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August 4, 2009

VIA COURIER

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549



Re: SR-DTC-2006-16 – Petition for Commission Review

Dear Ms. Murphy:

On behalf of the Securities Transfer Association, Inc. (“STA”), pursuant to Rule 430 of the Rules of Practice of the Securities and Exchange Commission (“Commission”), 17 C.F.R. § 201.430, enclosed herewith please find a petition requesting Commission review of a rule of the Depository Trust Company that was approved by the staff of the Commission’s Division of Trading and Markets, pursuant to delegated authority, on June 30, 2009.

Sincerely,

A handwritten signature in black ink, appearing to be "E. Pittman", written over a large, loopy flourish that extends across the line of the signature.

Edward L. Pittman

15220416.1.BUSINESS

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

X



Re: Securities Exchange Act Rel. No. 34-60196 (June 30, 2009) :
File No. SR-DTC-2006-16

**Petition
for
Commission Review**

X

NOW COMES THE SECURITIES TRANSFER ASSOCIATION, INC., PETITIONER, requesting that the U.S. Securities and Exchange Commission (the "SEC" or "Commission"), pursuant to Rule 430 of the Commission's Rules of Practice, 17 C.F.R. § 201.430, review and set aside the action of the Division of Trading and Markets ("Division") approving by delegated authority a rule filing by Depository Trust Company ("DTC"), as captioned above, pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78s(b)(2).

Background

On October 12, 2006, DTC filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act,¹ a proposed rule change amending and restating minimum requirements for transfer agents' participation in (i) DTC's Fast Automated Securities Transfer program ("FAST") and (ii) DTC's Direct Registration System ("DRS") as DRS Limited Participants ("DTC Rule Filing"). On March 29, 2007, and May 3, 2007, DTC filed amendments to the DTC Rule Filing. On May 25, 2007, the Commission published notice of the DTC Rule Filing as Amendments 1 and 2.² On December 31, 2007, DTC again filed an amendment. Notice of the amended DTC Rule Filing was published in the Federal

¹ 15 U.S.C. § 78s(b)(1).

² Exchange Act Release No. 55816 (May 25, 2007), 71 FR 30648 (June 1, 2007).

Register on February 20, 2007.³ On June 23, 2008, DTC filed a further amendment. Notice of that amended DTC Rule Filing was published in the Federal Register on June 19, 2008.⁴

Each of these amendments was made substantially in response to comments from Petitioner and its members. Despite significant opposition to some or all of the provisions, on June 30, 2009 – without further notice and one year after the last amendment – the Division, acting under delegated authority, approved the DTC Rule Filing on behalf of the Commission (“Approval Order”).⁵ The Commission’s Approval Order was published in the Federal Register at 71 FR 33496 (July 13, 2009). The Petitioner filed notice with the Commission on July 28, 2009 of its intention to file this Petition.

Applicable Legal Requirements

Petitioner is a trade association whose members are registered transfer agents directly affected by the DTC Rule Filing.⁶ Rules 430 and 431 of the Commission’s Rules of Practice, 17 C.F.R. §§ 201.430 and 201.431, provide for Commission review of actions taken by the Division pursuant to delegated authority, upon request, by persons aggrieved by the action.⁷ Rule 430 sets forth the procedural and timing requirements, while Rule 431 contains the requirements relating to the Commission’s actual review of the petition. In determining whether or not to grant the petition and review a rule change approved pursuant to delegated authority, Rule 431 provides that the Commission shall look to the standards set forth in Rule of Practice 411(b)(2), 17 C.F.R. § 201.411(b)(2). This provision states that the Commission should consider whether, among other things, the action taken by the Commission’s staff

³ Exchange Act Release No. 57362 (February 20, 2008), 73 FR 10849 (February 28, 2008).

⁴ Exchange Act Release No. 57959 (June 12, 2008), 73 FR 57959 (June 19, 2008).

⁵ Exchange Act Release No. 60196 (June 30, 2009), 74 FR 33496 (July 13, 2009).

⁶ Founded in 1911, the Securities Transfer Association, Inc. (“STA”) is the professional association of securities transfer agents. Its membership, consisting of over 150 transfer agents, maintains records in the aggregate of more than 150,000,000 registered shareholders on behalf of more than 15,000 issuers, including a considerable number of small company issuers.

⁷ The members of STA are directly affected by the Approval Order. STA is an aggrieved party. *See e.g., Financial Planning Association v. SEC*, 482 F.3d 481 (D.C. Cir. 2007).

(“Staff”) entails an exercise of discretion or decision of law or policy that is important, and that the Commission should review.

As we describe below, through its rule filing DTC is seeking to establish fundamental, and costly, standards for all transfer agents that provide services to issuers of National Market System securities.⁸ The effect of the DTC Rule Filing is broad in scope. Contrary to public policy and the intent of Congress, the DTC Rule Filing would redefine transfer agent regulation. DTC, in some areas, is a direct competitor of transfer agents. Nevertheless, in the absence of Commission rulemaking that would modernize transfer agent regulation, DTC is seeking to anoint itself as the *de facto* regulator of the transfer agent industry, despite the fact that transfer agents are not members of DTC, and are not afforded the same rights and protections that under the Exchange Act it must offer its own members.

Congress chose not to establish a self-regulatory organization for transfer agents. Any rules establishing broad minimum standards for transfer agents should be proposed and adopted by the Commission, in consultation with appropriate bank regulators, including the Federal Deposit Insurance Corporation, Office of Comptroller of the Currency and the Federal Reserve Board.⁹ In addition, they should be subject to review under the Regulatory Flexibility Act of 1980¹⁰, which is designed to benefit many of the smaller transfer agents that will be subject to the new DTC rules. In core areas that are the subject of the DTC Rule Filing, the Commission already has considered the very same issues in its own rulemaking process, and chosen not to adopt the standards embraced by DTC.

Petitioner believes that the DTC Rule Filing presents important issues of policy and law that require consideration by the Commission and which should not have been resolved by the Division using

⁸ Under Rule 600 (a)(46) of the Exchange Act, an “NMS security” means any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.

⁹ Section 17A(d)(3) of the Exchange Act.

¹⁰ 5 U.S.C. § 603(a).

its delegated authority. If the DTC Rule Filing is approved, Petitioner believes that the Commission would be abdicating the exclusive jurisdiction over transfer agents that Congress vested with it. Petitioner requests that the Approval Order be reviewed by the Commission and disapproved.

Overview

Transfer agents provide an essential function by assuring the safe and efficient transfer of securities from one holder to another. Transfer agents must be registered and are subject to detailed regulations adopted by the Commission under Section 17A of the Exchange Act. These regulations are designed to assure the timely and efficient processing of stock transfers and to safeguard customer securities, among other things.

DTC is a clearing agency also registered with the Commission pursuant to Section 17A of the Exchange Act. DTC provides an important role in securities markets. In addition to its central clearing function, programs and services offered by DTC have immobilized a large segment of the securities issued today.

The relationship between a transfer agent and DTC is commercial in nature. Transfer agents are retained by issuers to provide services to their shareholders. Share positions held at DTC are reflected on the transfer agent's records as that of a single shareholder. DTC charges for its services, and with respect to recordkeeping services, DTC competes directly with transfer agents.¹¹

DTC is subject to regulations adopted by the Commission, but as a self-regulatory organization it also may adopt its own rules and regulations governing the conduct of its members and take disciplinary action against those members that are not in compliance with its rules. Sanctions for non-compliance may include fines as well as expulsion. DTC is governed by its members, who establish fees, develop

¹¹ In fact, immobilization of securities within DTC has increased its share of the market for keeping records of beneficial owners from 30% to 70% over the past 30 years, while reducing the market share of transfer agents accordingly.

policies, oversee its disciplinary process, and share its revenues. The primary members of DTC are broker-dealers and banks. Transfer agents are not members in DTC – they are designated as “limited participants” and are approved for FAST eligibility by DTC in its sole discretion. Because they are not members of DTC, they do not enjoy the same level of protections under the Exchange Act that a self-regulatory organization must offer its members. As “limited participants,” transfer agents do not have the ability to fully participate in rulemaking, develop policies or determine fees, and have no meaningful way to be involved in the decisions made by DTC that may affect them.

The DTC Rule Filing

Since 1975, transfer agents have participated in programs offered by DTC. The FAST system was developed jointly by Petitioner’s members and DTC and is intended to efficiently transfer certificates between DTC and transfer agents. In recent years, national securities exchanges have required as part of their listing standards that companies use only transfer agents that participate in another program offered by DTC – the Direct Registration System.¹² DRS permits shareholders to move their share positions held in book entry form between DTC and the transfer agent.

Transfer agents that participate in DRS also must be “FAST Agents.” Thus, any DTC rules that establish threshold criteria for participation in either of these DTC programs also have the effect of establishing broad national standards for transfer agents. Those transfer agents that do not meet the standards that DTC has set for participation in the programs are effectively constrained from providing services to many of the public companies in the United States.

The DTC Rule Filing would establish a new paradigm for transfer agent regulation because its scope extends far beyond operational and system criteria to impose substantive requirements on the transfer agent community. The DTC Rule Filing contains very detailed and specific requirements that transfer agents must meet in order to participate in the FAST program. For example, the DTC Rule Filing

¹² See, e.g., NASDAQ Rule 4350(I); Section 501.00 of the NYSE Listed Company Manual.

requires transfer agents to obtain minimum amounts of insurance coverage (which are \$10 million for some agents and \$25 million for others). The DTC Rule Filing also establishes in detail the safekeeping requirements necessary for transfer agents, exceeding those currently required by the Commission under Rule 17Ad-12 (e.g., vaults, central theft and fire monitoring alarms). Moreover, as originally filed with the Commission, DTC sought to require all transfer agents to retain an independent auditor to provide an SAS 70 Report, in addition to the annual audit that transfer agents already must obtain pursuant to Rule 17Ad-13 of the Exchange Act. The final DTC Rule Filing requires transfer agents that obtain a SAS 70 Report to provide this to DTC.¹³

Other specific provisions of the DTC Rule Filing addressing participation in the FAST system require transfer agents to comply with *all state and federal laws* (including OFAC laws and regulations); force transfer agents to provide DTC with Commission examination reports; and permit DTC to conduct on-site examinations and inspections of the transfer agent's facilities, books, and records.¹⁴ If a transfer agent fails to adhere to any DTC requirement, then the DTC Rule Filing provides that DTC "in its sole discretion" may arbitrarily terminate the transfer agent's participation in the FAST program.

The Approval Order states that DTC is not attempting to "regulate" transfer agents, and that "DTC is imposing reasonable obligations necessary for it to comply with its statutory obligations and only on those transfer agents that choose to participate in its FAST and DRS programs...." (emphasis

¹³ Transfer agents generally provide their SAS 70 report only to clients, under strict terms of confidentiality, and for a fee (due to the significant expense of obtaining such a report). No such protections of confidentiality and consideration are provided in the DTC Rule Filing.

¹⁴ The DTC Rule Filing provides that:

Unless prohibited by applicable law, during regular business hours and upon advance notice, DTC reserves the right to visit and inspect, to the extent such visits and inspections pertain to DTC's securities position, the transfer agent's facilities, books, and records.

As is the case with SAS 70 Reports, no confidentiality obligation is imposed on DTC with respect to documentation and proprietary systems and controls to which access is mandated. In a typical commercial relationship, this would not be allowed.

added). Many within the transfer agent community, however, believe that without participating in the FAST and DRS programs, a transfer agent cannot remain commercially viable. Nevertheless, there is no analysis in the DTC Rule Filing of the potential costs of compliance with the new DTC rules, a significant issue with respect to those transfer agents considered small entities. Moreover, DTC's ability to, "in its sole discretion," terminate participation in its essential programs poses a substantial risk to the transfer agent industry, especially in light of the commercial relationship between DTC and transfer agents. Faced with the possibility of arbitrary termination of their participation in DTC's programs, transfer agents are constrained to complain about DTC's fees or services, or even to submit negative comments on DTC's rulemaking efforts.

The DTC Rule Filing is Inconsistent with the 1975 Act Amendments

The DTC Rule Filing contains certain elements that transfer agents do not support. Petitioner and its members' strong opposition to the new rules, however, stems primarily from the fact that they intrude upon the Commission's jurisdiction over transfer agents. Allowing DTC to set standards in fundamental areas of transfer agent operations is contrary to the system of regulation for transfer agents established by Congress through the adoption of the Securities Act Amendments of 1975 ("1975 Act Amendments").¹⁵

The 1975 Act Amendments added to the Exchange Act Sections 11A and 17A. Section 11A empowers the Commission to facilitate the development of a national market system. Under Section 17A, Congress required the registration of transfer agents and empowered the Commission to adopt regulations governing their conduct, in cooperation with appropriate bank regulators. The 1975 Act Amendments also required the registration of clearing firms, and subjected them to regulation by the Commission as self-regulatory organizations. Those provisions of Section 17A establishing requirements for the registration and operation of clearing firms, such as DTC, was modeled basically on Sections 6

¹⁵ See Pub. L. No. 94-29, 89 Stat. 1140 (June 4, 1975).

and 15A of the Exchange Act, which address the role of the exchanges and the NASD (now FINRA) as self-regulators.

Congress had considered an overarching self-regulatory organization for the National Market System, but chose not to establish one.¹⁶ Instead, in the 1975 Act Amendments it required only the registration of clearing agencies as self-regulatory organizations with the authority to regulate their own members. Thus, while transfer agents were required to register with the Commission, unlike registered broker-dealers they were not required to be members of any self-regulatory organization. The 1975 Act Amendments reserved the registration, regulation, and oversight of transfer agents exclusively to the Commission and the appropriate banking regulators.

While the 1975 Act Amendments were awaiting President Gerald Ford's signature, Commissioner John R. Evans addressed the Western Stock Transfer Association. With the Commission's soon-to-be new authority over transfer agents, Commissioner Evans outlined the measures that the Commission – and not any self-regulatory organization – would consider to further the intent of 1975 Act Amendments. Among these, he noted:

We will also have to review the need for standards for the safekeeping of certificates and records in the custody of transfer agents and may find it necessary to set minimum standards of safekeeping with respect to unissued certificates, those in process, and those awaiting pickup.

I anticipate that the Commission will consider prescribing standards in the area of financial responsibility through bonding requirements, and it will be necessary for us to decide whether it is appropriate to develop examination or other standards regarding qualifications of transfer agent employees similar to those presently applicable to broker-dealer employees. The Commission will consider the need for recordkeeping requirements¹⁷

Moreover, Commissioner Evans pledged to work cooperatively with transfer agents in establishing uniform standards and assured the transfer agent community that the Commission would follow the

¹⁶ See, e.g., H.R. Conf. Rep. 94-229, 96-97, 94th Cong., 1st Sess. 1975.

¹⁷ John R. Evans, Commissioner, SEC, *Proper Regulation Requires Understanding and Communication*, Address Before the Western Stock Transfer Association (May 28, 1975).

Administrative Procedures Act, review all comments, and evaluate the economic impact of any proposed course of action.

Since 1975, the Commission has established standards for turnaround of transfers, required recordkeeping and reporting, mandated the creation and enforcement of internal controls to safeguard securities, and required annual audits by independent public accountants. Now, almost thirty five years after Commissioner Evans's comments, DTC is attempting to supplant the authority over transfer agents that Congress vested with the Commission.

***DTC's Rule Filing Sets National Standards for Transfer Agents
That are Contrary to Those Adopted by the Commission***

The Approval Order dismisses arguments by commenters that the DTC Rule Filing sets standards for transfer agents in general, suggesting that transfer agents who do not meet those standards simply may choose not to provide services to "publicly traded companies" that require them to participate in DTC's programs. The Approval Order also acknowledges, however, that the DTC Rule Filing will affect at least 90 transfer agents, most of whom are members of Petitioner.¹⁸ These 90 transfer agents provide services to 930,000 issues, which include the stock of those public companies in the United States who, by an overwhelming margin, have the largest shareholder base and whose securities account for almost all of the active trading on our markets.

The DTC Rule Filing will apply to transfer agents that provide services to every issuer of National Market System securities, and potentially to those offering services to many other issuers, including mutual funds. Only those transfer agents that "elect" to provide more limited services, for example, to "publicly traded companies" whose stock trades on the OTC Bulletin Board or pink sheets, private companies, or with respect to fixed income securities, may not be affected. If Congress had intended for transfer agents, whose services relate to such a large segment of the public securities markets

¹⁸ See Approval Order at note 7.

– viz the national market system securities – to be governed by a self-regulatory organization, it would have required them to join one, as it did broker-dealers.

The Approval Order cites both Sections 6 and 19(b)(2) of the Exchange Act which require, as a condition to approval, a finding by the Commission that a rule filing by DTC is “consistent with the requirements of [the Exchange Act].” The Commission, however, already has adopted or considered regulation in many of the areas that are addressed by the DTC Rule Filing. For example, the DTC Rule Filing requires a transfer agent to carry a Financial Institution Bond, or a commercial crime policy providing similar coverage, and Errors and Omissions insurance. The DTC Rule Filing also will require notification of any lapse in insurance coverage or change in business practices, as well as proof of any new or substitute policy with respect to any required insurance within five days after entry into force of such new or substitute policy.

On two separate occasions, the Commission considered imposing – but ultimately declined to impose – net worth and insurance requirements for transfer agents. In 1982, the Commission solicited comments with respect to the desirability of proposing net worth and insurance requirements for registered transfer agents (other than federally regulated banks and transfer agents that perform transfer agent functions exclusively for their own securities).¹⁹ In addition, in 1994, the Commission reconsidered the merits and costs of minimum net worth and insurance requirements for transfer agents.²⁰ In the Commission’s 1994 proposing release, it noted:

During its 1983 rulemaking process, the Commission sought comment on whether it should impose minimum net worth and insurance requirements on transfer agents registered under Section 17A of the Exchange Act, other than federally regulated banks or transfer agents that perform transfer agent functions exclusively for their own securities. The Commission also requested comment on whether a minimum net worth requirement would be necessary if an

¹⁹ See Exchange Act Release No. 19142 (Oct. 15, 1982) (notice of proposed rulemaking and request for comments). See also Exchange Act Release No. 19860 (June 10, 1983) (adoption of certain rules but declining to take action with respect to minimum net worth and insurance requirements).

²⁰ See Exchange Act Release No. 34040 (Dec. 1, 1994) (notice of proposed rulemaking and request for comments).

appropriate insurance requirement were imposed. Most commenters favored a minimum insurance requirement and many favored both minimum insurance and net worth requirements. Commenters, however, suggested widely varying ranges of minimum insurance and net worth levels. In June 1983, when the Commission adopted recordkeeping rules and safeguarding procedures for registered transfer agents, the Commission considered, but decided to defer, promulgating rules regarding transfer agent net worth and insurance requirements.

Thereafter, the Securities Transfer Association, Inc. ('STA') petitioned the Commission for changes to rules concerning transfer agents which included, among other things, minimum insurance and net worth requirements. As discussed below, the Commission believes it is appropriate to reconsider the merits and costs of minimum net worth and insurance requirements for transfer agents...

The Commission, however, has not yet chosen to impose net worth and insurance requirements on transfer agents.

With respect to custody and safekeeping of securities, the DTC Rule Filing requires compliance with Rule 17Ad-12,²¹ as well as maintenance of a theft and central fire monitoring alarm system of a transfer agent's entire premises, and the maintenance of all certificate in a vault that is accessible only by authorized personnel, each of whom must comply with the fingerprinting requirements in Rule 17f-2. The Commission, however, already has adopted regulations addressing the custody and safekeeping of securities in 17Ad-12, and it has made the determination that the requirements set forth in that rule are those which are "necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes" of the national system for clearance and settlement of securities transactions.²²

Moreover, the Commission, in adopting Rule 17Ad-12, determined not to impose specific safeguards that each transfer agent should follow. Instead, the Commission allowed transfer agents to "exercise responsible discretion" in adopting particular safeguards, so long as those safeguards are

²¹ Rule 17Ad-12 generally requires registered transfer agents in custody or possession of any funds or securities to assure that "(1) all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction ...; and (2) all such funds are protected, in light of all facts and circumstances, against misuse." See 17 C.F.R. § 240.17Ad-12.

²² See Exchange Act Section 17A(d)(1) (authorizing Commission rulemaking subject to certain findings).

adequate to protect funds and securities under the circumstances.²³ While it enumerated a laundry list of safeguards that transfer agents might employ – which are similar to the requirements of the DTC Rule Filing – the Commission allowed individual transfer agents the opportunity to decide which particular safeguards were appropriate. As adopted, Rule 17Ad-12 provides that, “[i]n evaluating which particular safeguards and procedures must be employed, the cost of the various safeguards and procedures as well as the nature and degree of potential financial exposure are two relevant factors.” Thus, the Commission already has considered and rejected central elements of the DTC Rule Filing.

Transfer Agents do not Have the Protections and Benefits Afforded DTC’s Own Members

While DTC has attempted to analogize its actions to those of other “user-governed” organizations, the relationship between DTC and transfer agents is commercial (although not a typical commercial relationship in which the parties mutually agree upon services, fees and other terms). In their function as transfer agents, they are designated as limited participants in DTC. Nevertheless, DTC is seeking to effectively assert jurisdiction over transfer agents as though they were subject to DTC’s oversight in the same fashion as its own member participants.

We do not believe that the Approval Order fully addresses this concern. It states simply that the rights of transfer agents will be protected because DTC’s rule filings must be approved by the Commission, noting that “[t]his process should provide transfer agents, as well as others affected by DTC’s rules, adequate procedural safeguards.” This statement, however, ignores the fact that transfer agents are not members of DTC. If transfer agents were full participant members of DTC, they would be afforded far greater protection than simply the opportunity to comment in the context of a DTC rule filing with the Commission. The Commission approved DTC as a clearing agency and self-regulatory organization in 1983 based on its ability to satisfy the requirements of Section 17A of the Exchange Act that, among other things, required fair representation of its members, and fair procedures for enforcing its

²³ See Exchange Act Release No. 19142 (Oct. 15, 1982) (notice of proposed rulemaking and request for comments).

rules.²⁴ Again, transfer agents, however, are only “limited participants” in DTC – and not members. They are not shareholders and they do not participate in the governance of DTC, its rulemaking or its disciplinary processes, or share in its profits. Thus, they do not have the full procedural safeguards that Congress intended for members of self-regulatory organizations.²⁵

As we have stressed above, the relationship between DTC and transfer agents is commercial. Nevertheless, the DTC Rule Filing also requires limited participants to sign a Balance Certificate Agreement²⁶ and Operational Criteria, the terms of which are one-sided and dictated by DTC. Effectively, these agreements are adhesion contracts. Transfer agents have no ability to negotiate the terms of their business relationship on significant issues, including operational issues, fees, and confidentiality, as would generally be the case with two commercial parties, again reflecting DTC’s status as a *de facto* regulator.

The Commission Needs to Modernize Transfer Agent Regulation by Proposing New Regulations

DTC believes that its rule filings are necessary because the standards for participation in its programs have not changed substantially since 1975, and do not take into account changes that have occurred since that time – including significant changes in technology. In this regard, Petitioner agrees that the transfer agent regulations in the United States may need to be modernized. For many years the Division’s Staff has referred to rulemaking efforts under consideration within the Division that would achieve that effect. In numerous public statements since the beginning of the new millennium, the Staff has referenced internal drafts of these rules, some of which would appear to address the same concerns

²⁴ More detailed standards were set forth in Exchange Act Release No. 16900 (June 17, 1980).

²⁵ Allowing DTC to establish rules for transfer agents, but without membership, presents other troubling issues since DTC has potential conflicts of interest in protecting the interests of its members, who are banks and brokers, and who also perform some of the same functions as transfer agents.

²⁶ As noted in the STA’s prior comment letters, with the significant dematerialization of stock certificates, there is no need for such antiquated requirements as maintaining a “balance certificate” in lieu of the standard book-entry electronic method of recordkeeping. However, the DTC Rule Filing still includes this inefficient and unnecessary process, reflecting again DTC’s authoritarian rather than collaborative approach with its limited participant transfer agents.

which are the subject of the DTC Rule Filing. Moreover, in meetings with the Division almost one year ago, Petitioner's representatives were advised that portions of the DTC Rule Filing might not be necessary if the Commission were to publish for comment these long-awaited rule proposals.²⁷

Petitioner does not object to rule filings by DTC as they relate to the implementation and use of DTC's systems, which may include technology protocols to preserve the integrity of those systems. In addition, Petitioner does not necessarily object to the substantive standards in the DTC Rule Filing. In fact, as noted above, historically Petitioner and the transfer agent industry have encouraged the Commission to propose similar measures. Petitioner does, however, object to rules emanating from DTC, as a *de facto* new regulator of transfer agents.

By circumventing the Commission's rule approval process, the DTC Rule Filing creates standards that are contrary to those provisions of the Exchange Act that require any transfer agent rulemaking to be made in consultation with the appropriate bank regulators. In addition, despite the fact that commenters have complained about the economic effect on their businesses, the Approval Order notes that under Section 19(b) of the Exchange Act, DTC's rule filings are not subject to the Regulatory Flexibility Act of 1980. Thus, neither DTC nor the Commission has conducted any study to examine the impact of the DTC Rule Filing on small transfer agents.²⁸

Rather than allowing the abdication of its jurisdiction to DTC, the Commission should propose new transfer agent regulations that reflect changes in technology and evolution of the markets. We urge the Commission to act quickly to propose those new regulations.

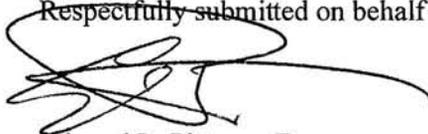
²⁷ The STA's President and individual members of its Board of Directors have voiced their concerns in multiple meetings with individual members of the Commission and the Division's former Director. Almost a year following submission of the last public comments on the proposal, after the composition of the Commission had changed, and after the Division's former Director had departed, the STA and its members were surprised to learn that the rulemaking had been approved by the Division using its delegated authority. Until this time, the STA and its members believed that the most significant provisions of the DTC proposal would be supplanted by the Commission's own rulemaking initiative.

²⁸ See Approval Order at note 31.

Conclusion

Petitioner believes that the Approval Order is contrary to both law and policy. In light of the foregoing, it respectfully requests that the Commission agree to review, and disapprove the DTC Rule Filing. We encourage the Commission to publish for public comment its own rules under Section 17A that will modernize transfer agent regulation and, if appropriate, establish new minimum regulatory standards.

Respectfully submitted on behalf of the Petitioner, by



Edward L. Pittman, Esq.
Dechert LLP