Registrar and Transfer Company

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June 19, 2007

Ms. 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. 34-55816, File No. SR-DTC-2006-16, Notice of Filing of Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents

Dear Ms. Morris:

Registrar and Transfer Company ("R&T") appreciates the opportunity to comment on the proposed DTC Rule Changes referenced above. R&T is a member of the Securities Transfer Association ("STA") and has been a transfer agent since 1899. R&T acts as agent for more than 900,000 open registered shareholder accounts in more than 1,600 CUSIPs. In the capacity as transfer agent, R&T has participated in the DTC FAST program since 1977, was active in the DRS Ad Hoc Committee and currently participates in the DRS program for a limited number of issues.

Overall Concerns

We are supportive of the effort to update the FAST and DRS agent criteria, but must state our serious concerns regarding the appropriateness of many provisions of the Proposed Rule and note the added responsibility instilled within the Commission by the current business configuration. In condoning the merger of competitive Depositories into a monopoly in the interest of efficiency, the Commission generated an added responsibility to ensure that the remaining Depository acts responsibly in regards to potential anti-competitive or abusive business issues. The Depository mission is to reduce risk while improving efficiency in the market clearing and settlement functions on behalf of its members, the brokers and custodian banks that are Participants. Services provided to Participants are provided services at fees that are carefully set against measured production costs. Income in excess of expenses is rebated by the Depository to the

Participants. The Depository has stated that it rebated more than $60 million to the Participants in 2006. Thus, efficiencies gained in providing services benefits the Participants and any excess income to the Depository becomes income to owners of the Depository, the Participants.

In preparing these revised Rules, the Depository seeks to mandate additional service requirements on transfer agents, who, for the most part, are not Participants and are not members of the DTC Self Regulatory Organization. In addition to defining transfer agents as custodians, a new definition under the FAST and DRS programs, the Depository has included a provision that would effectively eliminate the ability for transfer agents to charge for the myriad of services provided exclusively to the Depository. These services benefit the Participants and the Depository by reducing their operating overhead at the cost of the service provider, the transfer agent. Transfer agents are forced to provide services by the almost-concurrent Exchange rule changes that mandate DRS and, consequently FAST, services. These rules have forced transfer agents to provide extraordinary services that benefit the Depository and the Participants, while prohibiting the charging of fair and appropriate fees.

Since the Depository is a monopoly, transfer agents have no alternative but to provide these services, whether reasonable or not, if they wish to remain in business for Exchange-listed issues. The increased costs to transfer agents without the ability to recoup these costs will, contrary to the blanket statement issued in the Proposed Rules, have a definite anti-competitive effect, particularly on smaller and mid-size transfer agents and issuers and will adversely affect all transfer agents. This will undoubtedly result in the elimination of a large number of smaller agents and, in fact, has already resulted in some consolidation within the industry.

We believe that the Commission, while fostering a consolidation of depositories in the interest of creating a more efficient market, also has a responsibility to prevent the results of this consolidation from becoming an abusive business entity.

SPECIFIC COMMENTS

DTC Defined Custodial Relationship

The Proposed Rules defines and assumes that the FAST relationship between transfer agents and DTC as one of the transfer agent being a custodian for the Depository. The Proposed Rules relies on the concept of custody in several places. A custodian, as the term is commonly understood in financial services, is typically a financial institution, a bank or trust company, that holds securities or other financial assets on behalf of its customers. DTC maintains that transfer agents are custodians for DTC and that DTC has standing, as a customer of transfer agents, to dictate contractual obligations of transfer agents. This is an invalid premise. Transfer agents cannot be custodians for DTC for a number of technical reasons.

Issuer Control of Records: Transfer agents do not have control over the continued maintenance of the security positions of DTC that is normally required in a custodial relationship. Under a custodial relationship, the custodian maintains control over the securities asset unless directed to deliver it by the party entering into the custodial agreement. However, within the constraints of the FAST program, the transfer agent does not have the essential control element that is the very basis of a custodial relationship. The issuer of the securities has the unilateral ability to appoint a successor transfer agent as it deems appropriate. When this occurs, the transfer agent cedes the record keeping responsibility and provides the shareholder register to the successor transfer agent. The initial transfer agent, at this point, has lost control of the records that relate to ownership of the security, the book-entry account maintained in the name of CEDE & CO on behalf of the Depository. If DTC were the customer and these securities were truly held in custody, then only DTC could direct the release of these assets to a successor custodian.

Security Registration: When securities are held in a registered custodial account, the standard securities registration reflects the legal relationship between the owner and the custodian. If a custodial relationship existed, then the securities registration would reflect this relationship; e.g. Transfer Agent Name as custodian for CEDE & CO. This is not the case with the FAST program. Transfer agents maintain a book-entry account as a registered shareholder, directly registered in the nominee name of the Depository, CEDE & CO. CEDE & CO gains the same rights and recognition as any other registered shareholder. For example, it is CEDE & CO that has the right to vote or grant legal proxies for the securities position when an issuer declares a record date for a shareholder meeting. If this were a custodial relationship, then the custodian, the transfer agent, would have this right and be required to grant a legal proxy to CEDE & CO.

The transfer agent is appointed as agent for the issuer, and as such, takes the place of the issuer as record keeper of the stockholders of the issuer. When the issuer permits certificate and book-entry ownership, the transfer agent maintains the books and records of the issuer's stockholders showing the ownership position of all of the registered owners of the issuer's stock. Thus, the Depository, along with all other registered stockholders having book-entry positions, enjoys the same relationship with the issuer, that of being a registered stockholder. Their positions may be certified by the transfer agent, and this certification carries the weight and authority of the issuer based upon the contractual appointment of the transfer agent by the issuer.

Transfer agents, thus, are record keepers; they do not "hold" securities as custodians. Their vaults generally contain only blank or cancelled stock certificates; certificates reflecting actual ("live") securities are held by the shareholder. In the case of DTC's position held under its FAST system, there is no certificate except in the most nominal sense - a legended certificate referencing on the transfer agent's system as the number of shares held by DTC. The Balance Certificate does not have any separate value distinct from the transfer agent's records – records that the transfer agent provides a certification to in the daily FAST balancing process. The number of shares represented by that certificate changes daily in only one place: the systems of the transfer agent reflecting the issuer's registrar of registered shareholders.

The ability to provide separate custodial services may also be restricted by state laws to banking or financial institutions. Most transfer agents, including R&T, are not banks or trust companies. Transfer agents are not required by the SEC to be registered as a financial institution in order to be a transfer agent for a listed security. Requiring FAST agents to act as custodians for DTC will have anti-competitive consequences by forcing non-bank/trust company agents out of business or to incur significant ongoing expense in registering as a trust entity.

Therefore, the founding premise that the Depository is entering into a custodial relationship and, by that relationship, has the right and obligation to dictate certain processes is, by its basis, deeply flawed.

Inappropriate Balance Certificate Conditions

The FAST Balance Certificate Agreement provided in the Proposed Rule changes is almost the same as the Agreement entered into between R&T and the Depository in 1977. Rather than updating the process to reflect the advent of book-entry ownership created under the DRS model, the Proposed Rules are anachronistically perpetuating the system developed in the 1970s. Requiring transfer agents to maintain and update a ***physical*** Balance Certificate for each FAST position creates unnecessary and costly labor requirements and physical exposure of loss or destruction of the Balance Certificate. Further, having a physical certificate does not enhance the ownership rights and claims for DTC. Having a physical Balance Certificate held by a transfer agent does not provide a material argument for ownership rights by DTC. The daily balance certification provided by transfer agents, as agent for the issuer, gives DTC the position to argue for ownership rights of that position. Adverse claims can be lodged as easily against book positions as against certificated positions.

The outdated approach requiring a physical certificate to emulate a custodial responsibility is superfluous and of no benefit to either party. The Rule Change should not be accepted as submitted with the requirement to hold in safekeeping physical Balance Certificates. If it is, then transfer agents should be able to assess a reasonable fee for this service as there are no other registered shareholders that enjoy this "safekeeping" arrangement. Even the Depository, when it holds securities registered in the name of its customers' clients in safekeeping, will charge for this service. Therefore, if holding physical Balance Certificates envisioned under these Rule Changes is permitted, transfer agents should be then able to extract a service fee that is at least comparable, at a minimum, to the service fee charged by other entities, including the Depository, for safekeeping.

Problematic Proposed Insurance Requirements

The insurance deductible amounts, inclusion of DTC as a named party and insurance renewal notification requirements contained in the Proposed Rule Changes, present conditions that may not be feasible and clearly are inadequately researched in preparation of the Rule filing. If the Rule Change is accepted in the form presented, there will undoubtedly be failures by numerous transfer agents to conform with the Rules as written. The Depository Proposed Rules also includes the authority for the Depository to waive aspects of these insurance requirements to meet extenuating circumstances. Since the Depository is a monopoly, this waiver authority has the unintended result of granting the Depository the inappropriate authority to extract other services and business concessions from transfer agents.

DTC does not provide any justification supported by actual loss history experience nor do the proposed Rules contemplate any quantified allowance for asset levels of the transfer agent. Leaving the granting of waivers to the insurance rules contained in the Proposed Rule filing to the subjective judgment of the Depository without quantitative parameters should not be permitted.

Errors and Omissions Deductible: The Proposed Rules require a deductible of $25,000 on a policy limit of $1,000,000. This exceedingly low deductible may not even be possible, as the primary issuer of transfer agent insurance has ceased writing E&O policies for smaller agents and has ceased issuing new policies with the low deductibles. R&T has a $100,000 deductible, which it already deems as excessively low relative to the needs of the business for protection. The proposed insurance levels, coupled with exceedingly low deductibles, do not take into consideration the asset size of the transfer agent and the associated issuers. DTC is attempting to eliminate virtually all risk through costly insurance at the expense of transfer agents without permitting transfer agents to have reasonable levels of self-insurance (higher deductibles), backed by the ultimate party responsible for the transfer agent's actions, the issuer.

The Proposed Rules fail to recognize the agency relationship that exists between the issuer and transfer agent. Transfer agents act on behalf of and for the issuer in maintaining records that are the property of the issuer. Errors and omissions of the transfer agent are ultimately the responsibility of the issuer as owner of these records. While transfer agents typically indemnify issuers for errors relating to the performance of duties as a transfer agent, the failure of a transfer agent to be able to withstand losses results, ultimately, in the issuer being held responsible. Thus, there is no demonstrated need for excessive insurance.

Mail Loss Insurance: The reduction in physical certificates also makes it difficult to understand why DTC is attempting to impose significant mail insurance requirements. Moreover, mail loss insurance is of no legitimate interest to DTC since the very nature of the FAST program is that all the securities registered to DTC would be reflected in a balance certificate, the legended certificate kept by the transfer agent, which is never mailed anywhere.

Unheard of Loss Payee Provisions: The Proposed Rules mandate that DTC be named as an additional insured or a "loss payee" on mail insurance or in other policies. This is not standard insurance industry practice within the securities industry, but is more common in other insurance venues. Adding this language is a change in the securities insurance industry that may or may not be possible to achieve. Insurance carriers do not want to be in a position to have to arbitrate losses regarding multiple parties. This may impinge on the ability of some or all transfer agents to obtain insurance, creating a potentially anti-competitive environment by placing smaller transfer agents at risk for being arbitrarily denied a waiver by the Depository. Also, should the "named loss payee" be included, it would provide DTC with an inappropriate advantage in disputed insurance claims over other registered shareholders.

Policy Renewal Mechanics: In recent years, transfer agent insurance has become less available and the renewal process longer. Often, renewals are received at the last minute prior to the expiration of the current insurance term because of the process that the insurance underwriter conducts. Underwriters stall the process until the expiration is near, probably to better assess industry conditions and other economic factors. The renewal timing requirements present another situation that could enable DTC to disqualify a transfer agent or threaten such actions without the transfer agent having alternatives. R&T starts the renewal process three or four months in advance and, despite our best efforts, we usually do not receive policy renewals until just before a policy expires despite sound operations and finances.

We support requiring insurance levels for transfer agents. However, it is inappropriate for the Depository to be the entity setting such levels. In the past, the New York Stock Exchange set levels for their customers, the issuers, to require of their transfer agents. The Commission, as the agency charged with regulating transfer agents, has also discussed setting insurance parameters. The problem with having the Depository set such levels is that the Depository is a monopoly, that has maintained that it does not have a fee-bearing customer relationship with transfer agents and has not aligned risk with insurance needs. The end conclusion is that the Depository has clearly not performed sufficient due diligence on the existing insurance environment for transfer agents.

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Questionable Audit Requirements

The Proposal would require transfer agents to provide a report from an external Certified Public Accountant, certifying compliance with DTC agreements, Commission regulatory requirements concerning business continuity planning, and attesting to the soundness of the transfer agent's controls (in the form of a SSAE-10 or SAS-70 report). These reports would be in addition to the independent accountant's audit of internal controls already required by Rule 17Ad-13 of the Securities Exchange Act of 1934. These additional audit report requirements would be superfluous and would introduce substantial additional expense.

R&T is unsure whether any accounting firm is willing to undertake performing such an examination and providing a report meeting the requirements outlined. The cost of these examinations may be excessive and will likely create an undue burden on R&T as a mid-sized transfer agent. This, in turn, will have a deleterious effect on the abilities of R&T to compete in the marketplace.

The Commission, as the regulatory authority for transfer agents, performs examinations and requires a specific audit report performed by an external auditor under its rules. The SEC is the appropriate regulatory agency to oversee registered transfer agents. It performs examinations and these include a review of the practices of transfer agents in relation to the safety and security of securities and records. These requirements are already in place and should be sufficient to satisfy any of DTC's stated concerns.

Inappropriate Service Without Compensation Provisions

The Proposed Rules prohibit transfer agents from charging DTC fees that are not contractually agreed to by the issuer and charged to issuers' other registered shareholders for whom the transfer agent provides the same services. While appearing merely to request parity with other securityholders, this language bans any compensation for the myriad of specialized services demanded by DTC and brokers such as the daily certification of share balances and DRS processing. These services are unique to DTC and are not provided to other shareholders.

Monopolistic Concerns: The Proposal, taken in conjunction with the recent Stock Exchange rule changes mandating DRS, gives DTC the ability to require transfer agents to provide services for its benefit and the benefit of the brokerage industry without any compensation. If DTC refuses to pay transfer agents' fees for services rendered, transfer agents should be entitled to refuse to provide the services. However, because of the Exchange rule changes mandating DRS and the fact that the Depository enjoys a monopoly, transfer agents are forced, under the Proposed Rule, to provide services without compensation. While it may be argued that transfer agents should simply pass these costs along to issuers, the reality is that issuers and transfer agents should not be forced to pay for services requested by third parties, either DTC or other registered shareholders. Fee setting and waiving is a problem of Gordian proportions, but the solution is not a one-sided, "thou shall not charge fees".

Anti-Competitive Implications: Smaller transfer agents have a business model predicated by the needs of smaller companies. These agents charge the transferee, the party requesting the service, fees for the service, rather than charging the issuer. The movement of a book position through the DRS system to a brokerage account is a transfer that benefits both the shareholder and the broker. The issuer should not be required to subsidize transaction processing in the secondary market. This is akin to requiring the issuer cover all brokerage fees and commissions now charged to shareholders in secondary market transactions. This is a classic example of double-standards – DTC charges certificate and transactional fees yet prohibits transactional and certificate fees from being charged by transfer agents providing the service. Smaller issuers and agents cannot and should not be forced to pay for services requested by third parties, either DTC or other registered shareholders, because it creates an anti-competitive business environment. To do so threatens the ability of these issuers and transfer agents to continue in business.

The service provisions of the FAST operation criteria, such as the daily balancing and certification of positions, generate substantial costs. Smaller issuers and transfer agents should not be required to absorb expenses for services that benefit the brokerage community and its vendor, DTC. Small issuers with limited budgets have historically utilized small transfer agents to manage their costs. In many cases, they have adopted a certificate fee model where the issuer pays reduced fees to the transfer agent, and shareholders pay for transactions as needed. However, the effect of DTC's rule filing concerning mandated DTC FAST/DRS services for all Exchange-traded issues would be to prohibit such certificate fee arrangements and potentially force many small transfer agents that utilize such billing methodologies out of business.

Inconsistent Positions Within the Proposed Rules: Imposing custodial business requirements (*e.g.*, insurance deductibles and limits, the weight and fire-rating of safes, or the safekeeping of certificates, confirming daily balances, etc.) is inconsistent with the provisions barring the charging of fees not charged other registered shareholders. If a custodial or safe keeping service relationship exists, then it would be unique to DTC as a registered shareholder and service fees for custodial services would be appropriate. Even without custodial service, providing daily book-entry balance confirmations for each CUSIP is a special service that is not performed for other registered shareholders and service fees would be appropriate. DTC, under the Proposed Rules, should not be allowed to prohibit or dictate fees.

Inappropriate Open-Ended Provisions

The Proposed Rules also contemplate DTC developing and mandating additional enhanced service requirements without compensation at its sole discretion (e.g. Net Working for Equities, a safekeeping service replacement, has already been renamed "DRS Plus" in what appears to be an effort to make this enhancement appear to be part of on-going DRS development. It is not.). If other than mechanical changes are made to the DRS process, the changes should be subject to the same rule-making requirements that spawned these Proposed Rules. Approving an ambiguous provision that empowers the Depository to create new services and responsibilities on transfer agents under the guise of enhancements to the DRS system is a clear attempt to circumvent the checks and balances provided by the Commission and the Rule-Making process.

Regulating Other Registered Shareholders

Requirement to Generate Account Statements: The Proposed Rules would require transfer agents to send "a transfer advice or statement to shareholders within three (3) business days of each DRS account transaction that affects the shareholder's position or more often as required by the Commission's regulations." DTC has no authority to mandate notifications to all

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shareholders with DRS shareholdings. This authority lies solely with the Commission or within state commercial statutes. DTC does not have any direct involvement in book-entry transfers between or among other registered shareholders. Since DTC has no regulatory authority over transfer agents, it is inappropriate for DTC to mandate services to other registered shareholders in any context.

Inconsistent Standard of Care

The Proposed Rules 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 absolve DTC from responsibility for its own errors. If a third party, *e.g.*, a broker-dealer, were to suffer a loss caused by an error at DTC in its interactions with a transfer agent, DTC's exculpatory language would, in almost all circumstances, force the broker-dealer to seek recovery from the transfer agent alone. There is no purpose that would be served in absolving parties of responsibility for their own errors. Further, in other areas of the operating criteria, transfer agents are absolved for acts other than by their negligence, omitting the "gross" standard. The double-standard in negligence level should not be permitted in the Rule Filing.

Failure to Satisfy the Regulatory Flexibility Act of 1980

One of the main goals of the Regulatory Flexibility Act of 1980 (the "RFA") is to ensure that small businesses are given due consideration when agencies promulgate regulations. There is no evidence that any assessment has been done by DTC to examine the economic impact to small transfer agents or small issuers to ensure compliance with the requirements of the RFA. We urge the Commission to perform such an examination in its review of the Proposal.

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Conclusion

The Proposed Rule filing is needed, but is deeply flawed by a one-sided approach. The Rules were not developed in a collaborative effort to improve the industry, reduce risk and foster the development of additional services and efficiencies. These Rules, as submitted, have the opposite effect of driving a wedge between the forces that would seek to improve the DRS process and expand services to enhance efficiencies in the marketplace. While an updating of the FAST and DRS criteria is needed, it is not needed so badly as to warrant such egregiously one-sided Rules that stifles competition and creates an unfair business environment. We ask that the Commission to shelve the entire Rule Change request and host collaborative discussions to develop appropriate Rules.

Sincerely,

Thomas L. Montrone