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Via Email: rule-comments@sec.gov
Ms. Elizabeth M. Murphy
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: File Number SR-DTC-2013-11
Notice of Filing of Proposed Rule Change
to specify procedures available to issuers of
securities deposited at DTC for book entry services

Dear Ms. Murphy:

The purpose of this letter is to comment on the submission by The Depository Trust Corporation ("DTC") of Amendment No. 2 (the "Amendment") to proposed rule change SR-DTC-2013 (the "Proposed Rules"). The undersigned once again appreciates the opportunity to comment on the Proposed Rules as modified by the Amendment. These comments should be considered in the context of DTC's response letter, dated February 10, 2014(the "DTC Response"), to comments made on the Proposed Rules by the undersigned on January 14, 2014 (the "Comment Letter"). The Rule Proposals were filed with the Securities and Exchange Commission (the "Commission") on December 18, 2013.

Unfortunately, the Amendment does nothing to address the concerns raised in our Comment Letter regarding the total absence of procedures for the benefit of issuers affected by a DTC service interruption imposed prior to the Commission's ruling in *In the Matter of the Application of International Power Group, Ltd*. The reason for DTC's failure to design procedures for such issuers may be found in the DTC Response, wherein DTC stated that the Proposed Rules do not explicitly govern deposit chills and global locks imposed prior to International Power but that it is ready to provide the *"same fair procedures"* in all such cases *"if the issuers have requested review."*[1] The undersigned fails to comprehend why DTC believes that the fairness requirements of Section 17A(b) (3)(H) should not be applicable to Deposit Chills and Global Locks imposed prior to *International Power*. If anything, these fairness requirements should apply to pre-*International Power* cases in particular given that the relevant issuers have already been subject to DTC's service interruptions for extended periods of time. To the extent that those same issuers have managed so far to survive their ordeal, their inability to raise capital as a result of a DTC

[1] See the DTC Response at 13. It is unclear what DTC's statement in the DTC Response "*if the issuers have requested review,"* means. Fair procedures should apply regardless of an issuer's request for a review.

service interruption notwithstanding, time is now truly of the essence.[2] The DTC Response implies that its readiness to provide fair procedures is merely a gratuitous accommodation or good will gesture of sorts. This betrays a cavalier attitude toward these issuers' predicament, and a disregard for the Commission's position on the necessity for procedural safeguards that accord with the fairness requirement of Section 17 of the Securities Exchange Act of 1934, as set forth in *International Power*.

It is unclear how the Amendment's silence on the treatment of pre-*International Power* DTC service interruptions is consistent with the Commission's directive in *International Power* for *"fair procedures"* to be *"adopt[ed]"* and *"applied uniformly."* The DTC Response seems to imply that for securities subject to a deposit restriction predating *International Power*, but not under a global lock, the one year period discussed in Section 1(b) of Rule 22(B) of the Proposed Rules will be measured from some future date when the deposit restriction will be converted into a global lock.[3] To a small issuer whose securities have already been subjected to a deposit restriction for two years or more, the prospect of having the "same fair procedures" apply would hardly seem fair.[4]

As the Commission made clear in its *International Power* Opinion, the procedures to be adopted by DTC must be fair, as well as capable of being applied uniformly. The undersigned believes that this must include procedures applicable with respect to all situations involving DTC service suspensions, irrespective of when those suspensions were first imposed or whether the suspension took the form of a deposit chill or a global lock. Moreover, for the term "fairness" to have any meaning, consideration of whether a DTC service interruption should be lifted (or even imposed in the first place), cannot exist in a vacuum that fails to weigh the enormous impact that such service interruptions have on the issuer whose shares are affected thereby.

Therefore, considerations of fairness mandate at least a passing look at the disruptive, and in many cases perilous impact that a long-standing deposit chill has on an issuer. Specifically, fairness requires, at a minimum, that a balance must be struck between the goals sought to be achieved by newly proposed procedures and the relative magnitude of the problem, if any, involving the affected issuer's shares, the likely adverse impact upon the affected issuer, and the marginal benefit, if any, that would be realized by rote imposition of rules that, because of their inexact language, are likely, in an arbitrary way, to have an exacerbative impact on some issuers, as opposed to others. The noticeable absence in the Amendment of any mention of this as a concern, much less any mention of a proposal to achieve a fair balance of

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[2] DTC justifies its position by arguing that the Commission required DTC to adopt procedures in *future* cases. However, it is difficult to comprehend how the Commission would favor treating pre-*International Power* service interruptions less fairly than those imposed after *International Power*.

[3] Again, none of this is actually laid out in the Proposed Rules or in the Amendment, which should be considered a major gap in the Proposed Rules, as explained above.

[4] We hereby respectfully reiterate what was said in the Comment Letter. From the perspective of the small issuer whose securities were subjected to a deposit chill prior to *International Power*, differentiating between the removal of a deposit chill and a global lock as set forth in the Proposed Rules has the counter-intuitive effect that a global lock which is typically imposed as a result of enforcement proceedings is easier to remedy than a deposit chill which is usually imposed based on mere concerns regarding a security's eligibility.

interests, suggests that DTC either hasn't considered the matter, or else has considered it, but somehow erroneously deems it unnecessary to be addressed in accordance with *International Power*.

In summary, DTC should have drafted procedures for pre-*International Power* Deposit Chills similar to those applicable to future cases. Adherence to such procedures should not arbitrarily be at DTC's discretion nor should it be contingent on an issuer's request for review, whatever the meaning might be of that terminology. In addition, for the procedures to be fair and uniformly applicable, there should be a mechanism that gives credit for "time served" to issuers whose securities have been the subject of deposit chill predating *International Power*.

In the Comment Letter, the undersigned offered suggestions for how pre-*International Power* cases should be addressed, and we respectfully request again that those suggestions be considered along with the comments set forth above.

Very truly yours,

Louis A. Brilleman