

December 28, 2007

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

Re: Self Regulatory Organizations; The Depository Trust Company; Proposed Rule Change
Amending FAST and DRS Limited Participant Requirements for Transfer Agents;
Release No. 34-55816; File No. SR-DTC-2006-16

Dear Ms. Morris:

We represent The Depository Trust Company (“DTC”).

On October 12, 2006, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”),¹ and Rule 19b-4 thereunder, DTC filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) a proposed rule change on Form 19b-4 to update, standardize and restate the requirements for transfer agents participating in the Fast Automated Securities Transfer Program and the Direct Registration System of DTC. The proposed rule change was amended by Amendment No. 1 filed by DTC with the Commission on March 29, 2007 and Amendment No. 2 filed by DTC with the Commission on May 3, 2007 (the proposed rule change, as amended, the “Proposed Rule”).² On June 1, 2007, pursuant to Section 19(b)(1) of the Exchange Act, the Commission published notice of the Proposed Rule in the *Federal Register*.³

¹ 15 U.S.C. §78s (b)(1), as amended.

² The Proposed Rule is available on the DTC website at http://www.dtcc.com/legal/rule_filings/dtc/2006.php.

³ Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents, 72 Fed. Reg. 30,648 (2007).

In response to the Proposed Rule, 26 comment letters were submitted to the Commission,⁴ 3 in favor of the Proposed Rule⁵ and 23 opposing or suggesting revisions to the Proposed Rule.⁶

The comment letters of the opposing commenters may be grouped as follows:

- (a) a letter from the STA (a trade association of transfer agents in the United States), 6 letters from organizations that are members of the STA with representatives on the board of directors of the STA⁷ and 9 letters from other organizations that are members of the STA⁸ (collectively, the “STA Group”);⁹
- (b) a letter from the SFA (a trade association of insurance companies), a letter from Travelers (an insurance company that provides commercial property and casualty insurance) and a letter from Aon Risk Services Australia Limited (“Aon”), which was

⁴ The SEC website at <http://www.sec.gov/comments/sr-dtc-2006-16/dtc200616.shtml> lists 27 comment letters. However, the letter filed by Continental Stock Transfer & Trust Company appears to be listed twice.

⁵ Comment letters from: Albert Howell, Chairman, Securities Industry and Financial Markets Association, Securities Operations Division, Regulatory & Clearance Committee (June 22, 2007); Lawrence Morillo, Chairman, Securities Industry and Financial Markets Association, Operations Committee, Legal and Regulatory Subcommittee (June 22, 2007); and Dennis Callahan, Chairman, Bank Depository User Group (June 21, 2007).

⁶ Comment letters from: Gary N. Nazare, Managing Director, Transfer Agency Services, The Bank of New York (“BONY”) (June 29, 2007); Thomas M. Sullivan, Chief Counsel for Advocacy, and Charles A. Maresca, Director, Interagency Affairs, Small Business Administration, (“SBA”) (June 27, 2007); William Speirs, President, Securities Transfer Association of Canada (“STA Canada”) (June 26, 2007); Susanne Trimbath, Ph.D., CEO and Chief Economist, STP Advisory Services, LLC (“STP Advisory Services”) (June 26, 2007); J. Robert Morris, Managing Director, Valiant Trust Company (“Valiant”) (June 22, 2007); James R. Nielsen, Senior Vice President, U.S. Bank National Association (“U.S. Bank”) (June 22, 2007); Steven Rothbloom, President and CEO, Computershare North America (“Computershare”) (June 22, 2007); Christeena G. Naser, Senior Counsel, Center for Securities, Trust & Investments, American Bankers Association (“ABA”) (June 22, 2007); Lennie M. Kaufman, Executive Vice President, Wells Fargo Shareowner Services (“Wells Fargo”) (June 22, 2007); Charles V. Rossi, President, The Securities Transfer Association, Inc. (“STA”) (June 22, 2007); J. Donald Boggus, Jr., President and CEO, Crescent Banking Company and Crescent Bank and Trust Company (“Crescent”) (June 22, 2007); Joan M. DiBlasi, Shareholder Services Association (“SSA”) (June 22, 2007); James Becker, Zions First National Bank (“Zions”) (June 22, 2007); Artie Retolatto, 1st Global Stock Transfer, LLC (“1st Global”) (June 21, 2007); Kevin Kopaunik, Fidelity Transfer Company (“Fidelity Transfer”) (June 21, 2007); Jonathan Miller, President, StockTrans, Inc. (“StockTrans”) (June 21, 2007); Steven G. Nelson, President and Chairman of the Board, Continental Stock Transfer & Trust Company (“Continental”) (June 20, 2007); Salli Marinov, President/CEO, First American Stock Transfer Company (“First American”) (June 20, 2007); Thomas L. Montrone, President and Chief Executive Officer, Registrar and Transfer Company (“Registrar and Transfer”) (June 19, 2007); The Surety & Fidelity Association of America (“SFA”) (June 19, 2007); Walter E. Grote, Sr. Vice President, Travelers Bond & Financial Products (“Travelers”) (June 19, 2007); Steven D. Lucas, Director of Transfer Agent Compliance, Investors Bank & Trust Company (“Investors Bank & Trust”) (June 15, 2007); and Loren Hanson, Assistant Secretary, Otter Tail Corporation (“Otter Tail”) (June 5, 2007).

⁷ BONY, Wells Fargo, StockTrans, Continental, First American and Registrar and Transfer.

⁸ 1st Global, Valiant, U.S. Bank, Computershare, Crescent, Zions, Fidelity Transfer, Investors Bank & Trust and Otter Tail.

⁹ No comment letters were received from transfer agents other than members of the STA.

not submitted directly to the Commission but rather was attached to the letter submitted to the Commission by Computershare (collectively, the “Insurance Group”); and

- (c) letters from (i) the ABA, a trade association of financial services institutions, (ii) the SSA, a trade association of corporate issuers, agents and service providers involved in shareholder services, (iii) STA Canada, a trade association of transfer agents in Canada, (iv) the Office of Advocacy of the SBA, which describes itself in its letter as an independent advocacy office within the SBA whose views do not necessarily reflect the views of the SBA or the Administration, and (v) STP Advisory Services.

We would like to take this opportunity to discuss the comment letters and indicate where DTC is prepared to modify the Proposed Rule in response to concerns expressed by the opposing commenters.

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I. Frequently Used Terms

In this letter:

The Fast Automated Securities Transfer Program of DTC is referred to as “FAST”.

Transfer agents participating in FAST are referred to as “FAST Agents”.

The eligibility requirements for FAST Agents participating in FAST are referred to as the “FAST Agent Requirements”.

Issues of securities included in FAST are referred to as “FAST Issues”.

The Direct Registration System of DTC is referred to as “DRS”.

Transfer agents participating in DRS are referred to as “DRS Limited Participants”.

The eligibility requirements for DRS Limited Participants participating in DRS are referred to as “DRS Limited Participant Requirements”.

Issues of securities included in DRS are referred to as “DRS Issues”.

The eligibility requirements for DRS Issues included in DRS are referred to as “DRS Issue Requirements”.

The FAST Agent Requirements, DRS Limited Participant Requirements and DRS Issue Requirements are collectively referred to as the “Requirements”.

II. Purpose of Proposed Rule

Prior to the establishment of FAST, transfers of securities to or from DTC occurred by sending certificates back and forth between DTC and transfer agents. In the case of securities being deposited with DTC, DTC sent the certificates to the transfer agent for registration into the name of DTC’s nominee, Cede & Co., and the transfer agent returned the reregistered certificates to DTC. In the case of securities being withdrawn from DTC, DTC sent the certificates registered in the name of Cede & Co. to the transfer agent for reregistration into the name of the person designated by the withdrawing DTC participant, and the transfer agent returned the reregistered certificates to DTC for delivery to the withdrawing DTC participant. This process exposed certificates to risk of loss during transit between DTC and transfer agents, and the physical deliveries of certificates involved considerable expense.

In FAST, FAST Agents hold FAST Issues registered in the name of Cede & Co. in the form of balance certificates. As securities are deposited or withdrawn from DTC, FAST Agents adjust the denomination of the balance certificates as appropriate and electronically confirm these changes with DTC. As a result, FAST reduces the movement of certificates between DTC and FAST Agents and therefore reduces the costs and risks associated with the creation and movement of certificates to and from DTC, DTC participants and FAST Agents.¹⁰

Through DRS, an investor can hold a security as the registered owner in electronic form on the books of the issuer rather than holding the security directly in certificate form or indirectly

¹⁰ For a description of DTC rules relating to FAST, see Exchange Act Release No. 34-13342 (March 8, 1977) [File No. SR-DTC-76-3]; Exchange Act Release No. 34-14997 (July 26, 1978) [File No. SR-DTC-78-11]; Exchange Act Release No. 34-21401 (October 16, 1984) [File No. SR-DTC-84-8]; Exchange Act Release No. 34-31941 (March 3, 1993) [SR-DTC-92-15]; and Exchange Act Release No. 34-46956 (December 6, 2002) [File No. SR-DTC-2002-15].

through a financial intermediary. DRS also allows for the transfer of a DRS position from the books of the issuer to a financial intermediary through the facilities of DTC.¹¹

FAST has grown substantially since first being introduced in 1975,¹² and recent changes in the rules of the major securities exchanges suggest further accelerated growth.¹³ These changes require, as a listing prerequisite, that an issue of securities be eligible for processing through DRS. One of the criteria for participating in DRS is that the transfer agent be a FAST Agent. Accordingly, DTC filed the Proposed Rule in anticipation of the expected substantial growth of DRS and FAST resulting from implementation of these changes in the rules of the major securities exchanges.

III. Proposed Amended and Restated FAST Agent Requirements

Despite the robust past growth of FAST, the eligibility requirements for FAST Agents have not substantially changed since the implementation of FAST in 1975. Accordingly, taking into consideration the expected future growth of FAST, DTC reexamined the requirements for FAST with a view toward ensuring that the assets held by FAST Agents for DTC, which ultimately belong to DTC participants and their customers, are adequately protected. DTC identified aspects of FAST that need updating, including (i) insurance requirements (to take into account transaction volumes and values), (ii) safekeeping requirements (to clarify and enhance security and fire protection standards and to take into account technological advances that allow for economical security improvements) and (iii) regulatory and bookkeeping requirements (to ensure compliance with applicable laws and regulations and to utilize standardized audit reports).

We will now review each of the FAST Agent Requirements set forth in the Proposed Rule, indicating where DTC is prepared to modify or eliminate Requirements in response to concerns

¹¹ For a description of DTC rules relating to DRS, see Exchange Act Release No. 34-37931 (November 7, 1996) [File No. SR-DTC-96-15]; Exchange Act Release No. 34-41862 (September 10, 1999) [File No. SR-DTC-99-16]; Exchange Act Release No. 34-42366 (January 28, 2000) [File No. SR-DTC-00-01]; Exchange Act Release No. 34-42704 (April 19, 2000) [File No. SR-DTC-00-04]; Exchange Act Release No. 34-43586 (November 17, 2000) [File No. SR-DTC-00-09]; Exchange Act Release No. 34-44696 (August 14, 2001) [File No. SR-DTC-2001-07]; Exchange Act Release No. 34-45232 (January 3, 2002) [File No. SR-DTC-2001-18]; Exchange Act Release No. 34-45430 (February 11, 2002) [File No. SR-DTC-2002-01]; Exchange Act Release No. 34-48885 (December 5, 2003) [File No. SR-DTC-2002-17]; and Exchange Act Release No. 34-52422 (September 14, 2005) [File No. SR-DTC-2005-11].

¹² DTC introduced FAST in 1975 with 400 FAST Issues and 10 FAST Agents. Currently, there are over 930,000 FAST Issues and approximately 90 FAST Agents.

¹³ On August 8, 2006, the Commission concurrently approved similar rule changes in this regard proposed by the New York Stock Exchange LLC, the American Stock Exchange LLC and The NASDAQ Stock Market LLC (see Exchange Act Release No. 34-54289 (August 8, 2006) [File No. SR-NYSE-2006-29]; Exchange Act Release No. 34-54290 (August 8, 2006) [File No. SR-Amex-2006-40]; and Exchange Act Release No. 34-54288 (August 8, 2006) [File No. SR-NASDAQ-2006-008]); see also, Exchange Act Release No. 34-54410 (September 7, 2006) [File No. SR-NYSEArca-2006-31]; Exchange Act Release No. 34-55482 (March 15, 2007) [File No. SR-Phlx-2006-69]; Exchange Act Release No. 34-55481 (March 15, 2007) [File No. SR-CHX-2006-33]; and Exchange Act Release No. 34-55480 (March 15, 2007) [File No. SR-BSE-2006-46].

expressed by the opposing commenters and where DTC believes no change in the Requirements is necessary.

1. FAST Agent Requirement No. 1.

Set forth below is FAST Agent Requirement No. 1, as originally proposed:

“Transfer agent must be registered with the Commission, except where the transfer agent’s participation in the FAST program is limited to acting solely for municipal issues (and provide DTC with evidence of such), and follow all applicable rules under the Securities Exchange Act of 1934 (the “Exchange Act”) as well as all other applicable Federal and state laws, rules, and regulations, applicable to transfer agents, including OFAC regulations. In addition, the transfer agent must provide DTC with a written notification as soon as practicable, if its regulator has taken any regulatory action against the transfer agent with respect to an alleged violation of such laws, rules, or regulations. Any regulatory reports or information furnished to DTC, including that required pursuant to this Item No. 1 and Item No. 14 below, shall be held as confidential by DTC and will not be used for any purpose other than to manage the risk of DTC and its Participants. All other information furnished to DTC pursuant to the requirements set forth herein shall be held in at least the same degree of confidence as may be required by law or the rules and regulations of the Commission.”

A number of commenters in the STA Group,¹⁴ the SSA and the ABA submitted comment letters in opposition to FAST Agent Requirement No. 1. For the most part, the opposing commenters argue that the notice of regulatory action requirement is vague and overbroad, that transfer agents rarely if ever provide such a privilege to their customers and that at least some of the regulatory actions that would be covered by such notice might be subject to statutory or administrative nondisclosure obligations.

Taking these comments into consideration, DTC will revise FAST Agent Requirement No. 1 to remove the notice of regulatory action requirement. DTC will also remove the confidentiality provision as it is no longer relevant.

Accordingly, set forth below is FAST Agent Requirement No. 1, as amended:

“Transfer agent must be registered with the Commission, except where the transfer agent’s participation in the FAST program is limited to acting solely for municipal issues (and provide DTC with evidence of such), and follow all applicable rules under the Securities Exchange Act of 1934 (the “Exchange Act”) as well as all other applicable Federal and state laws, rules, and regulations, applicable to transfer agents, including OFAC regulations.”

¹⁴ See letters from STA, Computershare, Wells Fargo, Continental, BONY, U.S. Bank and Crescent.

2. FAST Agent Requirement No. 2.

Set forth below is FAST Agent Requirement No. 2, as originally proposed:

“The transfer agent must execute and fulfill the requirements of the appropriate form of Balance Certificate Agreement with DTC (in the appropriate form as set forth in Exhibit 2).”¹⁵

A number of commenters in the STA Group¹⁶ and STA Canada submitted comments in opposition to FAST Agent Requirement No. 2, generally objecting to DTC requiring FAST Agents to execute any form of Balance Certificate Agreement on the ground that it is one-sided and non-negotiable. They also argue that, while the securities industry is moving away from the use of physical certificates, the Balance Certificate Agreement perpetuates the use of physical balance certificates, which has the effect of imposing additional safekeeping and other costs on FAST Agents. Two commenters in the STA Group¹⁷ suggest that FAST Agents should be able to charge DTC a service fee for safekeeping balance certificates.

DTC will make no change in FAST Agent Requirement No. 2. The proposed Balance Certificate Agreement is an amalgamation of three forms of Balance Certificate Agreement that DTC has used previously for FAST Agents, the substance of which will remain the same when combined into the new form. The proposed Balance Certificate Agreement does not require FAST Agents to provide any new services to DTC, so it certainly is not appropriate for FAST Agents to charge DTC any new service fees for safekeeping balance certificates. However, as previously indicated, in response to comments from the opposing commenters, DTC is prepared to modify or eliminate certain of the FAST Agent Requirements as originally proposed, which otherwise would be binding on FAST Agents by virtue of the Balance Certificate Agreement.

3. FAST Agent Requirement No. 3.

Set forth below is FAST Agent Requirement No. 3, as originally proposed:

“When applying for FAST status, the transfer agent must include the name and CUSIP of a minimum of one issue it wishes to add to the FAST program. Issues eligible for the FAST program must be: (i) traded on an exchange registered under Section 6 of the Exchange Act, (ii) municipal securities, or (iii) transferred by a transfer agent that already acts as a FAST transfer agent for at least five (5) other issues that are traded on an exchange. The above provisions

¹⁵ DTC currently maintains three forms of Balance Certificate Agreement: one for transfer agents, one for issuers acting as their own agent, and the third for parties using a processing agent. DTC is consolidating these forms into a single form, a copy of which is attached as Exhibit 2(a) to the initial filing of the Proposed Rule.

¹⁶ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, Valiant, 1st Global, StockTrans and Crescent.

¹⁷ See letters from Registrar and Transfer and 1st Global.

notwithstanding, DTC reserves the complete discretion to include or exclude any particular issue in the FAST program.”

Certain commenters in the STA Group¹⁸ submitted comments in opposition to FAST Agent Requirement No. 3, generally to the effect that DTC should not be permitted to exclude an issue from FAST without good reason or without clearly defining all of the requirements for participation. One of these commenters¹⁹ further posits that FAST Agent Requirement No. 3 could allow for unequal treatment of issuers and FAST Agents and could be used as leverage by DTC with respect to other issues that may arise between DTC and FAST Agents.

Taking these comments into consideration, DTC will withdraw FAST Agent Requirement No. 3 in its entirety (and renumber subsequent FAST Agent Requirements accordingly).

4. FAST Agent Requirement No. 4.

Set forth below is FAST Agent Requirement No. 4, as originally proposed:

“The transfer agent must sign and fulfill requirements of the Operational Criteria for the FAST Transfer Agent Processing (as set forth in Exhibit 2(b))²⁰ and must comply with all applicable provisions of DTC’s Operational Arrangements (OA)²¹, as amended from time to time.”

A number of commenters in the STA Group²² submitted comments in opposition to FAST Agent Requirement No. 4, generally on the same grounds as the opposition to FAST Agent Requirement No. 2, *i.e.*, that the Operational Criteria and Operational Arrangements are one-sided and non-negotiable and that they perpetuate the use of physical certificates, which has the effect of imposing additional safekeeping and other costs on FAST Agents.

DTC will make no change in FAST Agent Requirement No. 4 for the reasons set forth above with respect to FAST Agent Requirement No. 2 (except to renumber this Requirement as FAST Agent Requirement No. 3).

5. FAST Agent Requirement No. 5.

Set forth below is FAST Agent Requirement No. 5, as originally proposed:

¹⁸ See letters from BONY, 1st Global and StockTrans.

¹⁹ See letter from 1st Global.

²⁰ A copy of the Operational Criteria is attached as Exhibit 2(b) to the initial filing of the Proposed Rule.

²¹ For more information relating to DTC’s OA, see Exchange Act Release No. 34-45994 (May 29, 2002), 67 FR 39452 [File No. SR-DTC-2002-02]; Exchange Act Release No. 34-24818 (August 19, 1987), 52 FR 31833 [File No. SR-DTC-87-10]; Exchange Act Release No. 34-25948 (July 27, 1988), 53 FR 29294 [File No. SR-DTC-88-13]; Exchange Act Release No. 34-30625 (April 23, 1992), 57 FR 18534 [File No. SR-DTC-92-06]; Exchange Act Release No. 34-35649 (April 26, 1995), 60 FR 21576 [File No. SR-DTC-94-19]; and Exchange Act Release No. 34-39894 (April 21, 1998), 63 FR 23310 [File No. SR-DTC-97-23].

²² See letters from STA, Computershare, Wells Fargo and Continental.

“In order to provide for the operational proficiency and efficiency of the program, on being accepted as a FAST transfer agent, the transfer agent must complete training by DTC on FAST functionality.”

No comments were submitted by any commenters specifically addressing this Requirement. Accordingly, DTC will make no change in FAST Agent Requirement No. 5 (except to renumber this Requirement as FAST Agent Requirement No. 4).

6. FAST Agent Requirement No. 6.

Set forth below is FAST Agent Requirement No. 6, as originally proposed:

“In order to protect against a risk of loss, the transfer agent must carry and provide evidence of a minimum of the following Bankers Blanket Bond Standard Form 24, or similar coverage, in proportion to transaction volume the agent processes, as follows:

a. \$10 million, with a deductible of no more than \$50,000, for a transfer agent with 25,000 or fewer transfer transactions per year as reported to the SEC.

b. \$25 million, with a deductible of no more than \$100,000, for transfer agents with over 25,000 transfer transactions per year as reported to the SEC.

In addition, the transfer agent must: (i) carry a minimum of \$1 million in Errors and Omissions insurance, with a deductible of no more than \$25,000 and show evidence of the policy on applying for FAST status, and (ii) have “mail” insurance policy of \$10 million or more and show evidence of the policy on applying for FAST status. The Errors and Omissions coverage shall identify DTC as an additional insured. The “mail” coverage shall identify DTC as a loss payee but shall not be invalidated by any act or neglect of the insured.

In the event that a transfer agent can demonstrate that its existing coverage and/or capitalization would provide similar protections to DTC as the requirements set forth herein, it may apply to DTC for a waiver of the deductibles set out above. DTC shall have sole discretion as to whether or not to grant any such waiver.”

Substantially all of the commenters in the STA Group, STA Canada, the ABA, the SBA, the SSA and all of the commenters in the Insurance Group submitted comments in opposition to aspects of FAST Agent Requirement No. 6. These comments may be grouped as follows:

- (a) Two of the commenters in the Insurance Group²³ note that the name “Bankers Blanket Bond” has been changed to “Financial Institution Bond” and that Standard Form 24 is specific to commercial banks. There are other standard forms that apply to other types

²³ See letters from SFA and Travelers.

of insureds, such as Form 14 for broker-dealers, Form 15 for mortgage bankers and finance companies, Form 23 for credit unions and Form 25 for insurance companies.

- (b) A number of commenters in the STA Group,²⁴ STA Canada, the SBA, the ABA, the SSA and all of the commenters in the Insurance Group object that the proposed coverage levels are too high and/or the proposed deductibles are unreasonably low and, therefore, compliant policies may not be obtainable or may not be obtainable at affordable rates from issuers with acceptable credit ratings.
- (c) A number of commenters in the STA Group,²⁵ the ABA and two of the commenters in the Insurance Group²⁶ object to the requirement that DTC be named as an additional insured on the Errors and Omissions policy on the ground that it is not standard in the industry to name a third party as an additional insured and could increase the cost of the policy.
- (d) A number of commenters in the STA Group,²⁷ Travelers and the ABA question the need for any mail insurance policy since the balance certificate is held by the FAST Agent and not mailed to or from DTC and/or object to the requirement that DTC be named as a loss payee on such policy on the ground that it is not standard in the industry to name a third party as a loss payee in these circumstances and could increase the cost of the policy.
- (e) A number of commenters in the STA Group,²⁸ the ABA, STA Canada, the SSA and Travelers argue that the provision of FAST Agent Requirement No. 6 which gives DTC the power to waive deductibles does not give FAST Agents any certainty that DTC will in fact waive deductibles in an appropriate case.

Taking these comments into consideration, DTC will revise FAST Agent Requirement No. 6 to (i) provide for a “standard form Financial Institution Bond, or a commercial crime policy providing similar coverage” (rather than a standard form of Bankers Blanket Bond or similar coverage), (ii) eliminate the deductible requirements, (iii) eliminate the requirement that DTC be named as an additional insured on the Errors or Omissions policy, (iv) eliminate the requirement that the FAST Agent obtain a mail insurance policy and (v) modify the waiver provision to delete the reference to deductibles (thereby expanding the scope of the waiver).

²⁴ See letters from STA, Computershare, Wells Fargo, Crescent, Zions, StockTrans, Continental, Registrar and Transfer, Investors Bank & Trust and Otter Tail.

²⁵ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, Investors Bank & Trust and Otter Tail.

²⁶ See letters from Travelers and Aon.

²⁷ See letters from STA, Computershare, U.S. Bank, Wells Fargo, Fidelity Transfer, Continental, First American, Registrar and Transfer, Investors Bank & Trust and Otter Tail.

²⁸ See letters from STA, Computershare, Wells Fargo, Crescent, Zions, 1st Global, Registrar and Transfer, Investors Bank & Trust and Otter Tail.

Accordingly, set forth below is FAST Agent Requirement No. 6 (renumbered as FAST Agent Requirement No. 5), as amended:

“In order to protect against a risk of loss, the transfer agent must carry and provide evidence of a minimum of the following standard form Financial Institution Bond, or a commercial crime policy providing similar coverage, in proportion to transaction volume the agent processes, as follows:

a. \$10 million for a transfer agent with 25,000 or fewer transfer transactions per year as reported to the SEC.

b. \$25 million for a transfer agent with over 25,000 transfer transactions per year as reported to the SEC.

In addition, the transfer agent must carry a minimum of \$1 million in Errors and Omissions insurance and show evidence of the policy on applying for FAST status.

In the event that a transfer agent can demonstrate that its existing coverage and/or capitalization would provide similar protections to DTC as the requirements set forth herein, it may apply to DTC for a waiver. DTC shall have sole discretion as to whether or not to grant any such waiver.”

7. FAST Agent Requirement No. 7.

Set forth below is FAST Agent Requirement No. 7, as originally proposed:

“In order to facilitate consistent protection against losses relating to securities in a transfer agent’s control, the transfer agent must notify DTC as soon as practicable of notice of any actual lapse in insurance coverage or change in business practices, such as increasing volumes, or other business changes that would result in the transfer agent requiring additional insurance coverage as outlined above. Such notice shall be delivered to:

*DTC
Inventory Management – ISL
55 Water Street
New York, New York 10041*

And with a copy to:

*DTC
General Counsel’s Office
55 Water Street – 22nd Floor
New York, New York 10041”*

A number of commenters in the STA Group²⁹ and the ABA submitted comments in opposition to FAST Agent Requirement No. 7, generally to the effect that such notice requirement is unwarranted.

DTC will make no change in FAST Agent Requirement No. 7, which only requires notice to DTC of (i) any lapse in insurance coverage or (ii) any change in business practices or other business changes that would result in the need for additional insurance (except to renumber this Requirement as FAST Agent Requirement No. 6).

8. FAST Agent Requirement No. 8.

Set forth below is FAST Agent Requirement No. 8, as originally proposed:

“The transfer agent must provide proof to DTC of the new or substitute policy for all required insurance at least 30 days prior to any expiration or change in insurance limits of a previous insurance policy.”

A number of commenters in the STA Group³⁰ and the ABA submitted comments in opposition to FAST Agent Requirement No. 8, generally to the effect that the 30-day prior notice requirement is unrealistic because insurers typically provide renewals within only days of the expiration of existing policies.

Taking these comments into consideration, DTC will modify FAST Agent Requirement No. 8 to delete any obligation to provide *prior* notice of any new or substitute policy, requiring only that the FAST Agent provide DTC with notice of a new or substitute policy within 5 days *after* the entry into force of such policy.

Accordingly, set forth below is FAST Agent Requirement No. 8 (renumbered as FAST Agent Requirement No. 7), as amended:

“The transfer agent must provide proof to DTC of any new or substitute policy with respect to any required insurance within five days after the entry into force of such new or substitute policy.”

9. FAST Agent Requirement No. 9.

Set forth below is FAST Agent Requirement No. 9, as originally proposed.

“To further facilitate Item No. 7 above, the terms of the insurance coverage noted above must state that the insurance provider must notify DTC within five (5) days of notice of any threatened or actual lapse in the above coverage requirements.”

²⁹ See letters from STA, Computershare, Wells Fargo and Continental.

³⁰ See letters from STA, Computershare, Wells Fargo, Continental, U.S. Bank, Registrar and Transfer and Investors Bank & Trust.

A number of commenters in the STA Group³¹, the commenters in the Insurance Group and the ABA submitted comments in opposition to FAST Agent Requirement No.9, generally on the ground that it is beyond the power of FAST Agents to cause their carriers to provide such notice to third parties and/or that it would impose an unreasonable burden on such carriers to do so.

Taking these comments into consideration, DTC will withdraw FAST Agent Requirement No. 9 in its entirety.

10. FAST Agent Requirement No. 10.

Set forth below is FAST Agent Requirement No. 10, as originally proposed.

“The transfer agent must establish and maintain electronic communications with DTC to balance FAST positions on a daily schedule.”

No comments were submitted by any commenters specifically addressing this Requirement. Accordingly, DTC will make no change in FAST Agent Requirement No. 10 (except to renumber this Requirement as FAST Agent Requirement No. 8).

11. FAST Agent Requirement No. 11.

Set forth below is FAST Agent Requirement No. 11, as originally proposed:

“The transfer agent must provide, on an annual basis to DTC, within 10 business days of filing with the SEC, an accountant’s report (pursuant to Exchange Act Rule 17Ad-13 (Annual Study of Evaluation of Internal Accounting Controls)) attesting to the soundness of controls to safeguard securities assets and reliability and integrity of computer systems, including confidentiality of customer account, or other non-public, information. To the extent that a transfer agent obtains a SAS-70 audit report, transfer agent shall provide DTC with a copy of the report within 10 business days of the transfer agent’s receipt of the report.

In addition, the transfer agent must provide, within the same time frame as required for such report, a report from an external certified public accountant:

a. certifying that the transfer agent is complying with all of DTC’s requirements relating to FAST agents including, without limitation, (a) those listed herein, (b) the Operational Criteria for FAST Transfer Agent Processing, (c) the OA, and (d) the Balance Certificate Agreement,

b. certifying that the agent meets any SEC requirements for business continuity planning, and

³¹ See letters from STA, Computershare, Wells Fargo, Continental, U.S. Bank and Investors Bank & Trust.

c. containing an SSAE 10 report (or the equivalent), attesting to the soundness of the transfer agent's control in meeting the requirements set forth herein; however an SSAE 10 need not be provided if the transfer agent has provided a SAS-70 audit report in accordance with the provisions of this paragraph 11."

A number of commenters in the STA Group,³² the ABA, the SSA, the SBA and STA Canada submitted comments in opposition to aspects of FAST Agent Requirement No. 11. These comments may be grouped as follows:

- (a) Commenters in the STA Group³³ and the SBA questioned the need for any report requirement other than the report filed with the Commission pursuant to Rule 17Ad-13 and any available report of an outside accountant on internal controls pursuant to SAS-70.
- (b) Commenters in the STA Group³⁴ questioned whether any outside accountant would or could certify as to compliance by the FAST Agent with all FAST Agent Requirements and SEC business continuity requirements and/or objected to the expense.

Taking these comments into consideration, DTC will modify FAST Agent Requirement No. 11 to (i) retain the requirement that the FAST Agent provide DTC with a copy of the Rule 17Ad-13 report filed by the FAST Agent with Commission and any available SAS-70 report of an outside accountant, (ii) delete the requirement that an outside accountant certify as to compliance by the FAST Agent with all FAST Agent Requirements, (iii) delete the requirement that an outside accountant certify as to compliance by the FAST Agent with all SEC business continuity requirements and (iv) modify the language of the requirement with respect to an SSAE-10 attestation to specify that, if a SAS-70 report is not available, then the FAST Agent shall provide DTC with an SSAE-10 attestation of an outside accountant with respect to the internal controls of such FAST Agent relating to FAST (which in fact is what DTC is currently receiving from FAST Agents).

Accordingly, set forth below is FAST Agent Requirement No. 11 (renumbered as FAST Agent Requirement No. 9), as amended:

"The transfer agent must provide to DTC, on an annual basis within 10 business days of filing with the SEC, an accountant's report (pursuant to Exchange Act Rule 17Ad-13 (Annual Study of Evaluation of Internal Accounting Controls)) attesting to the soundness of controls to safeguard securities assets and

³² See letters from STA, Continental, Computershare, BONY, Fidelity Transfer, Registrar and Transfer, Wells Fargo, StockTrans, Crescent, 1st Global, Investors Bank & Trust, Otter Tail, U.S. Bank, Zions, First American and Valiant.

³³ See letters from STA, Computershare, Wells Fargo, Continental, U.S. Bank, Registrar and Transfer, Investors Bank & Trust, BONY, Valiant, 1st Global, Fidelity Transfer and First American.

³⁴ See letters from STA, Computershare, Wells Fargo, Continental, U.S. Bank, Registrar and Transfer, Investors Bank & Trust, BONY, Valiant, 1st Global, Fidelity Transfer, StockTrans, First American and Otter Tail.

reliability and integrity of computer systems, including confidentiality of customer accounts and other non-public information. If a transfer agent obtains a SAS-70 report, the transfer agent shall provide DTC with a copy of the SAS-70 report within 10 business days of the transfer agent's receipt of the report. If a SAS-70 report is not available, the transfer agent must provide to DTC, on an annual basis within 10 business days of filing with the SEC the report referred to in the first sentence of this paragraph, an SSAE-10 report from an external certified public accountant (or equivalent report) attesting to the soundness of the transfer agent's controls relating to FAST."

12. FAST Agent Requirement No. 12.

Set forth below is FAST Agent Requirement No. 12, as originally proposed:

"FAST agents must safeguard all the securities assets as stated under SEC Rule 17Ad-12, and with at least the following additional DTC requirements:

a. Maintaining a theft and fireproof safe of no less than 350 pounds, with a minimum anti-theft test rating of UL 687, and a minimum fire rating of UL 72.

b. Maintaining a theft and fire central monitoring alarm system protecting the entire premises.

c. All certificates will be maintained in a secure location, accessible only by authorized personnel.

d. Certificates shall not be left unattended unless stored in a secure location or a "locked" safe."

A number of commenters in the STA Group,³⁵ the ABA and the SSA submitted comments in opposition to aspects of FAST Agent Requirement No. 12. Some commenters argue that DTC should not dictate physical security standards. Some commenters note that balance certificates are legended and display no value and, therefore, are of no use to thieves. Some commenters suggest that DTC should hold its position in securities in book-entry form, thereby eliminating the need for safekeeping requirements altogether. Some commenters object that the safe specification requirements are arbitrary. Cost was also a concern for some commenters, especially the smaller ones.

Taking these comments into consideration, DTC will (i) delete the safe requirement, (ii) modify the requirement with respect to the storage of certificates to provide that certificates must be kept in "a vault, safe or other secure location accessible only by authorized personnel" and (iii) retain the requirement with respect to alarm systems. In addition to balance certificates, FAST

³⁵ See letters from STA, Continental, BONY, Fidelity Transfer, Wells Fargo, StockTrans, Crescent, Investors Bank & Trust and Otter Tail.

Agents hold in custody blank certificates that can be, and have been, fraudulently issued and/or indorsed. Furthermore, FAST Agents possess electronic information about DTC and the securities it holds for its participants that is highly confidential and financially sensitive. Therefore, maintenance of a minimum level of physical safekeeping of certificates and computer systems is entirely necessary and appropriate.

Accordingly, set forth below is FAST Agent Requirement No. 12 (renumbered as FAST Agent Requirement No. 10), as amended:

“FAST agents must safeguard all the securities assets as stated under SEC Rule 17Ad-12, and with at least the following additional DTC requirements:

a. maintaining a theft and fire central monitoring alarm system protecting the entire premises; and

b. maintaining all certificates in a vault, safe or other secure location, accessible only by authorized personnel.”

13. FAST Agent Requirement No. 13.

Set forth below is FAST Agent Requirement No. 13, as originally proposed:

“Personnel with access to the safe and the codes for the centralized monitoring system will be governed by SEC Rule 17f-2, which includes but is not limited to rules for fingerprinting staff that physically handle certificates.”

No comments were submitted by any commenters specifically addressing FAST Agent Requirement No. 13. However, because of changes being made in FAST Agent Requirement No. 12 (renumbered as FAST Agent Requirement No. 10), a conforming change will be made in this Requirement to change the reference from “[p]ersonnel with access to the safe” to a reference to “[p]ersonnel with access to the certificates”.

Accordingly, set forth below is FAST Agent Requirement No. 13 (renumbered as FAST Agent Requirement No. 11), as amended:

“Personnel with access to the certificates and the codes for the centralized monitoring system will be governed by SEC Rule 17f-2, which includes but is not limited to rules for fingerprinting staff that physically handle certificates.”

14. FAST Agent Requirement No. 14.

Set forth below is FAST Agent Requirement No. 14, as originally proposed.

“The transfer agent, upon application, must provide DTC with a copy of the two most recent SEC examination reports as well as any follow-up correspondence. In addition, the transfer agent, on an ongoing basis, must provide DTC with

notice of any alleged material deficiencies documented by the SEC within 5 business days of the transfer agent being notified of such material deficiencies.”

A number of commenters in the STA Group³⁶ submitted comments in opposition to FAST Agent Requirement No. 14.

Some commenters argue that transfer agents do not provide this information to other registered holders and, therefore, should not be required to provide this information to DTC. This argument is misplaced. To the extent that a transfer agent is acting as a FAST Agent, the transfer agent is entering into a separate contractual relationship with DTC that it does not have with any other registered holders of securities. DTC has both a statutory duty under Section 17A of the Exchange Act and a duty to its participants (i) to screen transfer agents wishing to become FAST Agents (and in this connection to obtain examination reports) and (ii) to monitor transfer agents which are FAST Agents (and in this connection to receive reports of material deficiencies).

Some commenters argue that transfer agents are prohibited by law from providing the subject reports to third parties. However, a number of these same commenters acknowledge in their letters that they do sometimes provide this information to their customers (the issuers), which indicates that there is no absolute prohibition on transfer agents making this information available to third parties.

Taking these comments into consideration, DTC will modify FAST Agent Requirement No. 14 (i) to limit the deficiencies that must be reported to DTC to deficiencies that may affect the activities of the transfer agent as a FAST Agent and (ii) to make such disclosure subject to applicable law so that there can be no question about this Requirement causing any FAST Agents to violate any statutory or regulatory obligations.

Accordingly, set forth below is FAST Agent Requirement No. 14 (renumbered as FAST Agent Requirement No. 12), as amended:

“Unless prohibited by applicable law, the transfer agent, upon application, must provide DTC with a copy of the two most recent Commission examination reports as well as any follow-up correspondence. In addition, unless prohibited by applicable law, the transfer agent, on an ongoing basis, must provide DTC with notice of any alleged deficiencies documented by the Commission that may affect the activities of the transfer agent as a FAST Agent within 5 business days of the transfer agent being notified of such deficiencies.”

15. FAST Agent Requirement No. 15.

Set forth below is FAST Agent Requirement No. 15, as originally proposed:

³⁶ See letters from STA, Continental, Computershare, BONY, Wells Fargo, U.S. Bank and Fidelity Transfer.

“During regular business hours, upon advance notice, DTC reserves the right to visit and inspect, to the extent pertaining to their position, the agent’s facilities, books and records, but is not obligated to do so.”

A number of commenters in the STA Group³⁷ and the ABA submitted comments in opposition to FAST Agent Requirement No. 15. Their comments on this Requirement mirrored the comments that were submitted in opposition to FAST Agent Requirement No. 14, (renumbered as FAST Agent Requirement No. 12), in general that transfer agents do not provide this access to other registered holders.

As explained above, this argument is misplaced (i) because, to the extent that a transfer agent is acting as a FAST Agent, the transfer agent is entering into a separate contractual relationship with DTC that it does not have with any other registered holders of securities, and (ii) because DTC has both a statutory duty under Section 17A and a duty to its participants that makes it necessary and appropriate for DTC to exercise reasonable vigilance over FAST Agents. DTC will make no change in this Requirement, except to specify (as it is doing with respect to the previous Requirement) that FAST Agents must provide DTC with access to their facilities for the limited purposes set forth therein “[u]nless prohibited by applicable law”.

Accordingly, set forth below is FAST Agent Requirement No. 15 (renumbered as FAST Agent Requirement No. 13), as amended:

“Unless prohibited by applicable law, during regular business hours, upon advance notice, DTC reserves the right to visit and inspect, to the extent pertaining to their position, the transfer agent’s facilities, books, and records but is not obligated to do so.”

16. FAST Agent Requirement No. 16.

Set forth below is FAST Agent Requirement No. 16, as originally proposed:

“The transfer agent may only charge DTC fees (i.e., deposit, withdrawal, “rush”, cancellation, registration, or other transfer fees) that: (a) are contractually agreed to by the issuer, (b) are the same for all other registered holders, and (c) do not violate the regulations of the relevant securities exchange relating to transfer agent fees.”

A number of commenters in the STA Group,³⁸ the ABA and STA Canada submitted comments in opposition to FAST Agent Requirement No. 16, claiming that DTC was making FAST Agents provide additional services to DTC without additional compensation. A number of them expressed particular concern with the purported affect of FAST Agent Requirement No. 16 on smaller transfer agents.

³⁷ See letters from STA, Continental, Computershare, BONY and Wells Fargo.

³⁸ See letters from STA, Continental, Computershare, BONY, Wells Fargo, 1st Global, Fidelity Transfer, Registrar and Transfer, StockTrans and First American.

Taking these comments into consideration, DTC will withdraw Fast Agent Requirement No. 16 in its entirety.

17. FAST Agent Requirement No. 17.

Set forth below is FAST Agent Requirement No. 17, as originally proposed:

“Existing FAST agents shall have a period of six (6) months from the date of the Commission’s approval of this rule filing within which they must comply with these requirements, including the submission to DTC of a signed Balance Certificate Agreement, signed Operational Criteria, and all supporting documentation referenced herein. If an agent is non-compliant with these requirements upon the expiration of such period, DTC shall have the sole discretion to terminate or continue the agent’s FAST status.”

No objections to the six month transition period were made by any commenters, aside from objections to specific substantive FAST Agent Requirements. Since DTC is addressing the objections on substantive matters where appropriate, DTC will make no change in the transition period set forth in FAST Agent Requirement No. 17 (except to renumber this Requirement as FAST Agent Requirement No. 14).

18. FAST Agent Requirement No. 18.

Set forth below is FAST Agent Requirement No. 18, as originally proposed:

“An agent acting on behalf of a transfer agent, or an issuer acting on its own behalf, shall have the same rights and responsibilities under these requirements as if it were the transfer agent.”

No comments were submitted by any commenters specifically addressing this Requirement. Accordingly, DTC will make no change in FAST Agent Requirement No. 18 (except to renumber this Requirement as FAST Agent Requirement No. 15).

IV. Proposed Amended and Restated DRS Requirements

DTC proposes to amend and restate the eligibility requirements for DRS Limited Participants and the eligibility requirements for DRS Issues.

A. Eligibility Requirements for DRS Limited Participants

Set forth below are the DRS Limited Participant Requirements, as originally proposed:

“In order to be eligible for membership as a DRS Limited Participant, a party must:

- 1. participate in the FAST program and abide by the rules outlined in the FAST requirements above,*
- 2. execute a DTC Limited Participant Account agreement,*
- 3. deliver transaction advices directly to investors relating to DRS Withdrawal-by-Transfer requests, and provide DTC with a file (in a format and using functionality as specified by DTC from time to time) containing the transaction advice delivery date,*
- 4. complete training by DTC on DRS and Profile functionality,*
- 5. participate in Profile surety or insurance programs to initiate Profile Modification System transactions³⁹,*
- 6. must program changes related to DTC systems modifications within a reasonable time upon receiving notification from DTC of such modifications,*
- 7. must program changes to support and expand DRS processing capabilities as agreed to by the DRS Ad Hoc Committee,*
- 8. mail a transfer advice or statement to shareholders within 3 business days of each DRS account transaction that affects the shareholder’s position, or more often as required by the Commission’s regulations, and*
- 9. Existing DRS Limited Participants shall have a period of six (6) months from the date of the Commission’s approval of this rule filing within which they must comply with these requirements. If an agent is non-compliant with these requirements upon the expiration of such period, DTC shall have the sole discretion to terminate or continue the agent’s status as a DRS Limited Participants.”*

A number of commenters in the STA Group submitted comments with respect to certain of the DRS Limited Participant Requirements.

With respect to DRS Limited Participant Requirement No. 1, StockTrans questions why, to be a DRS Limited Participant, a transfer agent must be a FAST Agent. Given DRS transaction

³⁹ In DRS, instructions to transfer shares are sent by a broker-dealer that is a DTC participant or a transfer agent via the DRS Profile Modification System (“Profile”), which provides for screen based indemnification against false instructions from the party submitting instructions through DRS. The indemnity is supported by either a surety bond or an insurance policy.

volumes, the only way the program can operate efficiently is on a FAST basis. Accordingly, DTC will make no change in DRS Limited Participant Requirement No. 1.

With respect to DRS Limited Participant Requirement No. 4, Fidelity Transfer notes that training is important but should be at no cost to the DRS Limited Participant. Training is provided by DTC to DRS Limited Participants without cost. Accordingly, DTC will make no change in DRS Limited Participant Requirement No. 4.

With respect to DRS Limited Participant Requirement Nos. 6 and 7, a number of commenters in the STA Group⁴⁰ object to DTC (or the DRS Ad Hoc Committee of DTC) requiring that DRS Limited Participants program their systems to DTC specifications and upgrades. In order for DRS to function properly and for the benefit of all of its users, DTC must be able to operate DRS on a uniform basis, expanding its processing capabilities where that is technologically and economically feasible to do so (as determined by its users represented on the DRS Ad Hoc Committee). However, taking these comments into consideration, DTC will (i) add language to DRS Limited Participant Requirement No. 6 to specify that the program changes a DRS Limited Participant must make on notice from DTC are program changes relating to modifications of DTC's internal systems *e.g.* with respect to upgrades and (ii) add language to DRS Limited Participant Requirement No. 7 to specify that the program changes a DRS Limited Participant must make to *inter alia* expand DRS are program changes approved by the DRS Ad Hoc Committee. Accordingly, set forth below are DRS Limited Participant Requirement Nos. 6 and 7, as amended:

“In order to be eligible for membership as a DRS Limited Participant, a party must:

** * **

6. program changes relating to modifications of DTC's internal systems within a reasonable time after receiving notification from DTC of such modifications,

7. program changes to support, improve and expand DRS processing capabilities as agreed to by the DRS Ad Hoc Committee, and

With respect to DRS Limited Participant Requirement No. 8, a number of commenters in the STA Group⁴¹ object to DTC requiring that DRS Limited Participants mail a transfer advice or statement to shareholders within 3 days of any DRS transaction or more often as required by the Commission. Taking these comments into consideration, DTC will withdraw DRS Limited Participant Requirement No. 8 in its entirety.

No comments were submitted by any of the commenters on DRS Limited Participant Requirement Nos. 2, 3, 5 and 9. Accordingly, DTC will make no change in any of these

⁴⁰ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, BONY and StockTrans.

⁴¹ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, BONY and StockTrans.

Requirements (except to renumber DRS Limited Participant Requirement No. 9 as DRS Limited Participant Requirement No. 8).

B. Eligibility Requirements for DRS Issues

Set forth below are the DRS Issue Requirements, as originally proposed:

“In order to be eligible as a DRS issue, a security must:

- 1. be transferred by an agent accepted as a DTC DRS Limited Participant,*
- 2. participate in the FAST program. Issues may not be added to DRS if “out of balance” positions exist, and*
- 3. have a transfer agent or issuer that mails a transaction advice or statement within 3 business days of each DRS account transaction that affects the shareholders position, or more often as required by Commission regulations.”*

A number of commenters in the STA Group⁴² submitted comments in opposition to certain of the DRS Issue Requirements.

With respect to DRS Issue Requirement No. 2, the STA states that “[s]ince 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.” The STA further argues that “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.” StockTrans complains that daily balancing takes personnel, systems, time and effort and suggests that DTC should pay for it.

Although Rule 17Ad-10 sets forth certain recordkeeping requirements for transfer agents and imposes certain obligations on transfer agents with respect to overissuances, the STA is not correct in its conclusion that an out of balance condition does not affect DTC if its own position is in proof with the transfer agent. An out of balance condition can potentially negatively affect all shareholders. Given the size of its positions and the fact that it holds issues for its participants, DTC would be remiss in its responsibilities to its participants if it did not address, and through its arrangements with prospective DRS Limited Participants seek to correct, this problem. Nevertheless, taking the comments of the STA into consideration, DTC is prepared to modify DRS Limited Participant Requirement No. 2 to provide that an issue of securities may not become a DRS Issue if “persistent unremediated” out of balance conditions exist. Accordingly, set forth below is DRS Issue Requirement No. 2, as amended:

⁴² See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, BONY and StockTrans.

“In order to be eligible as a DRS issue a security must:

** * **

- 2. participate in the FAST program. Issues may not be added to DRS where persistent unremediated “out of balance” positions exist.”*

With respect to DRS Issue Requirement No. 3, a number of commenters in the STA Group⁴³ object to DTC requiring that DRS Limited Participants or issuers mail a transaction advice or statement to shareholders within 3 days of any DRS transaction or more often as required by the Commission. Taking these comments into consideration, DTC will withdraw DRS Issue Requirement No. 3 in its entirety.

No comments were submitted by any of the commenters on DRS Issue Requirement No. 1. Accordingly, DTC will make no change in this Requirement.

V. Proposed Standard of Care

DTC proposes to more clearly and specifically define its responsibilities to participants relating to the acts and omissions of third parties (including, but not limited to, FAST Agents) by adding the following at the end of Rule 6 of the Rules of DTC:

“Under no circumstance will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service (“Third Party”), unless caused directly by the Corporation’s gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action.

Under no circumstance shall the Corporation be liable for selecting or accepting any Third Party as an agent of the Corporation, including as a transfer agent participating in the Fast Automated Securities Transfer (FAST) Program.”

See Exhibit 5 to the initial filing of the Proposed Rule. See also the text of the proposed rule change for historical background on the standard of care and limits on liability set forth in the Rules of DTC.

⁴³ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, BONY and StockTrans.

A number of commenters in the STA Group⁴⁴ and the ABA object to this addition to the Rules of DTC, arguing that it may somehow shift liability from DTC to FAST Agents or absolve DTC from liability to FAST Agents.

The Rules of DTC form part of the contract between DTC and its participants. Nothing in the Rules of DTC can shift any liability from DTC to FAST Agents or absolve DTC from any liability to FAST Agents. Accordingly, DTC will make no change in the proposed addition to Rule 6.

VI. Miscellaneous Matters

Some commenters in the STA Group⁴⁵ claim that DTC is somehow seeking through the Proposed Rule to usurp the authority of the Commission to regulate transfer agents. DTC does not have that authority and does not want that responsibility. But DTC is entitled to enter into arrangements with FAST Agents and DRS Limited Participants on terms and conditions that are satisfactory to DTC for the protection of its participants.

Some commenters in the STA Group⁴⁶ and STA Canada claim that the Proposed Rule is somehow premised on the “flawed assumption” that transfer agents are custodians for DTC. The Proposed Rule has nothing to do with whether or not transfer agents are custodians for DTC, although it seems obvious that when transfer agents are acting as FAST Agents, holding balance certificates for DTC, they may fairly be (and generally are) characterized as custodians.⁴⁷ The Proposed Rule is instead premised on the fact that DTC has a statutory

⁴⁴ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, BONY and StockTrans.

⁴⁵ See letters from STA, Wells Fargo, Continental, BONY and StockTrans.

⁴⁶ See letters from STA, Computershare, Wells Fargo, Continental, Registrar and Transfer, Valiant, StockTrans and First American.

⁴⁷ See, Louis Loss and Joel Seligman, *Securities Regulation*, Vol. VI Revised, Chapter 7.E, at 2926 & n.29 (3d ed. 2002):

“Some securities depositories maintain transfer agent custodian arrangements under which a transfer agent maintains *custody* of some or all of the depository’s holdings in a ‘balance certificate.’ When a depository requests a withdrawal, the transfer agent is allowed to issue certificates concerning the withdrawal and to change the depository’s certificate to reflect the change in its share ownership. This arrangement avoids the delays and risks associated with shipping physical certificates between the transfer agent and the depository. SEC, Div. of Mkt. Reg., *The October 1987 Market Break*, supra, at 10-27 to 10-28 n.74”. [Italics Added]

See also, the following SEC orders: Exchange Act Release No. 34-36503 (November 22, 1995) [File No. SR-PHILADEP-95-07] (“The transfer agents maintain *custody* of the securities in the form of balance certificates and adjust daily the balance certificates to reflect PHILADEP’s withdrawal and deposit activity.”); Exchange Act Release No. 34-35484 (March 14, 1995) [File No. SR-MSTC-94-21] (“The transfer agents will have *custody* of the securities in the form of balance certificates registered in MSTC’s nominee name.”); Exchange Act Release No. 34-31941 (March 3, 1993) [File No. SR-DTC-92-15] (“Under the FAST program, DTC leaves securities in the *custody* of the issuer’s transfer agent in the form of balance certificates, typically in one or more large denomination jumbo certificates, registered in Cede & Co., DTC’s nominee name.”); Exchange Act Release No. 34-13277 (February 17, 1977) [File No. SR-

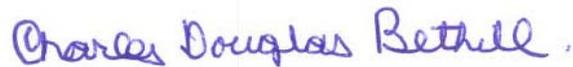
obligation “to safeguard the securities and funds in its custody or control or for which it is responsible” and, in the performance of this obligation, it has the right to establish appropriate Requirements for FAST Agents and DRS Limited Participants that wish to participate in its programs.

Some commenters in the STA Group⁴⁸ and STP Advisory Services claim that DTC and transfer agents are “competitors” and that DTC is using the Proposed Rule to drive its “competitors” (at least the smaller transfer agents) out of business. Section 17A of the Exchange Act clearly distinguishes between the role of a clearing agency and the role of a transfer agent. A person may not engage in either activity unless it is registered to do so. DTC is registered with the SEC as a clearing agency and not as a transfer agent. Conversely, no person registered with the SEC as a transfer agent is also registered as a clearing agency. DTC and transfer agents are not (and cannot be) “competitors”, and there is no merit to this claim.

VII. Conclusion

DTC will shortly file with the Commission an Amendment No. 3 reflecting the changes in the Proposed Rule described in this letter. For convenience of reference, attached hereto as Appendix A is a copy of the Proposed Rule marked to show such changes. DTC respectfully requests that the Commission approve the Proposed Rule, as so revised, and would welcome an opportunity to further discuss the Proposed Rule with representatives of the Commission.

Sincerely yours,



Charles Douglas Bethill

cc: Larry E. Thompson, Esq.
Managing Director and General Counsel
The Depository Trust & Clearing Corporation
55 Water Street
New York, New York 10041-0099

PSD-76-1] (“The TAC [transfer agent custodian] program permits PSDTC to retain a working supply of certificates while depositing securities evidenced by the remaining certificates with the TAC to be held in *custody* in the form of a balance certificate registered in the name of PSDTC’s nominee.”) [Italics Added]

⁴⁸ See letters from Wells Fargo, Continental and StockTrans.

Appendix A

FAST Agent Requirements:

1. ~~1.~~ FAST Agent Requirement No. 1.

Transfer agent must be registered with the Commission, except where the transfer agent's participation in the FAST program is limited to acting solely for municipal issues (and provide DTC with evidence of such), and follow all applicable rules under the Securities Exchange Act of 1934 (the "Exchange Act") as well as all other applicable Federal and state laws, rules, and regulations, applicable to transfer agents, including OFAC regulations. ~~In addition, the transfer agent must provide DTC with a written notification as soon as practicable, if its regulator has taken any regulatory action against the transfer agent with respect to an alleged violation of such laws, rules, or regulations. Any regulatory reports or information furnished to DTC, including that required pursuant to this Item No. 1 and Item No. 14 below, shall be held as confidential by DTC and will not be used for any purpose other than to manage the risk of DTC and its Participants. All other information furnished to DTC pursuant to the requirements set forth herein shall be held in at least the same degree of confidence as may be required by law or the rules and regulations of the Commission.~~

2. ~~2.~~ FAST Agent Requirement No. 2.

The transfer agent must execute and fulfill the requirements of the appropriate form of Balance Certificate Agreement with DTC (in the appropriate form as set forth in Exhibit 2).¹

3. ~~3.~~ FAST Agent Requirement No. 3.

~~When applying for FAST status, the transfer agent must include the name and CUSIP of a minimum of one issue it wishes to add to the FAST program. Issues eligible for the FAST program must be: (i) traded on an exchange registered under Section 6 of the Exchange Act, (ii) municipal securities, or (iii) transferred by a transfer agent that already acts as a FAST transfer agent for at least five (5) other issues that are traded on an exchange. The above provisions notwithstanding, DTC reserves the complete discretion to include or exclude any particular issue in the FAST program.~~

4. ~~FAST Agent Requirement No. 4.~~

The transfer agent must sign and fulfill requirements of the Operational Criteria for the FAST Transfer Agent Processing (as set forth in Exhibit 2(b))² and must

¹ DTC currently maintains three forms of Balance Certificate Agreement: one for transfer agents, one for issuers acting as their own agent, and the third for parties using a processing agent. DTC is consolidating these forms into a single form ~~as~~, a copy of which is attached ~~in~~as Exhibit ~~2-2(a) to the initial Proposed Rule filing.~~

comply with all applicable provisions of DTC's Operational Arrangements (OA)^{2,3}, as amended from time to time.

4. ~~5.~~ FAST Agent Requirement No. ~~5.4.~~

In order to provide for the operational proficiency and efficiency of the program, on being accepted as a FAST transfer agent, the transfer agent must complete training by DTC on FAST functionality.

5. ~~6.~~ FAST Agent Requirement No. ~~6.5.~~

In order to protect against a risk of loss, the transfer agent must carry and provide evidence of a minimum of the following ~~Bankers Blanket Bond Standard Form 24, or~~ standard form Financial Institution Bond, or a commercial crime policy providing similar coverage, in proportion to transaction volume the agent processes, as follows:

a. \$10 million, ~~with a deductible of no more than \$50,000~~, for a transfer agent with 25,000 or fewer transfer transactions per year as reported to the SEC.

b. \$25 million, ~~with a deductible of no more than \$100,000~~, for ~~a~~ transfer agents ~~agent~~ with over 25,000 transfer transactions per year as reported to the SEC.

In addition, the transfer agent must: ~~(i) carry a minimum of \$1 million in Errors and Omissions insurance, with a deductible of no more than \$25,000 and show evidence of the policy on applying for FAST status, and (ii) have "mail" insurance policy of \$10 million or more and show evidence of the policy on applying for FAST status. The Errors and Omissions coverage shall identify DTC as an additional insured. The "mail" coverage shall identify DTC as a loss payee but shall not be invalidated by any act or neglect of the insured.~~

In the event that a transfer agent can demonstrate that its existing coverage and/or capitalization would provide similar protections to DTC as the requirements set

² [A copy of the Operational Criteria is attached as Exhibit 2\(b\) to the initial Proposed Rule filing.](#)

² ~~For more information relating to DTC's OA, see Securities Exchange Act Release Nos. 34-45994 (May 29, 2002), 67 FR 39452 [File No. SR-DTC-2002-02]; 34-24818 (August 19, 1987), 52 FR 31833 [File No. DTC-87-10]; 34-25948 (July 27, 1988), 53 FR 29294 [File No. DTC-88-13]; 34-30625 (April 23, 1992), 57 FR 18534 [File No. DTC-92-06]; 34-35649 (April 26, 1995), 60 FR 21576 [File No. DTC-94-19]; and 34-39894 (April 21, 1998), 63 FR 23310 [File No. DTC-97-23].~~

³ [For more information relating to DTC's OA, see Exchange Act Release No. 34-45994 \(May 29, 2002\), 67 FR 39452 \[File No. SR-DTC-2002-02\]; Exchange Act Release No. 34-24818 \(August 19, 1987\), 52 FR 31833 \[File No. SR-DTC-87-10\]; Exchange Act Release No. 34-25948 \(July 27, 1988\), 53 FR 29294 \[File No. SR-DTC-88-13\]; Exchange Act Release No. 34-30625 \(April 23, 1992\), 57 FR 18534 \[File No. SR-DTC-92-06\]; Exchange Act Release No. 34-35649 \(April 26, 1995\), 60 FR 21576 \[File No. SR-DTC-94-19\]; and Exchange Act Release No. 34-39894 \(April 21, 1998\), 63 FR 23310 \[File No. SR-DTC-97-23\].](#)

forth herein, it may apply to DTC for a waiver ~~of the deductibles set out above~~. DTC shall have sole discretion as to whether or not to grant any such waiver.

6. ~~7.~~ FAST Agent Requirement No. 7.6.

In order to facilitate consistent protection against losses relating to securities in a transfer agent's control, the transfer agent must notify DTC as soon as practicable of notice of any actual lapse in insurance coverage or change in business practices, such as increasing volumes, or other business changes that would result in the transfer agent requiring additional insurance coverage as outlined above. Such notice shall be delivered to:

DTC
Inventory Management – 1SL
55 Water Street
New York, New York 10041

And with a copy to:

DTC
General Counsel's Office
55 Water Street – 22nd Floor
New York, New York 10041

7. ~~8.~~ FAST Agent Requirement No. 8.7.

The transfer agent must provide proof to DTC of ~~the~~any new or substitute policy ~~for all~~with respect to any required insurance ~~at least 30 days prior to any expiration or change in insurance limits of a previous insurance~~within five days after the entry into force of such new or substitute policy.

9. ~~FAST Agent Requirement No. 9.~~

~~To further facilitate Item No. 7 above, the terms of the insurance coverage noted above must state that the insurance provider must notify DTC within five (5) days of notice of any threatened or actual lapse in the above coverage requirements.~~

10. ~~FAST Agent Requirement No. 10.~~

8. FAST Agent Requirement No. 8.

The transfer agent must establish and maintain electronic communications with DTC to balance FAST positions on a daily schedule.

11. ~~FAST Agent Requirement No. 11.~~

9. FAST Agent Requirement No. 9.

The transfer agent must provide to DTC, on an annual basis ~~to DTC~~, within 10 business days of filing with the SEC, an accountant's report (pursuant to Exchange Act Rule 17Ad-13 (Annual Study of Evaluation of Internal Accounting Controls)) attesting to the soundness of controls to safeguard securities assets and reliability and integrity of computer systems, including confidentiality of customer ~~account, or~~ accounts and other non-public, information. ~~To the extent that~~ If a transfer agent obtains a SAS-70 ~~audit~~ report, the transfer agent shall provide DTC with a copy of the SAS-70 report within 10 business days of the transfer agent's receipt of the report. ~~In addition~~ If a SAS-70 report is not available, the transfer agent must provide, ~~within the same time frame as required for such report, a~~ to DTC, on an annual basis within 10 business days of filing with the SEC the report referred to in the first sentence of this paragraph, an SSAE-10 report from an external certified public accountant:

~~a. certifying that the transfer agent is complying with all of DTC's requirements relating to FAST agents including, without limitation, (a) those listed herein, (b) the Operational Criteria for FAST Transfer Agent Processing, (c) the OA, and (d) the Balance Certificate Agreement,~~

~~b. certifying that the agent meets any SEC requirements for business continuity planning, and c. containing an SSAE 10 report (or the equivalent report); attesting to the soundness of the transfer agent's control in meeting the requirements set forth herein; however an SSAE 10 need not be provided if the transfer agent has provided a SAS 70 audit report in accordance with the provisions of this paragraph 11.~~ controls relating to FAST.

10. 12. FAST Agent Requirement No. 12. 10.

FAST agents must safeguard all the securities assets as stated under SEC Rule 17Ad-12, and with at least the following additional DTC requirements:

~~a. Maintaining a theft and fireproof safe of no less than 350 pounds, with a minimum anti-theft test rating of UL 687, and a minimum fire rating of UL 72.~~ b. Maintaining maintaining a theft and fire central monitoring alarm system protecting the entire premises; and

~~e. All~~ b. maintaining all certificates ~~will be maintained~~ in a vault, safe or other secure location, accessible only by authorized personnel.

~~d. Certificates shall not be left unattended unless stored in a secure location or a "locked" safe.~~

11. 13. FAST Agent Requirement No. 13. 11.

Personnel with access to the safe certificates and the codes for the centralized monitoring system will be governed by SEC Rule 17f-2, which includes but is not limited to rules for fingerprinting staff that physically handle certificates.

12. 14. FAST Agent Requirement No. 14. 12.

~~The~~Unless prohibited by applicable law, the transfer agent, upon application, must provide DTC with a copy of the two most recent ~~SEC~~Commission examination reports as well as any follow-up correspondence. In addition, unless prohibited by applicable law, the transfer agent, on an ongoing basis, must provide DTC with notice of any alleged ~~material~~ deficiencies documented by the ~~SEC~~Commission that may affect the activities of the transfer agent as a FAST Agent within 5 business days of the transfer agent being notified of such ~~material~~ deficiencies.

13. 15. FAST Agent Requirement No. 15. 13.

~~During~~Unless prohibited by applicable law, during regular business hours, upon advance notice, DTC reserves the right to visit and inspect, to the extent pertaining to their position, the transfer agent's facilities, books, and records, but is not obligated to do so.

14. 16. FAST Agent Requirement No. 16.

~~The transfer agent may only charge DTC fees (i.e., deposit, withdrawal, "rush", cancellation, registration, or other transfer fees) that: (a) are contractually agreed to by the issuer, (b) are the same for all other registered holders, and (c) do not violate the regulations of the relevant securities exchange relating to transfer agent fees.~~17. FAST Agent Requirement No. 17.14.

Existing FAST agents shall have a period of six (6) months from the date of the Commission's approval of this rule filing within which they must comply with these requirements, including the submission to DTC of a signed Balance Certificate Agreement, signed Operational Criteria, and all supporting documentation referenced herein. If an agent is non-compliant with these requirements upon the expiration of such period, DTC shall have the sole discretion to terminate or continue the agent's FAST status.

15. 18. FAST Agent Requirement No. 18.15.

An agent acting on behalf of a transfer agent, or an issuer acting on its own behalf, shall have the same rights and responsibilities under these requirements as if it were the transfer agent.

Eligibility Requirements for DRS Limited Participants:

In order to be eligible for membership as a DRS Limited Participant, a party must:

1. participate in the FAST program and abide by the rules outlined in the FAST requirements above,
2. execute a DTC Limited Participant Account agreement,
3. deliver transaction advices directly to investors relating to DRS Withdrawal-by-Transfer requests, and provide DTC with a file (in a format and using functionality as specified by DTC from time to time) containing the transaction advice delivery date,
4. complete training by DTC on DRS and Profile functionality,
5. participate in Profile surety or insurance programs to initiate Profile Modification System transactions^{3,4}
6. ~~must~~ program changes ~~related~~relating to ~~DTC systems~~ modifications of DTC's internal systems within a reasonable time ~~upon~~after receiving notification from DTC of such modifications,
7. ~~must~~ program changes to support, improve and expand DRS processing capabilities as agreed to by the DRS Ad Hoc Committee, and

~~8. mail a transfer advice or statement to shareholders within 3 business days of each DRS account transaction that affects the shareholder's position, or more often as required by the Commission's regulations, and~~

8. 9. Existing DRS Limited Participants shall have a period of six (6) months from the date of the Commission's approval of this rule filing within which they must comply with these requirements. If an agent is non-compliant with these requirements upon the expiration of such period, DTC shall have the sole discretion to terminate or continue the agent's status as a DRS Limited Participants.

³ ~~In DRS, instructions to transfer shares are sent by a broker-dealer that is a DTC participant or a transfer agent via the DRS Profile Modification System ("Profile"), which provides for screen based indemnification against false instructions from the party submitting instructions through DRS. The indemnity is supported by either a surety bond or an insurance policy.~~

⁴ In DRS, instructions to transfer shares are sent by a broker-dealer that is a DTC participant or a transfer agent via the DRS Profile Modification System ("Profile"), which provides for screen based indemnification against false instructions from the party submitting instructions through DRS. The indemnity is supported by either a surety bond or an insurance policy.

Eligibility Requirements for DRS Issues:

In order to be eligible as a DRS issue, a security must:

1. be transferred by an agent accepted as a DTC DRS Limited Participant, and
2. participate in the FAST program. Issues may not be added to DRS ~~if~~where persistent unremediated “out of balance” positions exist, ~~and have a transfer agent or issuer that mails a transaction advice or statement within 3 business days of each DRS account transaction that affects the shareholders position, or more often as required by Commission regulations.”~~

Standard of Care:

Under no circumstance will the Corporation be liable for the acts, delays, omissions, bankruptcy, or insolvency of any third party, including without limitation, any depository, custodian, sub-custodian, clearing or settlement system, transfer agent, registrar, data communication service or delivery service (“Third Party”), unless caused directly by the Corporation’s gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action.

Under no circumstance shall the Corporation be liable for selecting or accepting any Third Party as an agent of the Corporation, including as a transfer agent participating in the Fast Automated Securities Transfer (FAST) Program.