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Via Electronic Mail

August 28, 2008

Florence E. Harmon
Acting Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: Securities and Exchange Commission Release No. 34-58252
File No. SR-DTC-2008-05, Notice of Filing of Proposed Rule Change
Establishing a New Money Market Instrument Procedure Disincentive Fee

Dear Ms. Harmon:

The American Bankers Association (ABA) appreciates the opportunity to comment on the proposal of the Depository Trust Company (DTC) to establish a new money market instrument ("MMI") procedure disincentive fee.

The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ more than two million men and women. Our members include issuing agents or paying agents (collectively "IPAs") who will be directly affected by DTC's proposal.

Under the proposal, DTC seeks to impose a \$10,000 "disincentive" fee on IPAs that reverse a previously made "Issuer Failure/Refusal to Pay" communication. As the proposal acknowledges, an IPA may on occasion wish to refuse to make a payment from its DTC account to holders of maturing money market instruments if the Issuer defaults on its obligation to the IPA. In these circumstances, the IPA must send an "Issuer Failure/Refusal to Pay" communication to DTC by 3:00 p.m. eastern time on the maturity date. Once the IPA makes this communication, DTC executes its Defaulting Issuer procedures, which include devaluing the MMI's collateral value to zero and blocking further issuances by the Issuer from entering DTC.

If, however, the Issuer subsequently meets its obligation, it would be proper for the IPA to seek to reverse its previous communication so that the MMI holders may be paid. The proposed disincentive fee would penalize IPAs for reversing that decision. The proposal also states that the fee would cover DTC's administrative costs in reversing its Defaulting Issuer procedures.

Discussion

ABA understands DTC's desire to avoid executing its Defaulting Issuer procedures and then later reversing those actions. *Unfortunately, the underlying determinant of this situation, whether the Issuer is in default, is not in the control of the IPA.* Rather, IPAs, as agents, serve as conduits for the Issuer. The Issuer's actions or lack thereof, cause the IPA to take the refusal to pay action. DTC should, therefore, assess any such disincentive fee upon the party that controls this situation, the Issuer.

Such a fee would impose an inappropriate financial burden on IPAs, forcing them to become unwilling collection agents for DTC. Very likely, the IPAs would not be fully reimbursed and would have to absorb the cost of the fees. Under the proposal, IPAs would bear all of the financial and customer relationship burdens of the proposal, while the Issuer—the party controlling the situation—would feel little impact. We note that the Letter of Representations signed by the paying agent states that the IPA will not be required to advance funds on behalf of the Issuer; yet, that is exactly what the proposal is likely to achieve. Furthermore, based on these written agreements, it is not clear that DTC even has the authority to debit the \$10,000 fee from the IPA's account without the IPA's authorization.

It is our understanding that the Issuers, as parties to the various contracts with DTC, have agreed to comply with DTC's MMI Procedures. Accordingly, ABA believes there is no legal or procedural barrier to imposing the disincentive fee directly on Issuers. While it may be simpler merely to debit an IPA's account with DTC, for the reasons discussed above, that position is inherently unfair and ultimately does not serve to encourage the appropriate party, the Issuer, to avoid defaulting on its obligations.

Conclusion

In conclusion, ABA strongly opposes the proposal as both an unwarranted financial burden on IPAs and as an inherently ineffective means of avoiding the reversal of "Issuer Failure/Refusal to Pay" communications.

If you have any questions about ABA's comments, please do not hesitate to contact the undersigned.

Sincerely,



Cristeena G. Naser

cc: Erik Sirri, Director
Division of Trading and Markets
Securities and Exchange Commission