

Chapter 13

SROs, Marketplaces and Clearing Agencies

13.3 Clearing Agencies

13.3.1 OSC Notice and Request for Comment – SS&C Technologies Canada Corp. and SS&C Technologies Holdings, Inc. – Application for Exemption from Recognition as a Clearing Agency

OSC NOTICE AND REQUEST FOR COMMENT

SS&C TECHNOLOGIES CANADA CORP. AND SS&C TECHNOLOGIES HOLDINGS, INC.

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).

SS&C Technologies Canada Corp. (SS&C Canada) and SS&C Technologies Holdings, Inc. (SS&C Holdings) have jointly applied (the Application) to the Commission for an order pursuant to section 147 of the OSA to exempt SS&C 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, SS&C 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, SS&C 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. The underlying subsidiaries of SS&C Holdings, of which SS&C Canada is one, operate within a decentralized business model. SS&C Canada is ultimately responsible to its parent, SS&C Holdings, which makes all major financial decisions.

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, SS&C Canada and SS&C Holdings 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 Appendix A (Draft Order) to the Application.

Among other things, the Draft Order requires SS&C Canada to comply with terms and conditions relating to systems and technology, financial reporting, outsourcing and information sharing and regulatory cooperation. Also, SS&C Holdings is required to take such actions as are within its ability to assist SS&C Canada in meeting the terms and conditions of the order. Moreover, SS&C 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

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

Attention: Secretary to the Commission

Re: Joint Application (“Application”) of SS&C Technologies Canada Corp. (“SS&C Canada”) and SS&C Technologies Holdings, Inc. (“SS&C Holdings”) requesting an exemption for SS&C Canada from the requirement to be recognized as a clearing agency under the *Securities Act* (Ontario)

Dear Sir or Madam,

Pursuant to the Ontario Securities Commission (“OSC”) Staff Notice 24-702 – *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* (“Staff Notice”) and in conjunction with its filing of Form 24-101F3 as it is subject to National Instrument 24-101 – *Institutional Trade Matching and Settlement*, SS&C Canada, together with its parent SS&C Holdings, are writing to the OSC to seek an exemption from recognition as a clearing agency for SS&C Canada. SS&C Canada’s service offering, SSCNet, is a matching service utility (“MSU”) as described in the Staff Notice.

PART 1 – GOVERNANCE

SS&C Canada is an indirect, wholly owned subsidiary of SS&C Holdings, the top-level holding company. SS&C Holdings, headquartered in Windsor, CT, USA, is a publicly traded company listed on the NASDAQ National Market. As such it makes periodic filings with the United States Securities and Exchange Commission (“SEC”) and is subject to SEC regulations applicable to publicly traded companies. SS&C Canada carries out the group policies promulgated by Holdings. The management and Board of Directors of SS&C Holdings are described in SS&C Holdings’ filings with the SEC. Funds affiliated with The Carlyle Group own approximately 60.4% of the outstanding stock of SS&C Holdings. William C. Stone, SS&C Holdings’ Chairman of the Board and Chief Executive Officer, owns approximately 21.4% of the outstanding stock of SS&C Holdings.

SS&C Holdings maintains a number of corporate governance documents on its public web site. The “Nominating Committee Charter” addresses steps taken to ensure each director and officer is a fit and proper person. The purpose of the

Nominating Committee of the Board of Directors (the “Board”) of SS&C Holdings is to:

- identify individuals qualified to become Board members, consistent with criteria approved by the Board;
- recommend to the Board the persons to be nominated for election as directors at any meeting of stockholders and the persons (if any) to be elected by the Board to fill any vacancies on the Board; and
- recommend to the Board the directors to be appointed to each committee of the Board.

SS&C Holdings also has policies and procedures in place to identify and manage conflicts of interest. The “Code of Business Conduct and Ethics” (the “Code”) is kept current on its public web site. The Code sets forth legal and ethical standards of conduct for directors, officers and employees of SS&C Holdings and SS&C Canada. This Code is intended to deter wrongdoing and to promote the conduct of all business in accordance with high standards of integrity and in compliance with all applicable laws and regulations. This Code applies to the SS&C Holdings and all of its subsidiaries and other business entities controlled by it worldwide.

Within SS&C Canada, the organizational structure ensures the interests of different Participants (advisers, dealers, and custodians) are met. Business, sales, and development staff are dedicated to the SSCNet division to ensure that a focus on post-trade communications is the sole concern. Because of the extensive range of products and services offered by SS&C Canada, it is important that SSCNet be neutral in terms of competitor products and platforms and that technological upgrades and advancements be based on input from advisers, custodians, and the dealer community.

PART 2 – FEES

The transactional based fee model for the use of SSCNet was established in 1991 when the predecessor service, FMCNet, was introduced. The model was developed with the input of the steering committee and charges each Participant approximately the same amount for the messages sent and/or received over the post trade life cycle of a transaction. The steering committee consisted of personnel representing advisers, dealers, and custodians. There is a small annual license fee which is identical for all Participants. If other networks are accessed to provide STP capabilities, e.g. SWIFT, those costs are passed on to the Participants making use of the service.

The use of a transactional based fee model with a minimal annual license fee ensures accessibility to all Participants wishing to use the service regardless of the number of transactions processed per month. The model is transparent and there are no hidden charges for the use of certain modules, e.g. the standing settlement instruction database.

PART 3 – ACCESS

Each Participant who is a member of SSCNet signs a standard SSCNet Agreement which sets forth the terms for access, term and termination, fees, warranties, limitation of liability, client's responsibilities and data, confidentiality, indemnification, and excusable delays. Each Participant goes through documented training and testing / acceptance phases before going live on the network. Once live, their status is available to the community through an online directory. SS&C Canada has not denied or limited access to any applicant.

In order to utilize the MSU functionality within SSCNet, a Participant must execute an "SS&C Appointment of a VMU (Virtual Matching Utility)". Dealers and custodians must also execute an "Appointment and Authorization of a VMU" with CDS Clearing and Depository Services Inc. (CDS). In order to interface with CDS via SSCNet, all three Participants of a transaction must have the above mentioned appointments in place with SS&C Canada, and the broker and custodian must have the CDS appointment in good standing.

PART 4 – RULES AND RULEMAKING

While SSCNet does not have a set of rules, standardized agreements with all Participants ensure transparency. All Participants have the same access to services and support. SS&C Canada believes that the SSCNet Participant Agreement is consistent with securities legislation and does not impose any burden on competition.

SSCNet is solely a carrier of electronic messages and does not hold funds nor manage accounts on behalf of clients, it does not provide centralized facilities for the clearing of trades in securities, nor does it act as a depository of securities. While monitoring is electronic, it focuses on data format integrity by highlighting irregularities, rejects, connectivity concerns, harmful data, etc. SS&C Canada does not monitor content as matching is a key component in the post trade cycle and necessary before trade settlement takes place. Matching can be done using the MSU within SSCNet or outside the service.

PART 5 – DUE PROCESS

If any Participant materially or repeatedly defaults in performing its duties or obligations described in the SSCNet Agreement, the agreement provides the Participant with 30 days to resolve the situation. SS&C Canada is responsible in such a situation to keep written records detailing the actions taken and subsequent decisions and the results of such actions and decisions.

PART 6 – RISK MANAGEMENT

- Controls provide reasonable assurance that client access to SSCNet application and data is restricted and set up based on authorized service agreements.
- Controls within the SSCNet application provide reasonable assurance that client transactions, as authorized by clients, are processed and executed accurately and completely.
- Controls provide reasonable assurance that changes to the existing SSCNet application are authorized, tested, approved, properly implemented and documented.

PART 7 – SYSTEMS AND TECHNOLOGY

SS&C Canada maintains business continuity plans that would take effect in the event of a catastrophe or pandemic. SS&C Canada operates a "Business Continuity Centre"--an alternate data and operations facility--as part of its SSCNet service offering. It allows rapid switching of operations to SS&C Canada's Business Continuity Centre should its

primary data centre experience a disaster. In the event of a business disruption, this near-real time data replication will let SS&C Canada's Application Service Provider ("ASP") clients resume business operations in less than four hours. This service has been in place since August 1, 2004.

The "Business Continuity Service" is an industry-leading initiative designed to ensure SS&C Canada's clients are able to carry on their day-to-day use of the SS&C Canada systems, thus protecting their investment management operations. All business continuity related systems are tested at least once per annum and are a key part of SS&C Canada's annual SAS70 / Section 5970 audit report.

The SSCNet development team and SS&C Canada information technology services departments both deploy a wide range of automated tools that continually monitor queues, system performance, response times and similar matters. This electronic monitoring system also generates emails to a wide range of staff advising of warnings and errors. Performance and capacity tests are conducted with every release at a minimum, and often on an ad-hoc basis as part of SS&C Canada's release process. If any material system failure occurs, SS&C Canada will promptly notify regulators.

The annual independent systems reviews covering both SSCNet and the SS&C Canada data centre IT service are published on SS&C Canada's client website.

PART 8 – FINANCIAL VIABILITY AND REPORTING

SS&C Holdings' financial statements are public and are filed with the SEC and available on their web site as well as on the SS&C public site (www.ssctech.com). A review of current and previous financial reports shows SS&C Holdings' (which includes its subsidiaries, including SS&C Canada) strong financial position, commitment to ongoing research and development, and the financial strength to continue to provide software and services.

PART 9 – OPERATIONAL RELIABILITY

SS&C Canada deploys a wide range of controls to ensure that the reporting of transactions between Participants is accurate, timely and reliable. While many of these controls are internal to SS&C Canada in terms of system monitoring, a wide range of reporting tools are made available to Participants to ensure controls can be extended to upstream and downstream systems that interface with SSCNet.

The control objectives specified in SS&C Canada's Section 5970 Auditors Report meet all industry standards. The description of controls is intended to provide SS&C Canada's ASP clients for the SSCNet application, their accountants and auditors with information about the control environment, practices and policies of SS&C Canada. The description has been prepared taking into consideration the guidance contained in Section 5970 of the Canadian Institute of Chartered Accountants ("CICA") Handbook ("S5970") for audits of controls at a service organization and the Statement on Auditing Standards No. 70 ("SAS70") of the American Institute of Certified Public Accountants ("AICPA"). Specifically, the control objectives within the Section 5970 report include:

- Controls provide reasonable assurance that client access to SSCNet application and data is restricted and set up based on authorized service agreements.
- Controls within the SSCNet application provide reasonable assurance that client transactions, as authorized by clients, are processed and executed accurately and completely.
- Controls provide reasonable assurance that changes to the existing SSCNet application are authorized, tested, approved, properly implemented and documented.

PART 10 – PROTECTION OF ASSETS

SSCNet is a post trade communications network and as such securities and cash are not held nor exchanged on behalf of Participants.

PART 11 – OUTSOURCING

SS&C Canada does not outsource the development or maintenance of its systems or services. If it decides to do so in the future, it will establish appropriate and formal arrangements and processes to ensure that all its obligations will continue to be met in accordance with industry best practices and that the OSC is provided access to data, information, and systems maintained by the third party service provider for the purposes of regulatory oversight of the SSCNet service.

PART 12 – INFORMATION SHARING AND REGULATORY COOPERATION

SS&C Canada commits to ongoing cooperation with the OSC and to share information with the OSC and its staff, and, as appropriate, self-regulatory organizations, exchanges, quotation and trade reporting systems, alternative trading systems, other clearing agencies, investor protection funds, and other appropriate regulatory bodies.

Patrick J. Pedonti
Senior Vice-President,
Chief Financial Officer & Treasurer
SS&C Technologies Holdings, Inc.

Normand A. Boulanger
President & Chief Executive Officer
SS&C Technologies Canada Corp.

APPENDIX A

IN THE MATTER OF
THE *SECURITIES ACT*, R.S.O. 1990, CHAPTER S.5,
AS AMENDED (“OSA”)

AND

IN THE MATTER OF
SS&C TECHNOLOGIES CANADA CORP.
AND SS&C TECHNOLOGIES HOLDINGS, INC.

ORDER
(Section 147 of the OSA)

WHEREAS SS&C Technologies Canada Corp. (“SS&C Canada”) and SS&C Technologies Holdings, Inc. (“SS&C Holdings”) have filed a joint application dated December 16, 2010 (Application) with the Ontario Securities Commission (“Commission” or “OSC”) for an order pursuant to section 147 of the OSA exempting SS&C Canada from the requirement to be recognized as a clearing agency pursuant to subsection 21.2(0.1) of the OSA;

AND WHEREAS SS&C Canada and SS&C Holdings have represented to the Commission that:

1. SS&C Canada is an indirect, wholly owned subsidiary of SS&C Holdings. SS&C Holdings, headquartered in Windsor, CT, USA, is a publicly traded company listed on the NASDAQ National Market.
2. Pursuant to National Instrument 24-101 – *Institutional Trade Matching and Settlement* (NI 24-101), SS&C Canada submitted in 2009 to the Commission Form 24-101F3 — *Matching Service Utility Notice of Operations*. The same document was also submitted to the Autorité des marchés financiers that same year. SS&C Canada is subject to the requirements of a matching service utility (“MSU”) in Part 6 of NI 24-101.
3. SS&C Canada offers Participants access to a real time MSU that facilitates the matching of allocations of institutional investor securities transactions against corresponding dealer confirmations.
4. SS&C Canada operates an electronic, post trade communications network (“SSCNet”) based in Mississauga, Ontario. SSCNet traces its history in Canada to 1991 when the network was introduced under its predecessor name, FMCNet.
5. SSCNet is used by registered dealers, advisors, and custodial banks and trust companies (collectively “Participants”) to communicate post trade delivery against payment, receipt against payment, and associated foreign exchange instructions between each other to facilitate the timely and accurate settlement of security transactions. Dealers and custodians use those instructions to report and affirm security transactions on behalf of advisors through the facilities of CDS Clearing and Depository Services Inc. (“CDS”).
6. SS&C Canada does not perform any core clearing agency functions such as:
 - (a) acting as an intermediary in paying funds or delivering securities, or both, in connection with trades and other transactions in securities,
 - (b) providing centralized facilities for the clearing of trades and other transactions (other than centralized facilities for comparing data respecting the terms of settlement of a trade or transaction), or
 - (c) providing centralized facilities as a depository of securities.
7. While SS&C Canada does not perform core clearing agency functions, it recognizes the need for proper risk management and has placed into operation a risk assessment process to identify and manage risks.
8. SS&C Canada maintains business continuity plans that would take effect in the event of a catastrophe or pandemic. SS&C Canada operates a business continuity centre, an alternate data and operations facility, as part of its standard SSCNet service offering. All business continuity related systems of SS&C Canada are tested at least once per annum.
9. SS&C Canada commits to ongoing cooperation and sharing of information with the OSC and SS&C Holdings commits to ensure SS&C Canada’s compliance with applicable regulatory requirements.

AND WHEREAS based on the Application and the representations of SS&C Canada and SS&C Holdings have made to the OSC, the Commission has determined that (i) SS&C Canada satisfies specific criteria set out in Appendix "A" of Commission Staff Notice 24-702 – *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* dated March 19, 2010 which are relevant to SS&C Canada's MSU activities in Ontario; and (ii) it would not be prejudicial to the public interest to grant the order requested;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the OSA, SS&C Canada is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the OSA;

PROVIDED THAT SS&C Canada and SS&C Holdings comply with the terms and conditions attached hereto as Schedule "A".

DATED at Toronto this ____ day of _____

SCHEDULE "A"

Terms and Conditions

Systems and Technology

- 1.1 For each of its systems that supports trade matching, SS&C 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, SS&C Canada shall ensure that a qualified party conduct an independent systems review in accordance with NI 24-101 and prepare a report regarding its compliance with section 1.1(a).

Financial Reporting

2. SS&C Holdings shall file its annual audited financial statements within 90 days after the end of its financial year and the annual financial statements of SS&C Canada which may be unaudited.

Outsourcing

3. Where SS&C 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 the agency.

Information Sharing and Regulatory Cooperation

- 4.1 SS&C 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 SS&C 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. SS&C Holdings shall take such actions as are within its ability to assist SS&C Canada in meeting the terms and conditions of this order.

6. SS&C Holdings 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. SS&C Canada shall not expand their business in Ontario into other clearing agency functions without the prior approval of the OSC.