



1120 Connecticut Avenue, NW  
Washington, DC 20036

1-800-BANKERS  
www.aba.com

*World-Class Solutions,  
Leadership & Advocacy  
Since 1875*

**Cristeena G. Naser**  
**Senior Counsel**  
**Center for Securities,  
Trust & Investments**  
Phone: 202-663-5332  
Fax: 202-828-4548  
Email: cnaser@aba.com

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 American Bankers Association (“ABA”) is responding to the above-referenced proposal of the Depository Trust Company (“DTC”) to amend FAST and DRS Limited Participant Requirements for Transfer Agents, published for comment by the Securities and Exchange Commission (“Commission”). The proposal would (1) substantially amend the requirements for registered transfer agents to participate in the Fast Automated Securities Transfer (“FAST”) program and (2) and for transfer agents to become Direct Registration System (“DRS”) Limited Participants.

ABA, on behalf of the more than two million men and women who work in the nation’s banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership—which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks—makes ABA the largest banking trade association in the country. Our members include registered transfer agents who are directly affected by DTC’s proposal.

ABA opposes the proposal because we believe (1) DTC should not have the authority to unilaterally impose rules on transfer agents; and (2) the proposed requirements are both unduly burdensome and inconsistent with the movement of the securities industry to a book-entry system for security holder registration. ABA supports the comments on DTC’s proposal submitted by the Securities Transfer Association (“STA”).

## **Discussion**

DTC's proposal comes in the context of new rules by the major securities exchanges requiring, as a listing prerequisite, that issues be eligible for DRS. Because transfer agents must be FAST agents to participate in DRS, transfer agents have no alternative to remaining as FAST agents. With DTC being "the only game in town," this proposal must be sufficiently scrutinized to ensure that the proposed changes truly are merited and are fair to the participants in the clearing system.

DTC states that the various requirements of the proposal (mail insurance, insurance minimums and deductibles, weight and fire-rating of safes, *etc.*) are warranted by the additional risks to DTC attendant to mandatory book-entry eligibility for listed securities. To the contrary, ABA believes these proposed requirements become *less* appropriate as securities certificates are replaced by book-entry positions.

### **1. Regulatory, Fiscal Responsibility and Security Requirements**

ABA strongly believes there is no basis whatsoever for DTC to seek written notification from a transfer agent "if its regulator has taken any regulatory action against" it with respect to "all applicable federal and state laws, rules and regulations" applicable to transfer agents. In the case of bank transfer agents, those regulators include federal and state bank regulators whose actions may be tangential to transfer agent activity. To the extent such actions are made public by the regulators, notice may be practicable. Absent such publication, regulatory actions are confidential. Moreover, DTC's assurances of confidentiality are not credible.

In addition, ABA strongly believes that there is no basis for DTC to request access to regulatory examination reports. Transfer agents are regulated and examined by the Commission and, as noted above bank transfer agents are also regulated by federal and state bank regulators. DTC need not involve itself in the operation of the transfer agent business, but rather should rely on the Commission and the bank regulators to enforce the rules governing transfer agent operations.

This is also the case with respect to other requirements, including annual auditor attestation reports, notice and inspection rights for DTC, or registered holder statement requirements, that seem to reflect a concern about transfer agents' operating environment.

Finally, ABA believes that it is well outside the purview of DTC to impose requirements for the physical security levels maintained by transfer agents, such as vault ratings, *etc.* DTC has provided no basis to justify these requirements, which seem to fly in the face of a non-certificated environment.

### **2. Insurance Requirements**

ABA strongly believes the insurance requirements in the proposal are unnecessary and impracticable. DTC has not provided any relevant loss history or potential risk that would justify these costly requirements.

With respect to the extremely low insurance deductibles set forth in the proposal, large transfer agents will simply be unable to obtain such deductibles. We understand that DTC has recognized this impossibility by proposing that DTC, in its sole discretion, may waive the deductible requirement. However, the possibility of a waiver provides no

certainty for large transfer agents, who may find themselves faced with the choice of complying with whatever waiver terms DTC seeks or not participating in the FAST program. According to the STA, none of its members currently satisfy the proposed insurance and deductible requirements.

The proposal would also require increased mail insurance requirements, which we assume would be to cover losses arising from lost, stolen or counterfeit certificates. However, this requirement seems to directly conflict with notion that more and more securities will be DRS eligible and those registered to DTC will be recorded in a legended balance certificate kept by the transfer agent and not mailed anywhere. In an environment of fewer physical certificates, we do not understand the need for higher mail insurance coverage.

The proposal would further mandate that DTC be named as an additional insured or a “loss payee” on mail insurance. We understand that this is not standard insurance industry practice because insurance carriers do not want to be in a position to have to arbitrate losses between multiple parties. Importantly, should this provision be adopted, DTC may have a favored position over registered holders in the resolution of disputed insurance claims.

ABA believes that the proposed notice requirements are unwarranted. Again, DTC has provided no basis for requiring notification to DTC in the event a new or substitute policy is issued, nor for requiring that policies include language that DTC be notified within five days of a threatened or actual lapse in coverage (assuming that transfer agents even have the negotiating power to have such language included).

### **3. Limitations on Fees**

DTC’s proposal would limit the fees transfer agents may charge DTC to (1) those agreed to by issuers and (2) those it charges all other registered holders. Yet DTC seeks additional services such as the new insurance, regulatory and auditing requirements set forth in this proposal which will certainly increase costs to transfer agents. In a commercial relationship, such as the one between DTC and transfer agents, it is patently unfair for one party to insist on new services without being willing to bear the cost of those services. Accordingly, ABA strongly opposes these fee limitations.

### **4. Standard of Care**

Because securities in the FAST program are held by transfer agents, DTC proposes it will not be liable “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.” Under this standard, DTC would not be liable for its own processing errors so long as they did not rise to the level of gross negligence, thus relegating the consequences of such errors to the transfer agent.

ABA strongly opposes this provision. In a dispute between DTC and a transfer agent, each party should bear responsibility for its own processing errors. No legitimate policy purpose is served when one party to a contract can impose on another party the consequences for its own ordinary negligence.

**Conclusion**

In conclusion, ABA opposes DTC's proposed changes to its FAST and DRS Limited Participant requirements. First, ABA believes that DTC should not be able to unilaterally impose changes on transfer agents. Second, many of DTC's requirements would be most applicable to paper certificates, and yet it's rationale for the proposal is that its risks are increasing because of increases in book entry positions. Finally, DTC has provided no supporting basis for the proposed requirements.

If you have any questions about ABA's comments, please do not hesitate to contact the undersigned.

Sincerely,



Cristeena G. Naser

cc: Erik Sirri, Director  
Division of Market Regulation  
Securities and Exchange Commission