that each service provided by a member of the Omgeo group has the capacity at all times to process client transactions, regardless of the level of activity in the financial markets. Omgeo LLC’s systems have more than 100% excess capacity for client transactions. Technical metrics such as the central processing unit, memory, storage, and network are taken into consideration, as are business metrics like transaction and message volume and processing rates.

- (ii) conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner,

Response: Capacity is evaluated monthly and annually through data gathering from a wide variety of sources and analysis, including automated instrumentation of the production systems, as well as analysis of new sales and market trends with operations managers and other key stakeholders.

- (iii) tests its business continuity and disaster recovery plans; and

Response: Omgeo LLC conducts tests twice annually to assess the efficacy and sufficiency of its business continuity planning/protocols and ensure that staff is prepared to execute same effectively with the objective of resuming full operations in the shortest time possible within regulatory guidelines.

- (c) promptly notifies the regulator of any material systems failures.

Response: Omgeo LLC reports central trade matching service utility outages in accordance with guidelines of the SEC for the reporting of “Severity Level 1 Service Disruptions”. “Severity Level 1 Service Disruptions” are defined as

problems resulting in a critical loss of functionality or capability and/or severe performance degradation rendering Omgeo LLC's central trade matching service utilities inoperable or unavailable to clients, and/or instances of frequent failure precluding productive use of same by client(s). The protocol for system outage notifications includes data loss or corruption.

The Applicant reports, and will continue to report, material systems failures (i.e., serious incidents that result in the interruption of the matching of trades for more than thirty minutes during normal business hours) to the Commission and the AMF within one hour from the time the incident is identified by the Applicant as being material, including the date, time, cause and duration of the interruption and its general impact on Canadian users/subscribers, in the same manner as Omgeo LLC will notify the SEC regarding material systems failures. In other words, the Omgeo group will treat the Commission, the AMF, and the SEC in the same manner regarding the reporting of material systems failures

7.2 The clearing agency annually engages a qualified party to conduct an independent systems review and prepare a report in accordance with established audit standards regarding its compliance with section 7.1(a).

Response: Omgeo LLC is audited and examined regularly by multiple entities:

(a) SEC

The SEC's Division of Trading and Markets conducts annual inspections of Omgeo LLC's central trade matching services under the SEC's Automation Review Policy (the "**SEC ARP**"). The annual inspections include detailed inspections of Omgeo LLC's data centres including: facilities management and physical security; information security, contingency and business continuity planning; pandemic planning; and other areas of the SEC ARP in a risk-based cycle. The SEC issues an update of findings and recommendations following each annual inspection. Omgeo LLC's Internal Audit and management update the Audit Committee of the Omgeo LLC Board of Managers at least three times per year on the implementation of recommendations made by the SEC ARP staff.

The SEC ARP also requires quarterly and annual technology updates to address changes in the systems and processes supporting the central trade matching services, including: organizational structure; computer operations and information processing; networks and telecommunications; systems development; quality assurance planning; capacity planning and performance management; information and physical security; outsourcing; contingency and business continuity planning; pandemic planning; change management; and internal audits; as well as an annual overview and profile covering: organizational structure; major system developments and changes; hardware; capacity planning; security developments; outsourcing; and contingency planning.

In addition, the SEC's Office of Compliance Inspections and Examinations performs examinations periodically in areas of particular interest to the SEC (e.g., emerging areas of compliance risk).

(b) Internal Audit

Omgeo LLC's Internal Audit conducts an annual program of vertical and horizontal audits of the core systems and processes supporting the central trade matching services as components of the larger audit program covering technology, finance, products, compliance, and human resources. These audits are scheduled annually in a risk-based cycle and include both broad reviews of critical processes to the delivery of the central trade matching services, such as: systems development; quality assurance; networking; change management; capacity and performance planning; information security; and disaster recovery and business continuity planning; as well as focused inspections of the core services, systems and applications underlying the central trade matching services. Each audit includes a risk assessment, control review, testing, and generation of an audit report which provides, for each audit, a description of the audit's scope, an overall rating, an executive summary, an assessment of the effectiveness of controls and, if applicable, recommendations for improving the control environment. Each report is sent to department management. Any audit reports that receive an unsatisfactory rating are sent to the Audit Committee of the Omgeo LLC Board of Managers. In addition, Omgeo LLC's Internal Audit and management update the Audit Committee at least three times per year on the progress towards completing the annual audit plan, as well as the implementation of audit recommendations that arise from the audits.

Omgeo LLC's Internal Audit reports functionally to the Audit Committee of Omgeo LLC's Board of Managers, thereby providing it with independence from Omgeo LLC's management. The Internal Audit function and the annual audit program themselves are subject to periodic quality assurance reviews by the SEC, the US Federal Reserve Board, the New York State Bank Examiners, and other independent third party auditors such as KPMG. Presently, the Internal Audit function is performed by the DTCC Internal Audit Department in an outsourced relationship through a services agreement between Omgeo LLC and the DTCC. The DTCC Internal Audit Department produces the audit reports described above.

Quarterly, the Applicant will provide the Commission and the AMF with a copy of any newly issued written audit reports from the DTCC Internal Audit Department regarding its independent audits of those systems, functions and activities that support Omgeo LLC's central trade matching service utilities.

(c) External Audit

Omgeo LLC's external auditor is PricewaterhouseCoopers ("PwC"). PwC conducts an annual Statement on Auditing Standards No. 70 ("SAS 70") Type II audit of controls supporting the central trade matching services. The annual SAS 70 Type II audit covers 11 control objectives and 49 control activities associated with: client account administration; automated trade processing; "on behalf of client" processing; logical security controls; change management controls; network connectivity; mainframe systems and databases; security administration; and data centre operations. Omgeo LLC holds SAS 70 Type II certifications for three products, including Omgeo CTM. The SAS 70 reports of Omgeo LLC do not cover OASYS Global.

Annually, the Applicant will provide the Commission and the AMF with a copy of Omgeo LLC's SAS 70 audits or successor or similar audit control reports.

PART 8 FINANCIAL VIABILITY AND REPORTING

8.1 The clearing agency has sufficient financial resources for the proper performance of its functions and to meet its responsibilities and allocates sufficient financial and staff resources to carry out its functions as a clearing agency in a manner that is consistent with any regulatory requirements.

(a) Financial Viability

Response: The Applicant is not subject to any minimum capital requirements under Canadian securities legislation in connection with it acting as an MSU for the Canadian capital markets, and has demonstrated with its audited financial statements for the fiscal year ended December 31, 2009 which were provided to the Commission under separate cover that it maintains sufficient financial resources for the proper performance of its functions in this capacity.

(b) Reporting

Response: The Applicant files, and will continue to file, quarterly reports with the Commission and the AMF in accordance with NI 24-101.

Moreover, at least 45 days before implementing a significant change to certain specified items set out in its MSU Notice of Operations, the Applicant will deliver to the Commission and the AMF an amendment to the information so that the Commission and the AMF may consider its potential implications for the Applicant carrying on business as an MSU in Canada.

PART 9 OPERATIONAL RELIABILITY

9.1 The clearing agency has procedures and processes to ensure the provision of accurate and reliable settlement services to participants.

Response: Omgeo LLC maintains a highly reliable and available service architecture at all levels of the Omgeo group's infrastructure. Each operations system contains redundant components to prevent the system from failing, as well as dual monitoring systems to actively check the health of each individual component.

Omgeo LLC has provided redundant systems for every component at the system level. During production operation, a failure of one of these components will not result in any outage. Service will continue transparently on the remaining available components in the event of individual component outages. At the data centre level, Omgeo LLC has extended High Availability configurations across dual primary databases. Processing survives system failures at one location by continuing on the surviving components at the other data centre.

In addition, Omgeo LLC has established out of region recovery which serves as a backup for Omgeo LLC's critical services in the event that neither primary data centre is operational. Should such an event occur, services will failover to Omgeo LLC's Remote Data Centre.

Client networks are load-balanced across the dual primary data centres. This eliminates the need for network failover procedures to activate the recovery site. Similarly, all operations systems are kept live and are actively managing the host and network infrastructure even prior to the disruption. This eliminates the need for recovery procedures to enable operations at the alternate site.

PART 10 PROTECTION OF ASSETS

10.1 The clearing agency has established accounting practices, internal controls, and safekeeping and segregation procedures to protect the assets that are held by the clearing agency.

Response: This specific criterion is not relevant to the Applicant because of the nature and scope of the Applicant's MSU activities in Canada. Specifically, the Applicant provides centralized facilities for the matching of trades of equity and debt securities and transmits matched trades to a clearing agency for clearing and settlement, but does not: (i) act as an intermediary in paying funds or delivering securities in connection with trades in securities; (ii) provide centralized facilities for the clearing of trades in securities, other than limited facilities for comparing data respecting the terms of settlement of a trade; (iii) provide centralized facilities as a depository of securities; or (iv) perform central counter-party, multilateral netting and/or guarantor functions and therefore does not come to possess any user/subscriber assets which would require protection.

PART 11 OUTSOURCING

11.1 Where the clearing agency has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of the agency.

Response: The Applicant is not a party to a formal outsourcing agreement with Omgeo LLC, but does have de facto outsourcing arrangements under Omgeo LLC's formal outsourcing protocols for its operating subsidiaries.

For reasons of business efficiency, certain operational and information technology services are outsourced by the Applicant to Omgeo LLC as described below.

Omgeo LLC serves as the Applicant's "back office" and provides software, systems, policies/procedures, protocols, infrastructure, administrative support, and other services which the Applicant utilizes in its MSU operations. Omgeo LLC is subject to regulatory and oversight requirements of the SEC regarding its central trade matching services in the United States.

Portions of Omgeo LLC's software applications are hosted within the DTCC data centre and leverage the DTCC's systems management infrastructure. Omgeo LLC ensures that its control requirements are adhered to by the DTCC via a SAS 70 Type II control review.

Portions of Omgeo LLC's information technology services are outsourced. Omgeo LLC ensures that its control standards are adhered to by these service providers by receiving their attestation that they possess certifications, (e.g., ISO 9001 and SEI-CMMI Level 5). Omgeo LLC periodically engages third parties to perform on-site security information audits of these service providers.

Presently, Omgeo LLC's Internal Audit function is performed by the DTCC Internal Audit Department in an outsourced relationship through a services agreement between Omgeo LLC and the DTCC.

PART 12 INFORMATION SHARING AND REGULATORY COOPERATION

12.1 For regulatory purposes, the clearing agency cooperates by sharing information or otherwise with the Commission and its staff, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

Response: Omgeo LLC has hereby jointly applied with the Applicant for an exemption from the requirement for the Applicant to be recognized as a clearing agency in Ontario. Omgeo LLC and the Applicant have proposed terms and conditions regarding information sharing and facilitating compliance requirements in the draft exemption order for the Commission's consideration. Moreover, upon request, the Applicant will provide additional written assurance in the Commission's preferred form that it will cooperate with the Commission and its staff, other MSUs that have filed a Form 24-101F3 with the Commission under NI 24-101, and recognized or exempt clearing agencies, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.

G. SUBMISSIONS

In the Clearing Agency Notice, Staff of the Commission stated that it may recommend to the Commission that an applicant be exempt from the Clearing Agency Recognition Requirement if:

- (a) the applicant provides limited services or facilities and does not present significant risks to the capital markets;
or

- (b) the applicant is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction.

Accordingly, it would not be contrary to the public interest for the Commission to exempt the Applicant from the Clearing Agency Recognition Requirement because:

- (c) the Applicant provides limited central trade matching services and facilities in Ontario;
- (d) the Applicant's limited central trade matching service activities in Ontario pose minimal risk to the Ontario capital markets;
- (e) the Applicant is authorized to act as an MSU in Ontario;
- (f) the Applicant is sufficiently regulated under NI 24-101;
- (g) the Applicant has a historical track record of acting as an MSU in Canada to date in compliance with applicable regulatory requirements;
- (h) the Applicant has provided extensive information and documentation to the Commission in this application and the Applicant's MSU Notice of Operations;
- (i) the Applicant's parent company, Omgeo LLC, is subject to regulatory and oversight requirements of the SEC in respect of Omgeo LLC's central trade matching services in the United States;
- (j) the Applicant's parent company, Omgeo LLC, has agreed to share information with the Commission and ensure the Applicant's compliance with applicable regulatory requirements; and
- (k) the Applicant has demonstrated its ability to accurately verify and match trade information from multiple market participants involving large numbers of securities transactions and sums of money in a manner that will not have adverse consequences for, and will enhance, the efficiency of the Canadian securities clearing and settlement system,

provided that, the Applicant continues to carry on business as an MSU in Ontario as described in, and in accordance with the requirements of, NI 24-101, CP 24-101, this application, the Notice of Operations, and any filings with, or instructions from, the Commission related to any of the foregoing from time to time, and complies with the terms and conditions attached at Appendix A of the draft exemption order attached at Schedule B.

H. ENCLOSURES

In support of this application, we are enclosing the following:

- (a) a verification statement from the Applicant and Omgeo LLC confirming the authority of Torys LLP to prepare and file this application and confirming the truth of the facts contained herein attached at Schedule A;
- (b) a draft exemption order for consideration of the Commission attached at Schedule B; and
- (c) a cheque in the amount of \$5,250 payable to the Ontario Securities Commission, representing the fee payable for this application attached at Schedule C.

We note for your information that a soft copy in word of this application (which includes the draft exemption order) will be sent under separate cover to applications@osc.gov.on.ca.

If you have any questions or require anything further in connection with this application, please do not hesitate to contact me.

Yours very truly,

Christine L. Vogelesang
Tel 416.865.7996
cvogelesang@torys.com
CV/fh

Enclosures cc: Maxime Paré, Ontario Securities Commission
Antoinette Leung, Ontario Securities Commission
Serge Boisvert, Autorité des marchés financiers

Monique Viranyi, Autorité des marchés financiers
Lee Cutrone, Omgeo LLC
Michael Luca, Omgeo LLC
Cherryl Williams, Omgeo Canada Matching Ltd.
Peter Aziz, Torys LLP
Mary Thomas Nagel, Torys LLP

Schedule A

STATEMENT OF VERIFICATION

TO: Ontario Securities Commission

The undersigned each hereby authorize the making and filing of the attached application by Torys LLP and confirm the truth of the facts contained therein.

Dated at New York, New York, United States of America as of the 16th day of December 2010.

**OMGEO CANADA MATCHING LTD./SERVICES
D'APPARIEMENT OMGEO CANADA LTÉE**

By: _____

Name: Antonio Nunes

Title: Chief Financial Officer

Dated at New York, New York, United States of America as of the 16th day of December 2010.

OMGEO LLC

By: _____

Name: Norman Reed

Title: General Counsel

Schedule B

DRAFT EXEMPTION ORDER

IN THE MATTER OF
THE SECURITIES ACT, R.S.O. 1990, c. S. 5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
OMGEO CANADA MATCHING LTD./SERVICES D'APPARIEMENT OMGEO
CANADA LTÉE AND OMGEO LLC

ORDER
(Section 147 of the Act)

WHEREAS OMGEO CANADA MATCHING LTD./SERVICES D'APPARIEMENT OMGEO CANADA LTÉE ("Omgeo Canada") and its parent company, OMGEO LLC (collectively, the "Filers"), have jointly filed an application dated December 16, 2010 (the "Application") with the Ontario Securities Commission (the "Commission") for an order, pursuant to section 147 of the Act, exempting Omgeo Canada from the requirement in subsection 21.2(0.1) of the Act to be recognized as a clearing agency (the "Clearing Agency Recognition Requirement");

AND WHEREAS the Filers have represented to the Commission that:

1. Omgeo Canada is a private company which was incorporated under the *Business Corporations Act* (Ontario) on September 28, 2007 and both its registered and head office are located in Toronto, Ontario.
2. Omgeo Canada is wholly-owned, directly, by Omgeo LLC. Omgeo LLC carries on business as a global provider of technology and information services (including central trade matching services) to the financial community through its subsidiaries (including Omgeo Canada) and is subject to regulatory and oversight requirements of the United States Securities and Exchange Commission in respect of Omgeo LLC's central trade matching services in the United States.
3. The principal shareholders of Omgeo LLC are the Depository Trust & Clearing Corporation (which through its subsidiaries, provides clearing, settlement and information services for various financial instruments) and Reuters Personal Focus Inc. (the principal holding company for the Thomson Reuters Markets Group, a US \$1.9 billion provider of information and technology solutions to the worldwide financial community).
4. Since September 30, 2007, Omgeo Canada has carried on business as a matching service utility in Ontario ("MSU") as described in, and in accordance with the requirements of, National Instrument 24-101 *Institutional Trade Matching and Settlement* and the companion policy thereto.
5. Specifically, Omgeo Canada provides centralized automated facilities for the matching of institutional trades of equity and debt securities and transmits matched trades to a clearing agency for clearing and settlement.
6. Omgeo Canada does not:
 - (a) act as an intermediary in paying funds or delivering securities in connection with trades in securities;
 - (b) provide centralized facilities for the clearing of trades in securities, other than limited facilities for comparing data respecting the terms of settlement of a trade;
 - (c) provide centralized facilities as a depository of securities; or
 - (d) perform central counter-party, multilateral netting and/or guarantor functions.
7. Omgeo Canada has provided extensive and comprehensive information and documentation to the Commission in the Application and in its MSU Notice of Operations in Form 24-101F3.
8. Omgeo LLC has agreed to share information with the Commission and ensure Omgeo Canada's compliance with applicable regulatory requirements.

9. Based on the facts set out in the Application, Omgeo Canada: (i) satisfies the specific criteria set out in Appendix A of Commission Staff Notice 24-702 Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agency dated March 19, 2010 which are relevant to the Applicant's MSU activities in Ontario in respect of the following topics: governance, fees, access, rules and rulemaking, due process, risk management, systems and technology, financial viability and reporting, operational reliability, protection of assets, outsourcing, information sharing and regulatory cooperation (the "**Appendix A Criteria**"); and (ii) does not present significant risks to the Ontario capital markets;

AND WHEREAS based on the Application and the representations the Filers have made to the Commission, the Commission has determined that Omgeo Canada satisfies the relevant Appendix A Criteria and that it would not be prejudicial to the public interest to grant the order requested;

IT IS HEREBY ORDERED by the Commission, pursuant to section 147 of the Act, that Omgeo Canada be exempt from the Clearing Agency Recognition Requirement as of March 1, 2011;

PROVIDED THAT Omgeo Canada and Omgeo LLC comply with the terms and conditions attached hereto as Appendix "A".

■, 2010

Commissioner
Ontario Securities Commission

Commissioner
Ontario Securities Commission

APPENDIX A TO DRAFT EXEMPTION ORDER

**Proposed Terms and Conditions for Exemption from Recognition as a Clearing Agency
in Ontario**

Systems and Technology

- 1.1 For each of its systems that supports trade matching, Omgeo Canada shall:
- (a) develop and maintain
 - (i) reasonable business continuity and disaster recovery plans;
 - (ii) an adequate system of internal control over those systems; and
 - (iii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support;
 - (b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,
 - (i) make reasonable current and future capacity estimates;
 - (ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner; and
 - (iii) test its business continuity and disaster recovery plans; and
 - (c) promptly notify staff of the Ontario Securities Commission (OSC or Commission) of any material systems failure, malfunction or delay.
- 1.2 For each of its systems that supports trade matching, Omgeo Canada shall ensure that a qualified party conducts an independent systems review in accordance with NI 24-101 and prepares a report regarding its compliance with section 1.1(a).

Financial Reporting

2. Omgeo Canada shall file annual audited financial statements within 90 days after the end of its financial year.

Outsourcing

3. Where Omgeo Canada has outsourced any of its key functions, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices. The outsourcing arrangement provides regulatory authorities with access to all data, information, and systems maintained by the third party service provider required for the purposes of regulatory oversight of Omgeo Canada.

Information Sharing and Regulatory Cooperation

- 4.1 Omgeo Canada shall provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.
- 4.2 Omgeo Canada shall share information and otherwise cooperate with other recognized and exempt clearing agencies as appropriate, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.

Additional Requirements

5. Omgeo LLC shall take such actions as are within its ability to assist Omgeo Canada in meeting the terms and conditions of this order.

6. Omgeo LLC shall provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws governing the sharing of information and the protection of personal information.
7. Omgeo Canada shall not expand their business in Ontario into other clearing agency functions without the prior approval of the OSC.