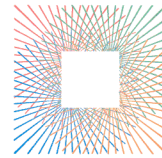


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June 29, 2007

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



*The* **BANK**  
*of* **NEW YORK**

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 Bank of New York (“BNY”) is submitting comments to the above-referenced proposal (“Proposal”), of the Depository Trust Company (“DTC”) to amend FAST and DRS Limited Participant Requirements for Registered Transfer Agents, published for comment by the Securities and Exchange Commission (“Commission”). The Proposal would substantially amend the requirements for registered transfer agents to (i) participate in DTC’s Fast Automated Securities Transfer (“FAST”) program and (ii) become a Direct Registration System (“DRS”) Limited Participant.

The Bank of New York is one of the largest registered transfer agents and securities registrars in the United States, utilizing DTC’s, FAST and DRS programs in connection with the registration of securities transfers for its Stock Transfer, Unit Investment Trust and Corporate Trust businesses.

BNY opposes the Proposal because (1) DTC should not have the authority to unilaterally impose rules on transfer agents through the Commission’s rulemaking authority for what is essentially a commercial arrangement between DTC and each transfer agent and (2) the proposed requirements are unduly burdensome, unnecessary, and inappropriate and inconsistent with the movement to a book entry system for registration of ownership of securities.

### **Discussion**

Use of the FAST and DRS programs by BNY (and other transfer agents) eliminates the need for the delivery by DTC to its participants of physical certificates representing shares of issuers which are registered in the name of DTC’s nominee, Cede & Co. and thus provides a benefit to DTC and its large network of participants. It is unquestionable that DTC, as one of the major depositories in the United States, is one of the largest custodians of securities in the United States. It is also unquestionable that the securities held by DTC for each of its participants are registered at the transfer agents for each of the issuers of securities in the name of Cede & Co.,

DTC's nominee. Consequently, DTC's fundamental relationship with transfer agents is that of a registered owner of shares. In this respect, DTC is like all other registered owners of shares whose name (or nominee name, as the case may be) is entered in the register maintained by each transfer agent on behalf of the issuer of the securities.

However, DTC is not like any other registered owner of shares. From the inception of the FAST program, DTC had demanded of the transfer agent community special services that it does not provide to other registered owners and this list has expanded with the development of the FAST program and DRS. As stated in the introduction to the proposed rules, prior to the establishment of the FAST program, transfers of securities to or from DTC on behalf of DTC's participants necessitated physically sending securities back and forth between DTC and transfer agents. As recognized in the proposed rules, this process exposed securities to risk of loss during transit between DTC and transfer agents and resulted in the expense of making physical deliveries of securities. Through the services negotiated and performed for DTC by transfer agents under the FAST program, DTC was able to "immobilize" its physical positions through the use of a balance certificate or DRS registration held by transfer agents for each issue of securities registered in its nominee name. Since the adoption of the FAST program in the 1970's, BNY has participated in FAST through a commercial agreement just like any other commercial relationship. If DTC now wants enhanced protection, or feels that its current Balance Certificate Agreement is inadequate, it should negotiate specific modifications to such Agreement with all or some transfer agents.

Historically, the Commission has not interfered with the commercial relationships between parties. The Commission should not now interfere with the commercial relationship and existing agreements between DTC and transfer agents by allowing DTC to unilaterally impose rules that force transfer agents to provide services to DTC, particularly without also requiring DTC to pay reasonable and appropriate compensation to transfer agents for their services. The bargaining power between DTC, which is essentially a monopoly, and transfer agents, which are a diverse group ranging from small businesses to large financial corporations, is clearly unequal. The Commission should not contribute to this inequality by endorsing DTC's attempt to force transfer agents to provide services to DTC and to receive compensation for the services transfer agents provide.

Not only is the manner in which DTC is attempting to extract additional services from transfer agents inappropriate, the timing is inexplicable. With the move toward a single book entry DRS position for DTC, the need for greater protections, particularly through the Commission's rule making authority, is unwarranted and, indeed, particularly inappropriate at this time.

#### 1. Notice of Regulatory Action

We object to the proposed requirement that transfer agents provide DTC with written notification that its regulator has taken any regulatory action against the transfer agent. It is unclear what is meant by "regulation" or "regulatory action". BNY is subject to regulation by several agencies and this requirement would place an undue burden on a highly regulated agent such as BNY. DTC is not a regulatory body and should be entitled to the same degree of disclosure that BNY provides to its other registered shareholders. DTC, as a registered shareholder, would have the right to this information when and if such information becomes

public. Not only is this proposal inappropriate, its scope is unclear. It is unclear from the proposed rule whether this requirement would mandate the disclosure of regulatory examinations, investigations or only actual disciplinary actions. Regardless of the scope, the disclosure of such regulatory action is both inappropriate, burdensome and could cause BNY to violate confidentiality obligations that it has with others, including its regulators, its customers and other registered shareholders. DTC is demanding confidential information from transfer agents that others in the marketplace are not entitled to receive. DTC has shown no special need for such information and the Commission should not endorse DTC's attempt to force transfer agents to disclose such confidential information to DTC.

2. Discretion to exclude an issue from FAST

DTC should not be permitted to mandate exclusion of an issue in FAST without a valid reason. As stated above, DTC is essentially a monopoly. Permitting DTC the unfettered discretion to exclude an issue from FAST without any standards places undue power in DTC's hands and will not facilitate the movement toward an uncertificated environment.

3. Insurance Requirements

We agree with and vigorously support the comments of both the Securities Transfer Association ("STA"), and the American Bankers Association ("ABA") regarding the onerous and impractical insurance requirements that DTC seeks to impose on participants in the FAST program. If DTC continues to pursue these requirements, it should be required to pay for such costly and in some cases, non-customary features of the insurance requirements just as would any other customer demanding special treatment from its service provider.

4. Additional Audit Report Requirements

The Proposal would require transfer agents to provide, within ten business days of filing with the Commission, a copy of the independent certified public accountant's annual report provided pursuant to Rule 17Ad-13 of the Securities Exchange Act of 1934 ("1934 Act"). In addition to this requirement, the proposal would require transfer agents to provide a special annual report from an independent certified public accountant certifying compliance with all of DTC's requirements relating to its FAST program, and the Commission's regulations relating to business continuity planning and attesting to the soundness of the transfer agent's controls. BNY is willing to provide DTC with its most recent SAS-70 report; however, any other requirements would be superfluous and expensive. The Commission, as the regulatory authority for transfer agents, performs examinations and requires specific auditor's reports under its rules. In addition, BNY is subject to a high level of scrutiny by a number of regulators such as the Commission, the Federal Reserve Board of New York, and the New York State Banking Department. The existing regulatory framework should be sufficient to satisfy DTC. These regulators, not DTC, are the appropriate authorities to regulate BNY and to enforce the rules governing transfer agent operations and controls.

5. Vault Requirements

DTC is attempting to regulate the safekeeping requirements for securities held by transfer agents in its vault. Transfer Agents are already required, under Rule 17Ad-12 of the 1934 Act, to hold securities in a manner reasonably free of risk of theft, loss or destruction. The Commission's rule is flexible, stating that these requirements should be weighed, in light of all of the facts and circumstances. DTC, by contrast, seeks to impose specific rigid requirements for the safekeeping of its balance certificates, requirements which are inappropriate and untimely in light of the movement toward universal DRS which would eliminate the need for a physical balance certificate. In spite of the lack of support for rigid safekeeping requirements, if DTC wishes to impose such requirements, it should pay for the heightened level of security, just as any other customer seeking custody services for its securities.

6. Regulatory Reports and Inspections

The Proposal would require transfer agents to provide DTC with (1) Commission examination reports (2) notification of "alleged material deficiencies documented by the Commission" within five business days of notification by the Commission, and (3) the right to visit and inspect the transfer agent's facilities, books and records. BNY rarely allows its customers such right of inspection and when it does so, it is under very limited conditions, at the expense of the customer. DTC is demanding confidential information from transfer agents that others in the market place are not entitled to receive. DTC has shown no special need for such information and the Commission should not support DTC's attempt to force transfer agents to disclose such information. DTC's proposal is also objectionable in that its compliance with this provision could potentially result in violation by BNY of its confidentiality obligations to others, including other customers, as well as significant additional uncompensated expense and disruption.

7. Limitations on Fees for Services

The Proposal would prohibit transfer agents from charging fees to DTC unless the issuer has contractually agreed to such charges and such charges are the same for all other registered holders. It is completely unreasonable to expect issuers to contractually agree to fees that a transfer agent might charge DTC for specialized services which are solely mandated by DTC and solely provided to DTC. DTC is requiring that transfer agents provide it with specialized services over and above what any other registered holder would expect, such as a high level of custodial services (e.g., insurance deductibles and minimum coverage amounts, weight and fire rating of safes compliance oversight) as well as other specialized processing, such as FAST balancing aggregation of dividend, interest and principal payments, without paying a reasonable commercially negotiated price for such services. In the Proposal, DTC is also attempting to regulate the delivery of transaction advices that transfer agents provide to shareholders by providing DTC with a file containing the transaction advice delivery date in a format and using a functionality specified by DTC. This would create additional costs for transfer agents that it most likely would not be able to recoup from DTC.

8. Standard of Care

DTC proposes that 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 of care, transfer agents would be responsible for all of DTC’s processing errors, even if DTC committed ordinary negligence. As stated in the STA comment letter, this would result in the transfer agents in effect being exposed to liability for losses to third-parties such as brokers or registered shareholders in cases where a transfer agent is unable to protect itself from such liability. This is completely one-sided treatment in favor of DTC and we share the STA’s and the ABA’s opposition to this provision.

9. Program Changes

BNY agrees with the STA’s position regarding the unreasonableness of DTC’s unilateral right to require transfer agents to implement program changes related to systems modifications without any standards of reasonableness or any agreement regarding compensation to transfer agents for the attendant costs of such modifications.

Conclusion

BNY concurs with the STA’s position that the adoption of the Proposal would have the effect of handing over to a private entity the Commissions regulatory authority over transfer agents. The Proposal would also, through rulemaking, mandate the terms of what is, and should remain, a private commercial relationship between DTC and each transfer agent. DTC’s interests, in demanding special services from transfer agents without paying for these services, are clearly aligned with the interests of its members, the broker/dealer community, and not with transfer agents, issuers of securities or investors. The proposal, in its current form, would create a serious disadvantage to BNY and other transfer agents which would be forced to comply with the proposed rules or be thrown out of FAST and DRS.

Please do not hesitate to contact the undersigned if you have any questions about BNY’s comments or if you would like to discuss BNY’s concerns with the Proposal.

Yours truly,



Gary Nazare  
Managing Director  
Transfer Agency Services