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October 25, 2010



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Elizabeth Murphy, Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-9303

**RE: DTCC Response to SEC Concept Release on the U.S. Proxy System  
(File Number S7-14-10)**

Dear Ms. Murphy:

The Depository Trust & Clearing Corporation (“DTCC”) is pleased to have the opportunity to comment on the Securities and Exchange Commission (the “SEC”) Concept Release on the United States Proxy System (File Number S7-14-10) (the “Release”). DTCC recognizes the importance of the SEC’s efforts on this topic. As the world’s largest clearance and settlement organization, DTCC is committed to supporting activities intended to improve the accuracy, reliability, transparency and integrity of the U.S. proxy system. DTCC is the parent company of The Depository Trust Company (“DTC”), the central U.S. depository for the immobilization of securities, a key link in the proxy process described in the Release<sup>1</sup>. DTC is committed to supporting an efficient and reliable proxy system to help protect the rights of investors and strengthen the integrity of the U.S. capital markets.

This response to the Release is provided in the first instance to correct any misperceptions regarding DTC’s Omnibus Proxy procedure and the reconciliation of issuer/agent records with DTC position listings. Additionally, and to further strengthen the proxy process, DTCC strongly supports the initiatives referred to in the Release:

- Continuing efforts to dematerialize securities;
- Encouraging participation in the Direct Registration System (“DRS”) and ongoing investor education; and
- Electronically tagging proxy information with XBRL data tagging.

As discussed in our response, DTCC believes that the systematic use and organization of digitalized information through the mechanisms of dematerialization, direct registration and electronic tagging will enhance the accuracy, reliability, transparency and integrity of the proxy process.

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<sup>1</sup> DTC provides custody and asset servicing for 3.5 million securities issues from the U. S., as well as issues from 121 other countries and territories, valued at \$33.9 trillion (as of the end of 2009). In 2009, DTCC settled nearly \$1.48 quadrillion in securities transactions.

## **IMMOBILIZATION HISTORICALLY AND AT DTC**

Following the “paperwork crisis” of the 1960s/1970s, Congress concluded that street name ownership was a necessary foundation to the efficient functioning of the securities markets. To facilitate centralized processing, securities are “immobilized” at depositories so that transfers can be made through book-entry on the records of those who deal directly with the true beneficial owners—the brokers and banks. This approach allows for the clearance and settlement of large volumes of trades without the inefficient and costly need to track and process individual paper certificates. Although today some criticize the modern “national clearance and settlement” system as being complex and antiquated, the system enables the processing of today’s high volume of trading transactions and is, in fact, technologically advanced and extremely efficient. The simpler, certificate-based systems of the past have proved inadequate.<sup>2</sup>

When securities are deposited at DTC by broker/dealers and banks -- DTC’s participant base -- they are generally re-registered in DTC’s nominee name, Cede & Co. The position is credited on DTC’s books to the account of the depositing DTC participant (i.e., the bank or broker/dealer) and the participant, in turn, records the beneficial or end investor’s ownership on its books. Because the records of the issuer (or its transfer agent) reflect the securities as registered to the nominee of DTC, DTC (through its nominee) has legal title to the securities and an obligation to pass the beneficial rights of ownership to its participants for the benefit of the ultimate investors. Therefore, and as suggested by the Release, DTC’s involvement in the proxy process is critical.

## **DTC OMNIBUS PROXY PROCEDURE**

DTC has a longstanding and well established Omnibus Proxy Procedure<sup>3</sup> to transmit proxy rights to the ultimate beneficial owners holding through DTC participants (the “Procedure”).

Briefly, for proxy solicitations where a record date has been established, DTC will assign the voting rights (or consent rights) of Cede & Co. to the participants which, on the record date, have the security credited to their account at DTC. DTC does not exercise voting rights itself. DTC issues an omnibus proxy and forwards it to the issuer in accordance with the Procedure. The omnibus proxy attaches a listing of the DTC security position broken down by participant positions on the record date (the Security Position Listing or “SPL”), so that the issuer and its agents may identify the banks and broker/dealers that are DTC participants, holding for their customers, the ultimate beneficial owners. DTC sends the omnibus proxy to the issuer as soon as possible after the record date (which is the applicable date to definitively determine participant

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<sup>2</sup> Excerpt from page 1 of Report on the Shareholder Communications Process with Street Name Holders, and the NOBO-OBO Mechanism – A report by the SIFMA Proxy Working Group 6/10/2010.

<sup>3</sup> Originally published in DTC’s Participant Operating Procedures, it is currently reflected in the Reorganization Service Guide on the DTCC website at: “<http://www.dtcc.com/downloads/products/learning/Reorganizations.pdf>”).

holdings). To facilitate communication between issuers and participants, the listing also includes the name, address, telephone number and proxy contact of each participant listed on the report. At the same time that the omnibus proxy is created, participants are notified by DTC of their voting position in the issue (which, of course, represents an amalgamation of the voting rights of the participant's customers holding the issue).

DTC takes issue with any characterization in the Release that casts doubt on the legitimacy of the Procedure. The Release cites, on page 18, footnote 42, the decision of a Delaware Chancery Court<sup>4</sup>, subsequently overturned. The court makes a statement about a lack of standard policies or procedures governing DTC's production of omnibus proxies, which is not well-founded and is factually inaccurate.

As noted above, DTC has a longstanding and public Procedure pursuant to which it issues the omnibus proxy as soon as possible following record date. This Procedure is effective, as are all of DTC's rules and procedures, as a contract between DTC and its participants. Moreover, DTC has the legal obligation under Part 5 of Article 8 of the Uniform Commercial Code to afford its participants the rights associated with the securities credited to their accounts and participants, as securities intermediaries, have the same obligations to their customers. Accordingly, DTC has legal and contractual obligations to pass along the proxy rights which it does by means of the omnibus proxy. Finally, although some might argue that DTC's agreement to provide the omnibus proxy "as soon as possible after the record date" is too indefinite, DTCC urges the better view that this requires prompt performance by DTC according to the timing and circumstances of its receipt of record date information from the issuer and/or its agent.

## **RESOLUTION OF POSITION IMBALANCES WITH DTC ASSISTANCE**

The concept release refers to "Imbalances in Broker Votes". Position imbalances occur for a host of administrative reasons (e.g., because of a "fail to deliver" in the clearance and settlement system or "missed transfers" around the applicable record date). For example, a share deposit that had not successfully been transferred into DTC's nominee name by record date may be reflected on the participant's books and records but would not appear on DTC's records, and hence on the SPL, in the firm's position for that date.<sup>5</sup> When these imbalances are brought to the attention of DTC, it cooperates with

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<sup>4</sup> Excerpt from page 18 of the Release: "<sup>42</sup> As noted in recent litigation, the execution by DTC of an omnibus proxy is neither automatic nor legally required, but occurs as a matter of common practice. Kurz v. Holbrook, 989 A.2d 140, 170 (Del. Ch. 2010), rev'd on other grounds, Crown EMAK Partners, LLC v. Kurz, 992 A.2d 377 Del. 2010) ("There does not appear to be any authority governing when a DTC omnibus proxy is issued, who should ask for it, or what event triggers it. The parties tell me that DTC has no written policies or procedures on the matter."). Note that the Delaware Supreme Court has reversed in part but declined to rule on the Court of Chancery's determination that the Cede breakdown is part of the stock ledger for these purposes. The Supreme Court wrote that a "gratuitous statutory interpretation" would not be prudent and that the Court of Chancery's interpretation of the Cede breakdown as part of the stock ledger for these purposes is "*obiter dictum* and without precedential effect".

<sup>5</sup> This situation is similar to a bank customer who deposits a check into his checking account and considers it part of his balance even though the bank may not reconcile to that balance on a particular day because the check has not yet cleared or was returned due to insufficient funds held by the check's payor.

participants, issuers and agents to reconcile positions so that investors are appropriately assigned voting rights.

Recently, for example, DTC contacted an issuer that asserted (in its comment letter on the Release) that the need to adjust DTC position reports because they did not match issuer records reflected an inherent flaw in the Procedure. DTC conducted a detailed review of examples provided by the issuer and determined that the positions reported on the SPL were correct as of record date; however, the issuer's agent had (erroneously) included in its records shares that were transferred into DTC's nominee name after the record date. The records of the parties differed because they reflected positions on different dates, not due to any inherent flaw in the Procedure. DTC welcomes such inquiries in order to facilitate the appropriate dissemination of position information for proxy determinations.

Position imbalances can also occur when securities are out on loan. DTC already offers a service for participants optionally to identify stock loan activity; we would support industry efforts to standardize a methodology to identify stock loan activity and reconcile positions, if the SEC so recommends.

#### **DEMATERIALIZATION THROUGH DRS TO IMPROVE THE PROXY PROCESS; INVESTOR EDUCATION**

DTC continues to champion the dematerialization or elimination of paper securities and the parallel need for better investor education. The dematerialization effort reduces costs and risks for all market participants, with the ultimate beneficiaries being the beneficial owners.

Through DRS, DTC provides investors with the option to hold their securities in a direct relationship with the issuer, through its transfer agent; it is an alternate approach to holding securities in a physical certificate or in "street name" book-entry form. DRS provides for electronic direct registration of securities in an investor's name on the books of the issuer or the issuer's transfer agent without a paper certificate. All exchange-listed securities, except those which are book-entry only, are required to be eligible for DRS. There are nearly 7,000 securities eligible for DRS. However, there are more than 700 issues that are DRS-eligible but non-participating in the program.

DRS enables issuers to know the identity of their shareholders, eliminating costly and time-consuming processes to determine shareholder identities. However, in order to realize this potential, issuers must participate in DRS and investors need to elect to hold their shares through DRS; there may yet be a common belief among investors that electronic holding or giving up the physical certificate is somehow inferior.

For this reason, DTCC endorses improved investor education. In an effort to promote investor education, DTC recently launched a new "Issuer Services" section on [www.dtcc.com](http://www.dtcc.com) to provide detailed and user-friendly information on DTC's role in the capital markets and, in particular, in the proxy process.

## STANDARDIZING PROXY DATA THROUGH XBRL DATA TAGGING

In an effort to improve corporate actions announcement processing, DTC has taken a leadership role in promoting the use of XBRL (the "eXtensible Business Reporting Language") for tagging key data elements for required disclosures. XBRL enables issuers to "tag" data when preparing their source documents. The tagged data is "embedded" within the saved file. In the prospectus, the issuer can tag key data to be readily usable by the financial industry, with an anticipated positive impact on proxy processing, among other benefits. Introducing and promoting best practices for global data handling standards could eliminate the inefficiencies and resulting losses from the current manual processing of announcements made by publicly traded companies and other issuers in the U.S.

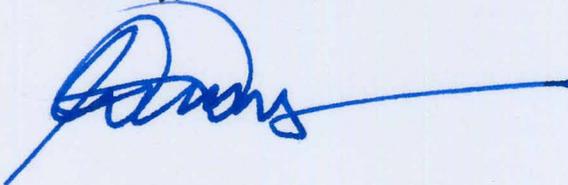
Plans call for a new corporate action taxonomy, which aligns with international standards (the new "ISO 20022" standards). This new taxonomy will support a seamless transition from issuer-generated documentation to standard ISO 20022 messages using XBRL technology. If extended to proxy statement and voting information, XBRL data tagging would help increase efficiencies, improve transparency between issuers and investors and offer greater clarity through reporting standardization.

### CONCLUSION

DTCC appreciates the opportunity to respond to the Release on this important topic. While we believe the current proxy system functions well, we are committed to working with the industry to institute improvements. To that end, we continue to support efforts toward securities dematerialization, encouraging use of DRS, improved investor education and XBRL data tagging initiatives.

DTCC looks forward to supporting the outcome of these efforts to create greater efficiencies, reduce risk and strengthen investor confidence in the U.S. capital markets.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized name followed by a long horizontal line extending to the right.