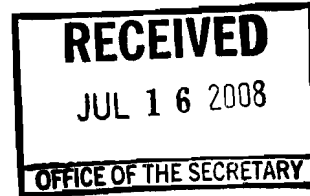


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July 15, 2008

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F. Street, N.E.
Washington, DC 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 ("Proposed Rules").

Dear Ms. Morris:

This letter is being submitted on behalf of the Securities Transfer Association Inc. ("STA") to supplement its prior comments on the Proposed Rules.¹ The STA is an organization whose membership is comprised of the majority of large and small transfer agents that provide essential transfer agent services to the issuers of securities in the United States. The purpose of this letter is to amplify the STA's earlier comments on a central issue that is reflected in the Proposed Rules submitted by the Depository Trust Company ("DTC").

As we discuss more fully below, the Proposed Rules are of significant concern to the transfer agent community because of the breadth of their effect on current transfer agent operations. As a result of exchange listing standards approved by the Commission in 2006, more than 9,000 public companies (large and small) whose securities are listed on national securities exchanges are required to participate in programs in which their transfer agents must be electronically linked with the facilities of DTC. Transfer agents that do not have access to the required DTC services will not be able to continue significant portions of their business operations which involve issuers of listed securities.

The Proposed Rules would require the majority of registered transfer agents to adhere to new DTC-mandated operational and financial standards that exceed the standards established by the Commission and bank regulators. Regardless of the merit of any individual requirement, the DTC proposals are very troubling because they stand for the proposition that DTC, and not the

¹ See, Letters from Charlie V. Rossi, President of the Securities Transfer Association, Inc. dated July 9, 2008, March 18, 2008, and June 22, 2007.

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Commission or bank regulators, will create the minimum regulatory standards for the transfer agent industry.

The Commission should note that transfer agents have a commercial and competitive relationship with DTC. Although DTC is a self-regulatory organization (“SRO”), the Proposed Rules do not reflect the effort of an SRO to regulate its own members. Transfer agents are “*limited participants*” of DTC for purposes of participating in the DRS program, and are not afforded many of the procedural safeguards that exist for SRO members. Transfer agents do not have the opportunity to participate in DTC’s internal process for producing rulemaking proposals, the staff of DTC is not accountable to members of the transfer agent community, and transfer agents do not have the full procedural protections that typically must be offered members of an SRO under the Securities Exchange Act of 1934 (“Exchange Act”).

1. Overview of Current Issue

In 2006 the Commission approved changes to the listing standards of the NYSE, NASDAQ, and Amex requiring issuers to participate in programs offered by a registered clearing agency, such as the DRS and FAST programs of DTC.² These programs offer substantial benefits to investors and issuers. However, as the Commission recognized when it approved amendments to the exchange listing standards: “[c]urrently, the only registered clearing agency operating a DRS is DTC.”³ At this point, and for the foreseeable future, DTC is the only game in town: there is no alternative to the DTC programs. Consequently, any transfer agent that wishes to provide services to the 9,000 listed companies affected by the exchange requirements, or any new public companies, must have an electronic linkage with DTC.⁴

² See, e.g., NASDAQ Rule 4350(I). See also, NASDAQ Listing Standards and Fees (June 2008).

DIRECT REGISTRATION PROGRAM

All securities listed on NASDAQ (except non-equity securities which are book-entry only) must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. If an issuer establishes or maintains a Direct Registration Program for its shareholders, the company must, directly or through its transfer agent, participate in an electronic link with a clearing agency registered under Section 17A of the Act to facilitate the electronic transfer of securities held pursuant to such program.

³ See, e.g., Exchange Act Release 53913 (May 31, 2006) (NASDAQ rulemaking).

⁴ Since 2006, DTC has been warning underwriters not to select transfer agents for IPOs that are not DRS eligible. See, *Attention All Underwriters: Is Your Transfer Agent DRS-Eligible?*, News and Information for DTCC Customers, (October 2006).

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2. DTC and Transfer Agent Regulation

A. *Role of Transfer Agents*

Transfer agents perform a variety of services on behalf of issuers of securities. Issuers contract directly with the transfer agent to act as their record keeper, and to provide other services for which they are compensated by the issuer. It is well established under state law that the transfer agent is the agent of the issuer who is its customer.

Transfer agents - large and small - are a critical component of the shareholder communications and settlement system for securities transactions. Transfer agents record the names and positions of registered holders of the issuer's securities. These holders may be the actual owners of the issuer's securities, or they may be nominees, such as brokerage firms, that represent many individual and institutional holders. Although DTC represents more than 70% of share ownership industry-wide, it is simply one registered holder on an individual transfer agent's records.

The functions provided by transfer agents to their issuer customers substantially exceed the day-to-day involvement with DTC, which is largely limited to an electronic interface. In many cases, these are labor intensive services that involve the issuance and cancellation of physical certificates, and require transfer agents to maintain call centers to assist the issuer's shareholders. In order to operate effectively, transfer agents must have extensive policies and procedures to assure compliance with federal transfer agent regulations, avoid liability under state laws, and serve the needs of their issuer customers.

B. *Commission Regulation of Transfer Agents*

The regulation of transfer agents by the Commission is a result of legislation adopted by Congress in 1975 that established a national system for clearance and settlement of securities. Transfer agents were found to have contributed to the "paper work crunch" of that period, and as a result the Commission was given the authority to require registration of transfer agents and to establish rules and regulations "necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes" of the Exchange Act.

Transfer agents that provide services to public companies were required to register with the Commission. Consistent with its mandate, the Commission proposed and adopted rules governing the conduct of transfer agents. As relevant here, Exchange Act rules adopted under Section 17(f) and Section 17A reflect the Commission's regulatory standards for the operation of registered transfer agents, *including the safeguarding of funds and securities, an evaluation of internal*

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*controls by an independent accountant, and extensive recordkeeping requirements.*⁵ These transfer agent regulations have been the subject of numerous Commission releases since 1975.

C. Regulation of DTC

At the same time that Congress authorized the Commission to regulate transfer agents, it also established mechanisms for the regulation of clearing organizations. DTC is a registered clearing agency that was formed in 1973. One of the primary functions of DTC was to create book-entry systems that eliminate the need for settlement of securities transactions through the transfer of paper stock certificates.

DTC is an SRO, subject to the requirements of Section 19 of the Exchange Act; and, as a clearing agency it is required by Section 17A to facilitate the “prompt and accurate clearance and settlement of securities transactions” and to adopt rules “to safeguard securities and funds in its custody or control or for which it is responsible”. It also was intended by Congress that “the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs”. These requirements relate both to the development of rules, as well as the “equitable allocation of reasonable dues, fees, and other charges among its participants”. In addition, they permit the clearing agency to establish rules governing the conduct of its members; including disciplinary procedures for the imposition of fines and suspension or termination of access by its participants.

3. DTC is Not the Self-Regulatory Organization for Transfer Agents.

Although DTC is a self-regulatory organization, it is not the self-regulatory organization of transfer agents or issuers. By statute and function, DTC’s members are broker-dealers and banks. Congress chose not to create a self-regulatory organization for transfer agents as it did for broker-dealers. Like issuers, transfer agents’ relationship to DTC primarily is commercial.

The full procedural safeguards that exist in the current SRO system are not available to transfer agents. SROs, like FINRA, are governed by their members who provide pragmatic regulation and discipline reflecting their own ethical and operational standards, but subject to oversight by the Commission. However, while transfer agents may become “limited participants” of DTC, they are not part of the organic structure of the DTC: they do not have full representation and voting rights within the organization - rulemaking proposals are generated, and fees are proposed, almost entirely without the involvement of the transfer agent community prior to their publication with the Commission.

⁵ Exchange Act Rule 17Ad-12, for example, that requires transfer agents to have controls in place to protect against the loss, theft, or misuse of customer funds and securities.

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In addition, and importantly, transfer agents would not appear to have full redress in the event that DTC determines arbitrarily to terminate their access to the FAST system or DRS as a result of losing their status as a “limited participant”. This aspect of the DTC proposal is of particular concern. Broker-dealers, for example, may be subject to discipline, termination, or disqualification from membership in FINRA as a result of violating FINRA rules, or becoming subject to a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act. However, they are subject to an adjudicatory process and entitled to review by councils or committees comprised of *other broker-dealers* – as well as non-members. They may also then appeal the decision by FINRA to the Commission itself, and to the federal courts.

Under DTC’s rules, the termination standards for transfer agents would appear to be far more subjective. For example, DTC may terminate a participant because its Board, or a committee, simply has “reasonable grounds to believe” that the participant, or any person associated with it, has caused a violation of the Exchange Act or some other provision of law.⁶ In the case of transfer agents who are limited participants, appeal rights may be after the fact and may be to panels or committees that may or may not include any representatives of the transfer agent industry.

Even though DTC is not the SRO for transfer agents, it also has requested that it be provided with access to Commission examination reports, accounting reviews, and the ability to inspect the premises of transfer agents for limited purposes.⁷ As the Commission has recognized, examination reports are considered to be highly confidential. DTC, however, has not indicated how it would use any of the information; and it is not clear whether or not it would seek to use the “soft” information it obtains to arbitrarily terminate its relationship with a transfer agent who is a limited participant.

We are concerned that even transfer agents who are fully compliant with Commission’s own transfer agent regulations, or as commonly the case have minor compliance deficiencies, might be terminated by DTC and effectively prevented from conducting business without the protection of the primary procedural safeguards typically available to SRO members, or that are associated with an administrative action by the Commission.⁸ A “reasonable ground to believe” standard is very

⁶ See, DTC Rule 10, Discretionary Terminations.

⁷ This information may or may not be relevant to compliance with any DTC standards. We note that in many cases the deficiencies identified by the Commission staff in such letters may not be significant, are easily corrected, or may be the result of miscommunications or misunderstandings. In addition, firms may in good faith disagree with the examination staff on an interpretation of the law. For this reason, firms have the ability to respond to deficiency letters. In most instances, they do not result in enforcement action by the Commission. It also should not be necessary for DTC to develop an inspection staff to assure compliance with its requirements by transfer agents that are not its members, and which may extend to rules and regulations other than those adopted by DTC.

⁸ We have not fully explored the redress that transfer agents might follow, which may include rare denial of access proceedings brought before the Commission, or actions in state court. However, the withdrawal of access to DTC’s systems is a significant commercial punishment that would severely damage the business operations of most transfer

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subjective and should not be sufficient for DTC to force a transfer agent who is a “limited participant” in DTC to shutter its business operations. Even if the transfer agent prevails in an appeal to DTC or the Commission, the damage to its business that could result if DTC withdraws access to its systems may be irreparable.

3. DTC Should Not Set Regulatory Standards for Transfer Agents

We are concerned that the Proposed Rules encompass fundamental areas of transfer agent regulation, including operational and financial requirements, and effectively establish new industry-wide baselines for transfer agents.⁹ As numerous commenters have noted, standards that require minimum insurance coverage, dictate requirements to safeguard certificates, mandate shareholder communication (including “advices” or confirmations), force transfer agents to provide inspection and examination reports, permit DTC inspections, and require access to independent audit information, among other requirements, each delve deeply into core transfer agent operational requirements.

Because of the breadth of their application, these proposals do not complement existing federal standards; they establish new minimum standards of operation for the transfer agent industry. The Proposed Rules also encroach upon areas of transfer agent regulation that historically have been considered or addressed by Commission in the context of its own rulemaking authority, in the Commission exemptive process, or in staff no-action letters. As one minor example, among many, the “transaction advices” that DTC would require transfer agents to provide shareholders who participate in DRS programs are directly analogous to the very specific transaction confirmation requirements that both bank regulators and the Commission require transfer agents who offer dividend reinvestment plans to provide shareholders.

When the Commission has not chosen to consider or affirmatively address an area through rulemaking, an SRO may seek to adopt its own standards. For example, DTC’s proposed bonding requirements are similar to those bonding requirements imposed on broker-dealers by their SRO – FINRA (and formerly the NYSE). However, transfer agents primarily have a commercial relationship with DTC, which is a vendor of services. They are distinct from the broker-dealers who are members of FINRA, because DTC is not their SRO.¹⁰ In another analogous example, it

agents. Without ever taking formal action, we are concerned that DTC would have the ability to coerce changes within transfer agents, which may or may not be related to its own rules.

⁹ We note that the exchange listing standards also have traditionally required issuers to use independent transfer agents that meet minimum capital standards. However, these exchange requirements are not imposed directly on the transfer agent, do not involve exchange inspections of transfer agents, and do not approach the same level of intrusion into core transfer agent functions as the Proposed Rules.

¹⁰ DTC itself notes this distinction when it states that the basis for the participation requirements is for the “protection of its participants” – brokers and banks - not the issuers or transfer agents affected.

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was the Commission itself that in recent years published for comment a proposal to establish minimum fidelity bonding requirements for registered investment advisers - which also are not members of an SRO.¹¹ If the Commission believes that there is a need to refine current transfer agent requirements for safeguarding shareholders funds and securities then it, and not DTC, should propose new industry-wide standards.

Even if DTC were the appropriate entity to propose regulations for the transfer agent community, there is no evidence that its Proposed Rules seek to address new transfer agent practices that are fraught with a danger unique to an electronic linkage with DTC, and which are not already covered by the Commission's existing rules. Its FAST program, for example, has operated for over 30 years under the Commission's rules for transfer agents, without the need for the additional requirements that it now seeks to impose. Under existing Commission rules, transfer agents already must adopt procedures designed to prevent theft and assure the safekeeping of funds and securities, and must have those procedures examined by an independent accounting firm each year. Moreover, market discipline in the form of issuer requirements and the potential for liability provide commercial incentives for transfer agents to remain highly vigilant in developing safeguards. DTC's proposed new rules are not necessary to maintain the integrity of transfer agent operations.

4. The Commission Should Propose Modern Transfer Agent Regulations

The STA has noted in its prior letters that although it objects to the Proposed Rules, it does not object to reasonable regulation of the activities of transfer agents. The Commission staff has spoken for almost five years about proposals that exist in draft form which would seek to modernize transfer agent regulation. It is our understanding, based on numerous discussions with the Commission staff, that these proposals have been drafted and are awaiting Commission review prior to publication for comment.

The Commission's proposals are necessary to address the evolution of the securities markets and transfer agents. Among other things, we believe that these Commission proposals also may tackle some issues that are similar to, if not the same as, those raised by DTC's Proposed Rules. We urge the Commission to consider delaying approval of the Proposed Rules and to seek comment from the transfer agent industry in the context of its own rulemaking. These proposals are long overdue.

¹¹ See, e.g., Investment Advisers Act of 1940, Release 2107 (Feb. 5, 2003):

Should advisers be required to obtain a fidelity bond from a reputable insurance company? If so, should some advisers be excluded? Alternatively, should advisers be required to maintain a certain amount of capital that could be the source of compensation for clients? What amount of capital would be adequate? (footnotes omitted).

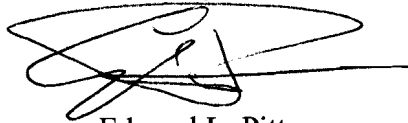
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5. Conclusion

We recognize that that the Proposed Rules have been moderated by DTC in some respects as a result of the comment process. While the STA still has concerns with particular provisions of the Proposed Rules, our fundamental objection is that they seek to establish minimum operational standards for a large segment of the transfer agent industry, and empower DTC to engage in activities that should be regulated directly by the Commission. DTC is not the SRO for transfer agents.

We encourage the Commission to act promptly to publish for comment its own rule amendments to modernize the current transfer agent regulations. We believe that this is the appropriate format to establish industry-wide regulatory standards for transfer agents. We look forward to working with the Commission and its staff, and invite you to contact either Charlie V. Rossi, President of the STA, or myself with any questions concerning this letter.

Sincerely,



Edward L. Pittman

cc: Erik R. Sirri
Robert L.D. Colby
James A. Brigagliano
Jerry W. Carpenter
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