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Washington, DC 20036

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

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 Amended Proposed Rule Change
Amending FAST and DRS Limited Participant Requirements for Transfer Agents

Dear Ms. Morris:

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

ABA brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members—the majority of which are banks with less than \$125 million in assets—represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women. Our members include registered transfer agents who are directly affected by DTC's proposal, including many community banks that serve as transfer agent for their own securities.

ABA opposes the amended proposal generally because we continue to believe (1) DTC should not have the authority to unilaterally impose rules on transfer agents; and (2) the proposed requirements are both unduly burdensome and inconsistent with the movement of the securities industry to a book-entry system for security holder registration. Specifically, we strongly object to the requirement that transfer agents provide extremely costly SAS-70 or SSAE-10 reports when even the transfer agent regulator—the Commission—has not seen fit to impose such a requirement. In addition, we strongly object to the implied requirement that transfer agents for non-publicly traded corporate debt be required to register with the Commission. Finally, ABA supports the comments on DTC's proposal submitted by the Securities Transfer Association (STA).

Discussion

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

DTC states that the various requirements of the proposal are warranted by the additional risks to DTC attendant to mandatory book-entry eligibility for listed securities. To the contrary, we reiterate our position that these proposed requirements become *less* appropriate as securities certificates are replaced by book-entry positions.

1. Registration Requirement for Certain Transfer Agents

To participate in the FAST program, the proposal would require that all transfer agents be registered with the Commission with the exception of transfer agents whose only participation in FAST is limited to acting solely for municipal issues. As structured, the intent of the proposal appears to be to require registration only when required by the Securities Exchange Act of 1934 (the Act). However, because the Act requires registration only with respect to securities registered under Section 12 of the Act, transfer agents that act solely for unlisted corporate debt securities are not required to be registered. We believe it likely that the failure to specifically address unlisted corporate debt in the proposal was merely an oversight. However, we are aware of transfer agents whose only FAST participation involves municipal securities and unlisted corporate debt, that would be adversely impacted if this provision is not changed. Therefore, we strongly urge the Commission to clarify this exclusion from the registration requirement when the proposal is finalized.

2. SAS-70 or SSAE-10 Reports

In addition to requiring transfer agents to provide to DTC a copy of the Annual Study of Evaluation of Internal Accounting Control filed with the Commission, the proposal would also require transfer agents to provide either an SAS-70 audit report or an SSAE-10 report from an external certified public accountant attesting to the soundness of the transfer agent's controls relating to FAST. ABA strongly opposes this requirement. First, bank transfer agents are specifically exempted from the requirement to provide to the Commission the Annual Study of Evaluation of Internal Accounting Control, so there is no report to send to DTC. See 17 CFR § 17Ad-13(d)(3). Second, the requirement to provide an SAS-70 attesting to controls relating to FAST would be extremely expensive, particularly for regional and community bank transfer agents. Moreover, SAS-70 reports that banks already procure would not necessarily review controls relevant to FAST. An SSAE-10 report would similarly be extremely expensive for smaller agents. Since the Commission, as regulator, has not seen fit to require such additional reports, DTC's requirement appears to be well outside the scope of its authority as a Self-Regulatory Organization. At minimum, it is incumbent upon DTC to demonstrate fully the need for such additional, costly reports before imposing that burden on transfer agents.

3. Transfer Agent Operations

ABA continues to believe there is no basis for DTC to involve itself in the operational aspects of the transfer agent's business as would be the result of its proposed changes to the FAST requirements. Transfer agents should not involve itself in the operation of transfer agents' business, but rather should rely on the Commission and the bank regulators to enforce the rules governing transfer agent operations.

Deficiency Information. Specifically, ABA believes that there is no basis for DTC to seek copies of a transfer agent's two most recent deficiency or compliance correspondences from the Commission and, on an ongoing basis, notices of material deficiencies. Such regulatory actions are the confidential property of the Commission and should not be made available to DTC unless the Commission so directs.

Insurance policy notifications. Similarly, ABA believes that DTC has provided no basis for requiring notification to DTC in the event an actual lapse of an insurance policy or changed in business practices that would result in increased insurance requirements. Nor has DTC demonstrated that there is a basis for providing evidence of any new or substitute insurance policy that is issued. Should this latter requirement be adopted, ABA urges the Commission to provide for a more reasonable period of time in which to notify DTC, specifically, 15 business days.

4. Standard of Care

Because securities in the FAST program are held by transfer agents, DTC proposes it will not be liable "for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC's gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action." Under this standard, DTC would not be liable for its own processing errors so long as they did not rise to the level of gross negligence, thus relegating the consequences of such errors to the transfer agent.

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

Conclusion

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

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

Sincerely,



Cristeena G. Naser

cc: Erik Sirri, Director
Division of Trading and Markets
Securities and Exchange Commission