THE STA
SECURITIES TRANSFER ASSOCIATION, INC.
Established 1911

June 22, 2007

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:

The Securities Transfer Association ("STA") appreciates the opportunity to comment on the Proposed Rule Change of the Depository Trust Company ("DTC") referenced above (the "Proposal"). Founded in 1911, the STA is the professional association of transfer agents. The STA membership includes 157 registered transfer agents maintaining records of more than 140 million registered shareholders. The STA has had the opportunity to meet with DTC on several occasions to review a draft of this Proposal over a period of many months. We are extremely disappointed that none of our concerns or proposals were reflected and, in fact, that in some ways the Proposal as filed is even more objectionable than the drafts that DTC presented to us back in October 2006. The STA believes that the Securities and Exchange Commission (the "Commission") would be abdicating its jurisdiction to regulate transfer agents if it were to permit DTC to implement the Proposal as it is currently written.

Introduction

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. DTC overlooks two key attributes of transfer agents.

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 by agreement with the transfer agent, and, of course, the transfer agent's regulators.

Second, a transfer agent is a recordkeeper; it does not actually hold securities as a custodian for a registered holder. Its 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 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, *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 any fees that transfer agents can charge 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

The STA strongly objects 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 reducing the financial benefit of such insurance. 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 STA transfer agent member 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 result will be a significant reduction in risk to DTC and transfer agents arising from lost, stolen or counterfeit certificates. 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. 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.

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, the STA objects 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, it is the STA's belief that DTC and other registered holders have sustained virtually no economic losses as a result of under-insured 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

The STA believes 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 DTC's Documentation

The Proposal requires that all FAST transfer agents execute a new Balance Certificate Agreement and agree to DTC's Operational Criteria and other documentation. The STA opposes the DTC's practice of establishing self-serving boilerplate agreements and procedures and refusing to negotiate their terms with transfer agents. Under the Proposal, DTC would have the ability to be completely inflexible with a transfer agent

over a six-month period and then in its "sole discretion, to terminate or to continue the agent's FAST status." DTC's 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 that would permit eliminating the outdated use of physical certificates representing DTC's position.

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 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. For smaller agents that do not currently obtain SSAE-10 or SAS-70 reports, this additional cost would be a significant and unwarranted burden.

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 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." The STA maintains that DTC has no authority to mandate notifications to shareholders with DRS shareholdings. This authority lies solely with the Commission should it choose to propose and adopt rules with this import. 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.

The Proposal also fails to explain the *purpose* of such notice or inspection rights, *i.e.*, what action DTC would or could take with respect to a transfer agent's alleged deficiency. Notices to DTC are pointless unless there is action that DTC would take upon receipt of such notices. DTC has no standing to take enforcement action—that right belongs to the Commission and other regulators. DTC has no standing to refuse to make payments to a transfer agent—any such right would belong to a customer. All DTC could arguably do is bar a transfer agent from the FAST and DRS programs. This would have such an impact to that transfer agent's customers and their shareholders that it seems inconceivable that the Commission would delegate to DTC such authority.

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.

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. The STA objects 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 left to its own devices can inflict tremendous harm on transfer agents through unilateral rule changes concerning DRS and FAST requirements.

Eligibility Requirements for DRS Issues

The Proposal indicates that issues may not be added to DRS if "`out-of-balance' positions exist." Since current Commission rules adequately address the correction of out of balance conditions (Rule 17Ad-10), the STA believes that DTC's proposed prohibitions would impose consequences beyond those contemplated by the Commission, even while efforts may be underway to correct the out-of-balance condition under the Commission's rules. We believe DTC's only valid interest in this regard is to ensure that its records are "in proof" with those of the transfer agent as to DTC's own position. Whether the remainder of the issuer's records are in balance has no effect on DTC's position and should not prevent the issue from being DRS eligible.

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

In addition to our position noted above that transfer agents not be forced to provide special services to DTC without compensation, we are very concerned about a

compensation matter of particular significance to smaller agents and the small and mid-cap issuers they service. DTC has historically refused to allow transfer agents to charge certificate transfer and issuance fees for any DTC FAST issues. Notwithstanding the wording of the Proposal's paragraph 16, the STA is concerned that DTC will continue its historical practice and refuse to pay these fees. Therefore, if DTC intends to impose any limitations or prerequisites on these payments, we believe that the Proposal should spell them out in detail.

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 new mandatory DRS listing requirements adopted by the NYSE, AMEX and NASDAQ will require all listed issues to use a transfer agent that has met DTC's FAST eligibility requirements by the end of this year, and will result in thousands of small and mid-cap issuers becoming DRS and FAST eligible. A refusal by DTC to pay the certificate transfer and issuance fees, which serve as the fee model for these issuers, will have a significant negative financial impact for both these issuers and for the small transfer agents that service them. The STA believes 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 businesses 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.

DTC's Usurpation of the Commission's Jurisdiction

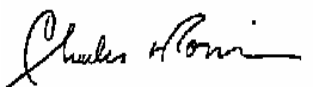
Perhaps the most objectionable aspect of DTC's Proposal is that it will have the effect of making DTC a supervising regulator of the entire transfer agent industry. Congress did not vest DTC with this authority; instead, it vested exclusive authority for regulating and overseeing transfer agents solely with the Commission. Moreover, DTC is an SRO which, through the Proposal, is seeking to regulate conduct and pricing for non-members. The STA submits that the Proposal presents a major structural problem in this regard, as SROs should not be provided such authority over non-members, and that the Commission needs to consider this irregularity in its review of the Proposal.

Conclusion

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 entity 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.

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

Very truly yours,



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