

By Federal Express and Electronic Submission

March 20, 2008

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

RE: Securities and Exchange Commission Release No. 34-57362,  
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:

Computershare appreciates the opportunity to comment on the Proposed Rule Change of the Depository Trust Company (“DTC”) referenced above (the “Proposal”). Computershare provides transfer agent services for approximately 2,700 issuer clients and approximately 17 million of their registered shareholders. Computershare is also an active member of the Securities Transfer Association.

Computershare provided comments by letter dated June 22, 2007 to the prior version of the Proposal, published by the Securities and Exchange Commission (the “Commission”) on May 25, 2007. Although DTC has made a number of changes to certain of the previously objectionable provisions of the Proposal, there are still provisions to which Computershare objects. In addition Computershare continues its strong objection to DTC’s apparent attempt through the rule filing to usurp the authority of the Commission to regulate transfer agents.

Introduction

Computershare would first like to address a fundamental flaw that appears to serve as the basis of the Proposal - the inaccurate assumption that transfer agents are custodians for DTC by virtue of the fact that they maintain securities records for registered shareholders that may include an account registered to DTC or its nominee Cede & Co. The plain meaning of a custodian, as the term is commonly understood in financial services, is a financial institution that holds securities or other financial assets on behalf of its

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customers.<sup>1</sup> DTC apparently believes that transfer agents are custodians for DTC and, therefore, assumes it has standing as a customer to make service demands and set business requirements for transfer agents while refusing to pay for services provided.

A transfer agent is not a custodian for DTC, but serves as the appointed agent of the issuer, under appointment documents executed between the issuer and the transfer agent. The transfer agent has only one customer, the issuer. A security holder of the issuer, like DTC, does not have any standing to require any operational or other standards of the transfer agent. Any transfer agent requirements are mutually agreed upon by the issuer and the transfer agent, and, of course, may be prescribed by the transfer agent's regulators.

In addition, a transfer agent is a recordkeeper and does not hold securities as a custodian for a registered holder. Its vaults generally hold only blank or cancelled stock certificates. Registered shareholders hold the physical certificates reflecting their ownership of shares of stock. In the case of DTC's position held as a registered holder under its FAST system, there is no certificate except in the most nominal sense--a legended certificate referencing the transfer agent's systems for the number of shares it holds. This certificate has no separate value and is not negotiable based on the legend and perforations made to the physical certificate.

DTC also asserts its Proposal is necessary as a result of the mandatory book-entry eligibility for listed securities. However, many of the requirements proposed become less appropriate in a book entry environment (e.g., insurance requirements, safe and vault requirements).

Computershare asserts that DTC lacks authority to impose any of its proposed requirements on transfer agents. This Proposal is especially objectionable at this point as the Commission is in the process of developing new and amended transfer agent rules to cover similar topics. Although we believe that DTC has no authority to impose any of its proposed requirements on the transfer agents, Computershare sets forth each of its specific objections to the Proposal below.

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<sup>1</sup> *Barron's Dictionary of Finance and Investment Terms* (1985) defines custodian as "bank or other financial institution that keeps custody of stock certificates and other assets of a mutual fund, individual or corporate client."

### Insurance Requirements

Computershare believes the proposed notice requirements to DTC, such as in the event of the issuance of a new or substitute policy or an actual lapse in coverage, and proof of new or substitute policies, are onerous and unnecessary. For example, as Computershare renews its policies on an annual basis, this would mean it would have to give notice and proof of coverage to DTC every year, even though the coverage remains unchanged.

### Regulatory Reports and Inspections

The Proposal would require transfer agents to notify DTC within five (5) business days of “any alleged material deficiencies documented by the Commission that may affect the activities of the transfer agent as a FAST Agent.” The Proposal would also give DTC the right to visit and inspect a transfer agent’s facilities, books and records.

Transfer agents rarely if ever offer such privileges to their customers. Since DTC is not even a customer, these proposed rights are completely unreasonable. These requirements again appear to be based on DTC’s faulty assumption that transfer agents are acting as DTC’s custodian. As previously discussed, this is not the case. DTC is not legally entitled to this confidential information and has failed to demonstrate any need or purpose for it. Even if these documents were provided, DTC has no authority to take any action as a result of them, other than arguably to terminate the transfer agent as a FAST or DRS participant. For a transfer agent as large as Computershare, the impact of such termination would be significant to the securities industry; it is difficult to imagine the Commission would want to relinquish what would amount to shutting down a transfer agent, to the authority of DTC.

### Execution of DTC’s Documentation

The Proposal requires that all FAST transfer agents execute a new Balance Certificate Agreement and agree to DTC’s Operational Criteria and other documentation. Computershare objects to DTC requiring transfer agents to execute agreements and agree to procedures without any ability on the part of transfer agents to negotiate the terms of such agreements. As previously discussed, DTC as a registered shareholder has no authority or standing to impose such requirements. Computershare also objects to the one-sided nature of such agreements in favor of DTC. We also note that DTC’s forms remain largely unchanged from the original documents dating back to the 1980s and still require the outdated use of physical certificates representing DTC’s position.

### Shareholder Statements

The Proposal would require transfer agents to send a transaction advice to shareholders for DRS Withdrawal-By-Transfer requests, as well as an electronic file to DTC for such transactions in a manner and format as specified by DTC. While Computershare does not object in principle to sending a statement for such transactions, we maintain our position that DTC has no authority to mandate transaction notifications to registered shareholders with DRS shareholdings. The Commission is the regulatory entity with authority to propose and adopt rules addressing shareholder notifications. In addition, Computershare should not be required to send an electronic file to DTC as prescribed by DTC without compensation and without the ability to negotiate the manner and content of the file transmission.

### Standard of Care

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

### Implementation of Program Changes

The Proposal would require transfer agents to implement program changes related to DTC systems modifications and to support and expand DRS processing capabilities. This is objectionable for a number of reasons. First, although the changes related to DRS processing would have to be approved by the DRS Ad Hoc Committee, of which Computershare is currently a member, there is no similar requirement for changes related to DTC systems modification. As a result, program changes that may result in significant costs to transfer agents would be solely determined by DTC. Computershare further objects to the DRS Ad Hoc Committee being the final authority on decisions to expand DRS processing capabilities. The Ad Hoc Committee has no governing by-laws or rules regarding membership, voting rights, etc., and its membership is presently dominated by

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DTC and DTC members. Computershare and other transfer agents, therefore, will have a limited ability to participate in the decisions made by such committee that may greatly impact us and our clients.

Finally, the Proposal fails to address the reasonableness and necessity of changes and the attendant costs that may be incurred by transfer agents. Computershare objects to DTC unilaterally determining what changes to make to FAST and DRS, and requiring Computershare to make changes to its operations and systems to implement the same without any agreement upon the necessity of changes and costs incurred. DTC provides no justification for providing it with this unilateral authority.

#### Conclusion

Computershare continues to object to the adoption of the Proposal. DTC has no legal authority to regulate the transfer agent industry. This authority lies with the Commission. Further, the requirements of the Proposal will result in additional costs to Computershare. DTC should not be permitted to mandate additional requirements for and services from Computershare or any other transfer agents without appropriate compensation. This longstanding practice of DTC must not be allowed to continue to the financial detriment of transfer agents and their issuer clients (and indirectly to investors, to whom such costs are ultimately passed).

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin (Jay) J. McHale Jr.", is written over a light blue horizontal line.

Martin (Jay) J. McHale Jr.  
President, US Equity Services  
Computershare