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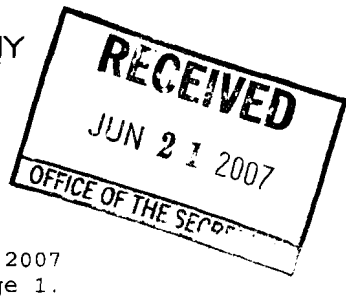

STEVEN NELSON
Chairman and President

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Ms. Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington DC 20549-1090

RE: Securities and Exchange Commission Release No. 34-55816
File No. SR-DTC-2006-16, Notice of Filing of Proposed Rule Change Amending FAST and DRS Limited Participant Requirements For Transfer Agents

Dear Ms. Morris:

I am writing to you on behalf of Continental Stock Transfer & Trust Company ("CST") to strongly object to the above-referenced proposed Rule (the "Proposal") filed by The Depository Trust Company ("DTC"). CST is a medium-sized stock transfer agent which has been in business since 1964. We currently represent more than 1,000 public issuers, aggregating more than 1.5 million shareholder accounts. We write to you to augment the comment letter filed by the Securities Transfer Association ("STA") of which we are a member.

It is our position that DTC, the only depository in the United States, seeks through this filing to extend its 30 year pattern of anti-competitive behavior by mandating eligibility rules which will have the effect of evicting from the transfer agent industry scores of small transfer agents which provide valuable, cost effective services to thousands of smaller issuers around the country. In so doing, DTC, which is a Self Regulatory Organization ("SRO"), is both usurping the congressionally-granted exclusive authority of the SEC, and attempting to make SRO eligibility rules and compliance rules, not for its own members, but for transfer agent non-members, which are direct competitors of DTC. DTC seeks, through this Rule filing, unfettered authority and discretion to mandate what services transfer agents must provide to DTC and its members, while at the same time refusing to pay for such mandated services.

In summary, DTC is a monopoly engaged in predatory, anti-competitive conduct with respect to its direct competitors. The effects of this anti-competitive behavior are far-reaching as to price and mandated services; and it will result in scores of small transfer agent competitors being forcibly evicted from the marketplace. Finally, in filing these proposed Rules, DTC is usurping the SEC's exclusive jurisdiction to regulate transfer agents.

BACKGROUND

There are currently more than 150 commercial stock transfer agents around the United States, including commercial transfer agents and mutual fund agents. While 30 years ago there were scores of large bank transfer agents providing these services, consolidation and the effects of DTC expansion have reduced the number of large commercial agents to but a handful. In 1970, the commercial transfer agent industry kept on its books approximately 70% of all shareholder records, and DTC's positions represented approximately 30% of all beneficial shareholder records. In the past 30 years, as a result of market conditions and actions taken by DTC, there has been a dramatic shift so that now more than 70% of all publicly-traded shares are represented by DTC positions, and 30% or less are kept in registered form on the books of transfer agents. These changes have been deftly orchestrated by DTC as outlined in the annexed Declaration of Dr. Susan Trimbath, a former insider at DTC, in a recent lawsuit filed by Olde Monmouth Stock Transfer Co., Inc., against Depository Trust & Clearing Corporation and Depository Trust Company (07CV0990 (SDNY)), in which Olde Monmouth Stock Transfer Co., Inc. ("Olde Monmouth") sought to enjoin implementation of DTC's proposed Rules, which Rules would have the effect of closing Olde Monmouth because they are anti-competitive and exclusionary. Olde Monmouth is only one of the small agents which has been threatened by DTC and who are together facing the prospect of being put out of business by DTC's proposed Rules.

DTC is an SRO, which is owned and operated by a conglomerate of banks and brokers which together own 100% of DTC and run it through Board representation. DTC is registered as a clearing agency with the SEC and clears virtually all equity securities in the United States. DTC performs similar recordkeeping and related functions for its broker-dealer and bank members as transfer agents perform for registered shareholders. Dr. Trimbath demonstrates that over the past 30 years or more DTC has single-mindedly attempted to expand its assets under management and shareholder accounts overseen at the expense of transfer agents, which are its direct competitors. While DTC continually says that they are not competitors of commercial transfer agents, the wording of its Charter* and the history of the last 30 years belies that claim; and Dr. Trimbath, a former Director of Transfer Agent Services at DTC, makes clear that DTC has always looked on transfer agents as competitors and has repeatedly designed ways to take business away from transfer agents through dematerialization, and now through mandatory DRS Rules.

While transfer agents originally proposed DRS -- the Direct Registration System -- it worked too well, in that it allowed shareholders to sell small share positions directly through transfer agents on a low-cost basis, thereby obviating the need for shareholders to use brokers to effect such transactions using their high minimum charges. Not surprisingly, the brokerage community was not pleased. But, DTC designed a DRS alternative, the result of which was to allow registered shareholder positions on transfer agent books to be transferred to brokers electronically to enable broker-originated sales.

The most recent outgrowth of this decades-long process -- mandatory DRS -- is seeking to move millions of registered shareholder accounts from transfer agents, and place the shares they represent in the DTC System for the benefit of DTC and its broker owners. DTC's proposed DRS eligibility requirements take this one step further by trying to eliminate transfer agent competition and give DTC complete control of the DRS System. These rules give DTC virtually unfettered discretion to decide which agents are in the mandatory DRS System, and which agents are out. Moreover, DTC has, over the past year or so, orchestrated mandatory DRS Rules which have been enacted by the New York Stock Exchange ("NYSE"), the American Stock Exchange ("AMEX"), and NASDAQ. These Rules require that all publicly-traded issues on these three Exchanges must, by January 1, 2008, be handled by a DRS eligible transfer agent, i.e., they must be in the DTC controlled FAST/DRS Electronic System.

The result of this confluence of DTC-orchestrated events is that small transfer agents, such as Olde Monmouth, and scores of others like them, must either become DTC FAST eligible, or they must exit the transfer agent business, unless they are satisfied with handling only "Pink Sheet" companies which are not yet covered by mandatory DRS Rules.

*DTC's own Organization Certificate provides that DTC "shall exercise the general corporate powers" to be a transfer agent.

DTC'S USURPATION OF THE SEC'S CONGRESSIONALLY-GRANTED EXCLUSIVE AUTHORITY TO REGULATE TRANSFER AGENTS

It is clear that Congress vested in the SEC exclusive authority to regulate and register transfer agents. The SEC has routinely made transfer agent regulations, and routinely audits compliance with those regulations for each and every SEC registered transfer agent. For the past 6 years or more, the SEC has been engaged in drafting and adopting new transfer agent rules, including insurance and capital requirements, enhanced record-keeping and processing requirements, annual mailing of statements to registered shareholders, business continuity rules, etc. In this regard, it should be noted that while large brokerage firms and banks have been continually in the news as being responsible for repeated fraud and billions of dollars in shareholder losses, the transfer agent community has rarely been involved in such problems. There have been virtually no shareholder losses attributable to the misconduct or insolvency of transfer agents.

Accordingly, while the SEC properly attempts to exercise its authority by updating the regulatory requirements for transfer agents in light of market changes and technological advances, DTC has no such regulatory authority. Nevertheless, it is currently attempting to define and mandate the insurance, capital, auditing and eligibility requirements of transfer agents.

It is against this backdrop that DTC, a competitor SRO, seeks to become a de facto regulator of the entire transfer agent industry, eventhough transfer agents are not members of DTC (or its SRO). In essence, they are trying to fill the vacuum left by the SEC's failure to finalize the SEC's proposed transfer agent rules. However, Congress did not authorize DTC to regulate transfer agents -- it authorized only the SEC to do so. Moreover, since DTC is a competitor which is seeking to require under these Rules that transfer agents provide to DTC and its participants enhanced DRS services and products, while at the same time refusing to pay for same, the entire process becomes that much more impermissible.

TRANSFER AGENTS ARE NOT CUSTODIANS FOR DTC

We will comment below on each of the specific new FAST and DRS limited participant requirements contained in the Proposal but first will address a point of confusion that appears to be the Proposal's guiding principle: its flawed assumption that transfer agents are custodians for DTC by virtue of the fact that transfer agents maintain securities records that may include records of securities that are registered to DTC or its nominee Cede & Co. The Proposal relies heavily on the concept of custody in several places. A custodian, as the term is commonly understood in financial services, is a financial institution that holds securities or other financial assets on behalf of its customers. DTC apparently believes that transfer agents are custodians for DTC and therefore assumes it has standing as a customer to its vendor to make demands of transfer agents. However, a transfer agent is not a custodian for DTC, but serves as the appointed agent of the issuer, under appointment documents executed by the issuer and the transfer agent setting forth the duties and obligations of the transfer agent.

First, a transfer agent is the agent of the issuer and has one customer, the issuer. The transfer agent has discretion whether to serve a particular issuer and to negotiate with the issuer mutually acceptable terms for that service. The transfer agent does not have any such discretion regarding whether to maintain a record of a particular security holder's position; if the security holder is a direct owner of the issuer's securities, the transfer agent must maintain a record of that position. The security holder does not have any standing to require any operational or other standards of the transfer agent. This is the prerogative of the issuer in its written agreement with the transfer agent, and, of course, the transfer agent's regulators.

Second, transfer agents are recordkeepers; they do not actually hold securities as a custodian for a registered holder. Their vaults generally hold only blank or cancelled stock certificates. Certificates reflecting actual ("live") securities are held by the registered shareholder.

In the case of DTC's position held as a registered holder under its FAST system, there is no certificate except in the most nominal sense--a legended certificate referencing the transfer agent's systems for the number of shares, which has no separate value distinct from the transfer agent's records. The number of securities represented by that registered position changes daily, in only one place: the systems of the transfer agent. Thus, the value is nothing more than a systems record. As the clearance and settlement system moves rapidly away from physical stock certificates toward a book-entry model, this fundamental attribute of transfer agents' limited role as recordkeeper (and not as custodian) becomes increasingly unmistakable.

Yet DTC states that the advent of mandatory book-entry eligibility for listed securities is the triggering event that prompts its need to have dominion over an entire industry. In fact, the long list of proposed "custody" requirements (*e.g.*, insurance deductibles and minimum coverage amounts, the weight and fire-rating of safes) becomes *less* appropriate at this point in time, *not more*, as securities certificates become supplanted by book-entry positions. Similarly, DTC as a registered holder lacks standing to impose any of its proposed regulatory related requirements (*e.g.*, access to Commission regulatory examination reports, annual auditor attestation reports, notice and inspection rights for DTC, or registered holder statement requirements). DTC's attempt to impose this new authority over the transfer agent industry, while never appropriate for one commercial participant in the financial services industry to impose on another participant, is especially untimely now, as the appropriate regulatory body, the Commission, readies a series of rulemaking releases covering similar subject matter.

As if all of the above were not enough, the Proposal also contains specific provisions that would block fees that transfer agents can charge DTC, for work uniquely performed for DTC, despite the additional costs and burden imposed on transfer agents by the Proposal, and that would insulate DTC from acts or omissions caused by its own negligence, while imposing a higher liability standard for transfer agents.

Although we believe that DTC lacks authority to impose any of its proposed requirements on the transfer agent industry, we have specific objections to each of them, which we discuss below.

Insurance Requirements

Continental and the STA strongly object to the costly and onerous insurance requirements of the Proposal, such as excessively high minimum coverage levels, excessively low deductibles, and notice and loss payee/named insured requirements. For large transfer agents, the deductibles set forth are not reasonable and may not even be obtainable from insurers with acceptable credit ratings. If obtainable, the premiums will be significantly increased over current levels, thus frustrating the financial benefit of such insurance. We believe that the additional cost of DTC's insurance requirement would be between $50,000 and $100,000 per year for Continental alone. For some smaller transfer agents, the large minimum coverage amounts proposed will actually exceed the value of the DTC's securities on the books of the agent, and will not be available at affordable rates. Indeed, we believe that there is not one transfer agent in the United States currently meeting the insurance and deductible requirements that DTC seeks to impose.

As noted previously, because there will be fewer outstanding physical certificates as they are replaced with holdings in book-entry form, the potential liability for lost, stolen or counterfeit certificates should result in a significant reduction in risk to DTC and transfer agents. However, despite this reduction, the Proposal would mandate increased insurance requirements. The decrease in the number of physical certificates issued also makes it difficult to understand why DTC is attempting to impose significant mail insurance requirements. Moreover, mail loss insurance is of no legitimate interest to DTC since the very nature of the FAST program is that all the securities registered to DTC would be reflected in a balance certificate, the legended certificate kept by the transfer agent, which is never mailed anywhere.[1]

The Proposal's attempt to mandate that DTC become a protected party under the insurance by being named as an additional insured or a "loss payee" on mail insurance is also highly objectionable. We have been advised by insurance placement experts that this is not standard insurance industry practice, as insurance carriers do not want to be in a position to have to arbitrate losses between multiple parties. If the Proposal stands, DTC would have the ability to control settlement of disputed insurance claims, and favor its interests over that of the transfer agent and other securityholders. There is no reason why DTC and its constituency, street name holders, should enjoy a favored position over record holders, again with no rationale beyond DTC's particular commercial interests, especially when it is understood that street name holders enjoy SIPC coverage and other protections.

Finally, we object to all of the proposed notice requirements to DTC, including notification to DTC in the event of the issuance of a new or substitute policy, an actual or threatened lapse in coverage, and proof of changed coverage. DTC even attempts to require insurers to include language in their policies to notify DTC within 5 days of a threatened or actual lapse of a policy. DTC as a registered holder has no authority to impose any such notice requirements. It may be beyond transfer agents' ability to require insurance companies to include such language in policy documents.

Importantly, DTC and other registered holders have sustained virtually no economic losses as a result of under-insured or insolvent transfer agent activities, and, accordingly, the proposed insurance requirements are unnecessary, onerous and overly broad. DTC has failed to establish any relevant loss history or potential risk (particularly with regard to book-entry securities) to justify such onerous and costly requirements.

Safekeeping Requirements

Continental and the STA believe that DTC should have no authority to dictate the physical security levels maintained by transfer agents, such as the rating of their vaults, the nature of their alarm systems and so on. As stated above, DTC is not a transfer agent's customer, nor its regulator. Further, we believe such requirements are especially untimely now, since the advent of the FAST system makes vaults and alarms less important, not more so. As the balance certificate reflecting the securities allocated to DTC is specially legended on both sides and displays no value, it is of no value to a thief. Moreover, universal DRS allows the physical balance certificate to be *eliminated* entirely. If, notwithstanding the legends which make unauthorized transfer impossible, DTC is so concerned about the safekeeping of any physical balance certificates, as explained below, the DTC position should be held in book-entry in DRS like that of other registered holders.

Execution of a New Balance Certificate Agreement

The Proposal requires that all FAST transfer agents execute a new Balance Certificate Agreement and agree to DTC's Operational Criteria document. These forms remain largely unchanged from the original documents dating back to the 1980s, despite the movement to book-entry recordkeeping and other changes in securities processing. For every listed

[1] Although the Proposal would allow a waiver of the required levels and deductibles, as this would be at DTC's sole discretion, this potential for waiver offers no real relief to transfer agents.

security held by DTC as a registered holder (including any certificate representing DTC's FAST position), we believe the DTC position should be listed as a book-entry position, and the outdated use of physical certificates should be eliminated. However, the Proposal does not promote the use of book-entry registration for DTC's FAST position, and assumes the use physical certificates indefinitely. If DTC succeeds in requiring the issuance of physical "balance certificates" only, this will result in unnecessary and significant costs and risks to transfer agents stemming from the administrative burden of issuing new physical "balance certificates" for every FAST issue on a daily basis as well as the vault storage of such physical certificates. It is perplexing to understand why DTC appears to be clinging to the notion of maintaining physical "balance certificates" as the entire securities industry moves towards a book-entry model and dematerialization of stock certificates.

Auditor Reports

The Proposal would require transfer agents to provide an annual report from an external certified public accountant, certifying compliance with DTC requirements, Commission requirements concerning business continuity planning, and attesting to the soundness of the transfer agent's controls (in the form of a SSAE-10 or SAS-70 report). These reports would be in addition to the independent accountant's audit of internal controls already required by Rule 17Ad-13 of the Securities Exchange Act of 1934. These additional audit report requirements would be superfluous and would introduce substantial additional expense. It is expected that the cost of procuring an SSAE-10 or SA7-70 report, together with an accountant's review and certification of compliance with DTC's 300 page Manual would exceed $100,000 per year for Continental alone. Moreover, it is unclear whether any accounting firms are even willing to undertake performing such an examination, and under what conditions or what cost. DTC as a registered holder, and not a transfer agent's customer, has no right to impose such requirements on a transfer agent.

The Commission, as the regulatory authority for transfer agents, performs examinations and requires a specific auditor report under its rules. This existing regulatory framework should be sufficient to satisfy any of DTC's stated concerns. In any event, the Commission, not DTC, is the appropriate party to impose audit report requirements on transfer agents.

Services Rendered to DTC Without Compensation

The Proposal would prohibit transfer agents from charging DTC fees that are not contractually agreed to by the issuer and are more than those charged to other holders for providing the same services. While appearing merely to request parity with other security holders, this language would rule out any compensation for the myriad specialized services currently demanded by DTC. Based on the language of the Proposal, DTC apparently expects transfer agents to provide such services (as well as other enhanced services that DTC may mandate from time to time in its sole discretion) without compensation. This is clearly not acceptable to transfer agents and would not be allowed in any other commercial relationship. If one commercial party requests another to provide services to it, the service provider may decline to do so unless it receives acceptable compensation. If DTC refuses to pay transfer agents for services rendered, transfer agents should be entitled to refuse to provide such services without the sword over their heads that DTC could throw them out of FAST (and therefore out of business). DTC may argue that transfer agents should simply pass these costs along to issuers, and indirectly their shareholders, but Continental and the STA maintains that neither of these parties should have to bear the cost of services provided to DTC. DTC should not be permitted to require more and more from transfer agents without the discipline of bearing the cost for its demands.

Shareholder Statements

The Proposal would require transfer agents to send "a transfer advice or statement to shareholders within three business days of each DRS account transaction that affects the shareholder's position or more often as required by the Commission's regulations." Continental and the STA maintain that DTC has no authority to mandate notifications to all shareholders with DRS shareholdings. This authority lies solely with the Commission. DTC has absolutely no place regulating transaction advices for registered shareholders. It remains baffling why this is even part of the Proposal, since it would apply exclusively to parties other than DTC. The Proposal gives no explanation or justification for this requirement.

Regulatory Reports and Inspections

The Proposal would require transfer agents to supply DTC with copies of Commission examination reports, notifications of regulatory action and immediate notification of "any alleged material deficiencies documented by the Commission." The last of these items is a new requirement added from previous draft versions of the rule filing. It would also give DTC the right to visit and inspect a transfer agent's facilities, books and records.

Transfer agents rarely if ever offer such privileges to their customers. Since DTC is not even a customer, these proposed rights are completely out of line. The disclosure and access rights appear to be based on the faulty assumption that transfer agents are acting as DTC's custodian, which as previously discussed, is not the case. Most importantly, DTC is not entitled to this confidential information under applicable law and regulation and has failed to demonstrate any need for it.

Standard of Care

The Proposal would also absolve DTC from liability "for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action." This standard would permit DTC to avoid responsibility for its own errors and force transfer agents to "carry the bag" if a third party (*e.g.*, a broker-dealer, or registered shareholder) were to suffer a loss caused by an error at DTC in its interactions with a transfer agent. DTC's exculpatory language would in almost all circumstances force the injured party to seek recovery from the transfer agent alone. DTC wishes to escape liability for even its own ordinary negligence, so that losses might be borne by a transfer agent that is at no fault whatsoever. In a dispute between DTC and a transfer agent, each party should bear responsibility for its own processing errors. There is no legitimate policy purpose that would be served in absolving parties of responsibility for their own errors. In addition, the effect of this position would be, similar to that described with respect to insurance above, to favor DTC and its constituency, street name holders, over record holders, again with no rationale beyond DTC's particular commercial interests. We submit that the standard of care in the commercial relationship between a transfer agent and DTC should be the same for both parties and DTC has no right to unilaterally impose such an unfair standard.

Implementation of Program Changes

The Proposal would require transfer agents to implement program changes related to DTC systems modifications and to support and expand DRS processing capabilities. Although the changes related to DRS processing would have to be approved by the DRS Ad Hoc Committee, of which transfer agents are members, there is no similar requirement for changes related to DTC systems modification. The Proposal fails to address the reasonableness and necessity of changes and the attendant costs that may be incurred by transfer agents. Continental and the STA object to DTC unilaterally determining what changes to make to FAST and DRS, and requiring transfer agents to make changes to their operations and systems to implement the same without any agreement upon the necessity of changes and costs incurred. There is absolutely no justification presented in the Proposal for the "blank check" that DTC is requesting. As the Proposal itself makes abundantly clear, DTC if left to its own devices can inflict tremendous harm on transfer agents through unilateral rule changes concerning DRS and FAST requirements.

Negative Impact on Small Transfer Agents and Small and Mid-Cap Issuers

DTC's Proposal, taken in conjunction with the new mandatory DRS listing requirements already adopted by the NYSE, AMEX and NASDAQ, will require all listed issues to use a transfer agent that is a DTC FAST agent (*i.e.*, a transfer agent that has met the eligibility requirements imposed by DTC, as interpreted by DTC in its sole discretion) and has signed the boilerplate Balance Certificate Agreement as required by DTC. As part and parcel of this arrangement, DTC prohibits issuers and their transfer agents from charging presenters (*i.e.*, shareholders and broker-dealers) for certificate transfers and issuances.

The result is that for those smaller transfer agents and their thousands of small issuer clients now being forced into the DTC's FAST system, DTC is refusing to allow alternate pricing arrangements (*e.g.*, certificate and transfer fee billing structures), which have heretofore been used by small agents and issuers. Whereas large and medium-sized full service transfer agents typically charge issuers monthly administrative fees for their broad array of services, smaller agents offering only core services have been able to offer small issuers alternative billing structures that include nominal or no monthly charges to the issuer and transaction fees paid by presenters. The Proposal would prohibit these alternative billing arrangements for all DRS eligible issues, thereby having a significant negative financial impact for both smaller transfer agents and their small to mid-sized issuer clients. Many smaller transfer agents will be forced out of business.* For those that are able to remain in business, they will have to charge (and small and mid-sized issuers will have to bear) the higher costs of the pricing model generally used by medium-sized and large transfer agents, that will be even higher based on the onerous requirements imposed by the Proposal.

Failure to Satisfy the Regulatory Flexibility Act of 1980

One of the main goals of the Regulatory Flexibility Act of 1980 (the "RFA") is to ensure that small business are given due consideration when agencies promulgate regulations. There is no evidence that any assessment has been done by DTC to examine the economic impact to small transfer agents or small issuers to ensure compliance with the requirements of the RFA. We urge the Commission to perform such an examination in its review of the Proposal.

* Indeed, 4 small agents have already felt compelled to sell their businesses in light of mandatory DRS and DTC's proposed Rules.

Conclusion

Perhaps the most objectionable aspect of DTC's Proposal is that it will have the effect of making DTC a supervising regulator of the entire transfer agent industry. Congress did not vest DTC with this authority; instead, it vested exclusive authority for regulating and overseeing transfer agents solely with the Commission. Moreover, DTC is an SRO which, through the Proposal, is seeking to regulate conduct and pricing for non-member vendors which provide services to DTC. Continental and the STA submit that there is a major structural problem here which the Commission has thus far totally ignored.

Adoption of the Proposal would be disastrous. If the Proposal is not substantially revised to address the concerns urgently raised by transfer agents, it would amount to an abdication by the Commission of its authority to regulate the transfer agent industry, handing this authority to a private sector monopoly whose ultimate goal is not the protection of investors but the protection of its own commercial interests. In addition, as the Commission is aware, DTC has a long history of streamlining its own operations by pushing additional service requirements on transfer agents while refusing to pay for almost all of these services despite the concerted efforts of the STA, to enlist the Commission's assistance in urging DTC to bargain with transfer agents in good faith. Furthermore, the advent of mandatory book-entry eligibility would give transfer agents no choice but to adhere to DTC rules, lest DTC in its sole and unfettered discretion throw them out of FAST and DRS and, therefore, out of business. DTC's naked attempt by this Proposal to extend it's 30 year pattern of anti-competitive behavior must not be permitted by the Commission.

We thank you for the opportunity to comment on the Proposal and would welcome the opportunity to discuss our concerns further.

Very truly yours,

Steven G. Nelson
President and
Chairman of the Board

SGN/ecs

Enc.

VIA FEDERAL EXPRESS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OLDE MONMOUTH STOCK TRANSFER CO., INC.,	:	
Plaintiff,	:	
-- against --	:	07 CV 0990 (CSH)
DEPOSITORY TRUST & CLEARING CORPORATION and DEPOSITORY TRUST COMPANY,	:	
Defendants.	:	

DECLARATION OF SUSANNE TRIMBATH, PH.D.

SUSANNE TRIMBATH, PH.D, hereby declares pursuant to 28 U.S.C. § 1746 as follows:

1. I hereby submit this brief in support of Plaintiff's Motion for a Preliminary Injunction and in Opposition to Defendants' Motion to Dismiss.

2. I am the Chief Executive Manager and Chief Economist of STP Advisory Services, LLC, which is located at 2118 Wilshire Boulevard, Suite 596, Santa Monica, California 90403.

3. I was employed by Defendant Depository Trust Company ("DTC") from August 1987 through August 1993. DTC is now a wholly-owned subsidiary of Defendant Depository Trust and Clearing Corporation ("DTCC"). My title at DTC was Director of Transfer Agent Services. I held day-to-day responsibility for maintaining positive relationships between DTC and the corporate trust community ("CTC") in the United States and Canada. CTC includes transfer agents ("TAs") and registrars, i.e., those companies that maintain the ownership records for public companies. I also managed a staff of about six (6) employees who maintained the contact databases used to ship securities and mail correspondence to TAs. As DTC's liaison, I served on transfer agent industry association committees, attended quarterly and annual meetings and conferences, and was a frequent speaker at TA industry events.

4. Prior to joining DTC, from August 1985 through July 1987 I was employed by the Pacific Clearing Corporation ("PCC") and the Pacific Securities Depository Trust Company ("PSDTC"), now defunct subsidiaries of the Pacific Stock Exchange. My initial title with PCC was Operations Analyst, and I was responsible for reviewing

operations for improvements and defining new business products. In about September 1986 I was promoted to Vault Manager at PSDTC, and was made responsible for managing the day-to-day operations of the vault, which held securities valued at approximately $49 billion. I remained in this position until the PSDTC was reorganized, at which point I was hired by DTC in New York.

5. In addition to my employment experience with DTC and PSDTC, following my tenure at DTC I was a Senior Advisor on a project funded by the United States Government to develop stock trade clearing and settlement and depository operations in Russia in 1993 and 1994. This work occasioned discussions with DTC senior management subsequent to my tenure at DTC. In my capacity as Senior Advisor to the Russian project, I created system specifications for stock trade clearing, settlement and depository operations. These specifications often were reviewed by DTC management prior to implementation in Russia.

6. In May 2000, I was awarded the degree of Ph.D. in Economics from New York University.

7. I have thoroughly reviewed the documents submitted by Defendants in connection with the matters presently before the Court, and believe (for the reasons delineated below) that certain assertions contained therein are demonstrably false.

8. While I was employed by DTC, my industry-liaison role exposed me to a broad range of DTC activities, not only with the CTC, but with bank and broker-dealer participants (each, a "Participant," and collectively, the "Participants") activities. Many of the same companies that were TAs were also banks (e.g., US Trust, Bank of New York, Chase, Citibank) that maintained Participant accounts at DTC. The necessity of working with DTC departments and companies on these two complementary sides of the securities business gave me a strategic perspective that was not afforded to most operations managers at DTC.

9. When I first arrived at DTC in the fall of 1987, the relationship between DTC and the transfer agents (TAs) was quite strained. The TAs believed that DTC was making unreasonable demands for everything from increased

automation to decreased fees. In fact, DTC had the power to control prices charged by TAs for their services. Even in 1987, DTC's holdings of many issuing companies were as much as 75% of all shares outstanding. Through Defendants' on-going and vigorous efforts at "immobilization" (maintaining physical custody of all stock certificates only at DTC) and "dematerialization" (making shares exist only in the form of electronic files, rather than as physical pieces of paper), DTCC can now claim to be the registered shareholder of 100% of many issuers' stocks and bonds (through its nominee name, Cede & Co). This makes Defendants the largest registered shareholders of the clients of the TAs (the stock issuers).

10. **Notwithstanding Defendants' frequent claims to the contrary in their brief, Defendants and Plaintiff Olde Monmouth Stock Transfer Co., Inc. ("Olde Monmouth") are indeed competitors.** As DTC's liaison to the TAs, I served on industry committees, including the "T+3 Direct Registration Subcommittee" (the "Subcommittee") associated with the International Group of Thirty Clearance and Settlement Project, which was known as the "G30." G30 was formed in the 1990s by top financial industry

representatives from 30 industrialized nations in an effort to improve efficiency in international capital markets by recommending standards for their respective 30 national markets. On the Subcommittee, I worked beside representatives of the Securities Transfer Association ("STA") and the American Society of Corporate Secretaries ("ASCS").

11. The Subcommittee viewed a new Direct Registration System initiative developed by the TAs ("DRS-TA") as offering investors an additional choice of stock ownership in the form of an account statement, in which the shares would be registered in the name of the investor and maintained on the books of the issuer in a book-entry format. After consideration, the G30 decided that the complete elimination of certificates was not necessary at that time, and thus did not endorse DRS-TA.

12. The TA community, nevertheless, continued its work to develop DRS-TA. In 1992, the TA community formed the Investor Registration Option Implementation Committee ("IRO/IC") to make DRS-TA a reality. I served as DTC's representative to IRO/IC. This work eventually led the

Securities and Exchange Commission ("SEC") to solicit comments on the policy implications of, and the regulatory issues raised by, DRS-TA in a release dated December 1, 1994. (Annexed hereto as "Exhibit A" is a true and correct copy of SEC Release No. 34-35038, which contains further details regarding the events leading to the development of DRS-TA.)

13. DRS-TA was based on dividend-reinvestment programs where, at the shareholders option, a company would use dividend payments to purchase additional shares for the shareholder rather than disbursing the dividend as a cash payment to the shareholder. Some issuers extended the concept to the point where an individual investor could open an account with the company that issued the stock (or the company's TA) into which a shareholder could make additional cash contributions that the issuer would then use to purchase additional shares of the company's stock for the shareholder.

14. Shareholders participating in DRS-TA would deal directly with the company that issued the stock (or the company's TA) to buy, sell and transfer shares of stock.

The issuers accumulated the stock transactions of all of the shareholders together before executing buy and sell trades so that any transaction fees the issuer paid were divided among a great number of shareholders. Therefore, stock issuers were able to offer DRS-TA services at virtually no cost to shareholders.

15. Before I left DTC in 1993, I proposed and enhanced a service for the direct mailing of certificates by agents to shareholders at the request of financial intermediaries through DTC. I also proposed, developed and tested automated direct withdrawals and deposits at custodians. Both programs are complementary services to DRS-TA, in that these were the refinements necessary to make DRS-TA compatible with DTC services. After I left DTC, I was told by TAs and former co-workers who remained at DTC that the relationship between DTC and the TAs deteriorated almost immediately upon my departure, despite the fact that the department that I headed and developed, Transfer Agent Services, was expanded significantly in the number of staff assigned to the function. I mention this because I believe it places in context the events that follow.

16. Subsequent to the development of DRS-TA, DTC began a program to develop a depository operated book-entry registration system ("DRS-DTC") whereby DTC would come into *direct competition* with the TAs. On October 3, 1996, DTC filed with the SEC a proposed rule change to establish "a new service called the Direct Registration System" ("DRS-DTC"). In SEC Release No. 34-37778 (a true and correct copy of such Release is annexed hereto as "Exhibit B"), which was incorrectly cited in Defendant's Memorandum of Law as the rule where SEC approved DTC's FAST Program, DTC states that DRS-DTC would allow an investor "to transfer its DRS position in the security to a *financial intermediary* in order to sell or pledge the security or to receive a certificate representing the security" (emphasis added). In contrast, DRS-TA would allow an investor to *directly* sell, pledge or transfer the shares.

17. Therefore, DRS-DTC was not a program intended to accommodate the DRS-TA business of the TAs; in fact, as I describe above, that work was completed before I left DTC in 1993. Instead, DRS-DTC was a new service. This is clearly demonstrated in SEC Release No. 34-37778 where

Plaintiff references separate documents to describe the separate services: SEC Release 35038 (December 1, 1994) in footnote 2 to describe DRS-TA; and DTC Important Notice B# 1368-96 (July 15, 1996) in footnote 3 to describe DRS-DTC. Defendant's new product was distinctly advantageous to DTC and its Participants and *specifically intended to compete with the TAs.*

18. There are clear reasons why DTC would take such steps to compete with the TAs through DRS. DTC is tantamount to a cooperative owned by its Participants, with such Participants given the right to purchase voting shares of DTC stock in proportion to the quantity and value of services they use at DTC annually. The voting shares are then used to elect Participants' officers to the Board of Directors of DTC. (Annexed hereto as "Exhibit C" is Note 1 (entitled "Business and Ownership") to DTCC's Consolidated Financial Statements, dated December 31, 2006, which unequivocally demonstrates such Participants' ownership of DTC.)

19. Likewise, as clearly demonstrated in Note 9 (entitled "Shareholders' Equity") to DTCC's Consolidated

Financial Statements, dated December 31, 2006 (a true and correct copy of which is annexed hereto as "Exhibit D"), the Participants also have ownership interests in DTCC with concomitant DTCC voting rights and directorships. Moreover, many DTCC Board members are employed by Participants that either are FAST-approved transfer agents or closely affiliated with companies that are FAST-approved transfer agents. For example:

- DTCC Director Ellen Allemany is the Chief Executive Officer of Global Transaction Services for Citigroup Corporate and Investment Bank. Citigroup is associated with Computershare Investor Services, which is a transfer agent approved for the FAST Program.
- DTCC Director J. Charles Cardona is the Vice Chairman of The Dreyfus Corporation, which is now owned by Chase Mellon, which in turn owns ChaseMellon Shareholder Services, which is a FAST Program approved transfer agent.
- DTCC Director Art Certosimo is the Executive Vice President of the Bank of New York, which is a FAST-approved transfer agent.

- DTCC Director David Weisbrod is Senior Vice President of Risk Management, Treasury & Securities Services for JP Morgan Chase & Co., which owns ChaseMellon, a FAST-approved transfer agent.

It is also worthy of emphasis that Mellon Financial recently announced merger plans with Bank of New York.

20. Furthermore, some of the Participants were worried that DRS-TA would take business away from them. They expressed such concerns during the development of DRS-TA. If an investor could buy, sell and transfer shares of stock without a "financial intermediary," then the TAs would be in direct competition with the Participants, who own Defendants DTC and DTCC.

21. In fact, DRS-TA was offered at a significantly lower cost to investors than the buy and sell services of DTC's Participants. Many DRS-TA programs charged no fees to buy shares, only minimal fees to sell shares and no account maintenance fees. (It is important to bear in mind that this was in the 1990s, before online trading pushed

many brokerage fees to less than $10 per trade.) Therefore, since the TAs seemed to be competing with the Participants, it only made sense for such Participants, especially those with employees on DTC's Board of Directors, to have DTC compete with the TAs.

22. Furthermore, in 2006, DTCC filed proposed rule SR-2006-16 with the SEC which is entitled "Proposed Rule Filing to Update the Requirements Pertaining to the FAST and DRS programs of DTC." (A true and correct copy of DTCC proposed rule SR-2006-16 is annexed hereto as "Exhibit E"). Although eventually withdrawn by DTCC for revision, SR-2006-16 represents a particular burden on smaller transfer agents like Plaintiff Olde Monmouth.

23. I first became aware of SR-2006-16 on October 17, 2006 when it was brought to my attention by the STA along with the STA's members' concerns that DTC's proposal was deeply flawed and presented an onerous burden to TAs (especially because of the extraordinary insurance requirements). I am told that the STA held meetings and discussions with DTC and the SEC in order to secure changes to many of the most onerous provisions of SR-2006-16. The

STA argued that the proposed rule exceeded the permissible scope of DTC's authority over TAs. This is made especially clear by Defendants in their Memorandum of Law when they state that, in addition to appointing FAST agents, Defendants must incur costs associated with "monitoring the agents' performance." According to the SEC, however:

> There is no SRO that governs transfer agents. The SEC therefore has promulgated rules and regulations for all registered transfer agents, intended to facilitate the prompt and accurate clearance and settlement of securities transactions and that assure the safeguarding of securities and funds. The rules include minimum performance standards regarding the issuance of new certificates and related recordkeeping and reporting rules, and the prompt and accurate creation of security holder records and the safeguarding of securities and funds. The SEC also conducts inspections of transfer agents.

(See www.sec.gov/divisions/marketreg/mrtransfer.shtml, a true and correct copy of which is annexed hereto as "Exhibit F.")

24. I respectfully submit that DTCC's filing of proposed rule SR-2006-16 with the SEC is part and parcel of a carefully orchestrated plan by DTCC and DTC to force some TAs (especially small TAs such as Olde Monmouth) out of business. In this regard, in October 2006, at the annual

meeting of the STA, a DTCC Managing Director publicly announced a timeline for the complete elimination of any transfer business that handles physical stock certificates, that is, the elimination of any stock transfer business that was not enrolled in FAST and DRS-DTC. Specifically, as clearly demonstrated in the attached DTCC PowerPoint slide dated, October 20, 2006 (a true and correct copy of such PowerPoint slide is annexed hereto as "Exhibit G"), such Managing Director stated that by 2008, DTC wanted to be the self-proclaimed "Roach Motel" of stock certificates, in that certificates get deposited to DTC but they never come out. The wording on the slide states that "All withdrawals will be done via full DRS," referring to DRS-DTC.

25. On page 8 of Defendants' Memorandum of Law, Defendants *brazenly and falsely* state that "Those issues that are not listed on the New York Stock Exchange, American Stock Exchange or the NASDQQ need not adopt DRS" and therefore need not be FAST approved. In this regard, the SEC not only approved that particular rule change in August 2006, but it also approved an additional and similar rule change for NYSE Arca issues in September 2006. (NYSE

Arca, formerly known as the Archipelago Exchange and the Pacific Exchange, is the second securities exchange operated by NYSE Group, Inc.) Likewise, in January of 2007, Mr. Lawrence Morillo, Managing Director of Pershing LLC and Chairman of the Securities Industry and Financial Markets Association (SIFMA), publicly stated that the Boston, Chicago and Philadelphia stock exchanges filed rule changes with the SEC in October 2006 to adopt DRS and FAST. (A true and correct copy of Mr. Morillo's PowerPoint slides, dated January 11, 2007, are annexed hereto as "Exhibit H".) Mr. Morillo also stated that the National Stock Exchange (Chicago) would consider such a rule change at their next Board meeting. **Therefore, there would appear to be no limit to the business that will be denied Olde Monmouth if Plaintiff is denied access to FAST and DRS-DTC.**

26. On page 3 of Defendants' Memorandum of Law, Defendants erroneously indicate that the FAST Program has only been available for 10 years when, in point of fact, FAST was initiated more than 30 years ago. According to footnote 3 of SR2006-16:

> DTC introduced the FAST program in 1975 with 400 issues and 10 agents. Currently, there are over 930,000 issues and approximately 90 agents.

27. As further evidence of the anti-competitive intent of Defendant, it is worth observing that, in the 30 years since its inception, the number of issues eligible for FAST has increased 2,325 times while the number of agents eligible for FAST has increased by a factor of only 9. Furthermore, the population of small transfer agents is rapidly declining. According to my analysis of data available from SEC publications, the number of small registered TAs declined 34%, from 470 to 310 just in the 4 years since 2003. In the same period, the number of all TAs declined only 13%, from about 900 to 785 today. Clearly, the small businesses in the TA community are suffering more than the larger TAs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of March, 2007.

S/
Susanne Trimbath, Ph.D.
Chief Executive Manager and Chief Economist
STP Advisory Services, LLC

Sworn to before me this
17th day of March, 2007.

_____
Notary Public