STOCKTRANS

June 21, 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 Requirements for Transfer Agents.

Dear Ms. Morris:

This letter is in response to the request for comments by the U.S. Securities and Exchange Commission (the "Commission") on the proposed rule changes filed by Depository Trust Corporation (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). As the Commission engages in its review of the proposal, we ask that it consider specifically the issues we raise herein.

Significantly, the recent United States Supreme Court ruling in **Credit Suisse Securities LLC v. Billing et al** has placed an additional weighty imperative on the shoulders of the Commission, appointing the Commission as the sole guardian against anti-trust and monopolistic practices and behavior in the securities industry. As a result of this decision, the Commission stands alone as the defender of investors, small transfer agents and small public companies against unfair competition and unnecessary expenses foisted upon them by any monopolistic securities industry enterprise. As the Supreme Court said in its opinion **"Finally, the SEC is itself required to take account of competitive considerations when it creates securities-related policy and embodies it in rules and regulations"** and **"See 15 U. S. C. §77b(b) (instructing the SEC to consider, "in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation"); §78w(a)(2) (the SEC "shall consider among other matters the impact any such rule or regulation would have on competition"); Trinko, 540 U. S., at 412 ("The additional benefit to competition provided by antitrust enforcement will tend to be small" *where other laws and regulatory structures are "designed to deter and remedy anticompetitive harm"*)**(italics added.) We are confident that the Commission will not shirk from this duty, but, rather, recognize and pursue vigorously this new charge.

StockTrans, Inc. is a Commission registered securities transfer agent that has specialized principally in serving small to mid-cap public companies for 35 years. We currently serve as transfer agent for approximately 150 publicly owned corporations that have, collectively, approximately 90,000 active shareholders of record and approximately 500,000 beneficial shareholders. StockTrans, Inc. has been a DTC FAST agent for years and currently has about 46 issues in the FAST system.

During our long history in the stock transfer industry, we have witnessed the inexorable movement of Depository Trust Company ("DTC") into a position of having unfettered control of the entire clearing and depository functions for virtually all United States publicly traded securities. Over the past 35 years, competing depositories across the United States (located in the Mid-Atlantic, New England , West Coast and Mid-West regions) were, with little or no apparent consideration of potential anti-competitive results, allowed by the Commission to be swallowed up by DTC, leaving DTC as the sole depository in the U.S., i.e., as a monopoly. Not surprisingly, DTC has, and continues increasingly, to conduct its business as the monopoly that it is. What is surprising is the seeming acquiescence to these policies by the Commission.

The current rule change filing by DTC abandons any remaining pretense DTC had fostered regarding who has the authority and responsibility to regulate securities transfer agents, and the processing of the transfers of share ownership of U.S. public corporations between buyers and sellers. Clearly, the Congress of the United States has specifically and solely assigned that responsibility and authority to the Commission, yet, if DTC's rule changes are approved, the Commission will have abdicated its appointed duties in this arena.

In general, we question the concept that DTC has the right to usurp the Commission's authority in regulating securities transfer agents. We do not believe there exists any legislative authority permitting the Commission to turn over this responsibility to a commercial enterprise that, by its own charter and history, is a competitor to the very transfer agents it seeks to regulate. In fact, we believe that DTC has been acting, and continues to act in an *ultra vires* manner with impunity.

More specifically, we have the following objections to these DTC proposals in the rule change filing:

I) DTC's unilateral declaration that to be DRS eligible, an issue must be in DTC's FAST system:

a) We, and most other transfer agents of all sizes support, both in word and action, eliminating inefficiencies in securities processing, *where it is necessary.* Transfer agents have played a critical role in designing and implementing the FAST system as it stands today, and support the expansion of DRS, as evidenced by the number of issues transfer agents have placed into the FAST system. However, we also recognize that there are several circumstances under which FAST and DRS are not the "be all and end all" of processing, and can be of little or no benefit to issuers and/or their shareholders. For example, thinly-traded companies, issuers in a development or growth stage that are marshalling all their resources for corporate development and expansion, issuers that are attempting a turn-around after some financial setback, issuers with especially static and older shareholder bases, etc. Additionally, as shareholder activism increases, and the possibility of majority voting for all issues and the elimination of broker discretionary voting looms, companies are increasingly searching for ways to communicate faster and better with their shareholders. Universal implementation of FAST and DRS for all

exchange listed issues hinders that communication as it puts more and more shareholders multiple layers of institutions distant from their companies. We urge the Commission to approach this issue without wearing the blinders of "all book entry processing must be good, therefore, all processing must be book entry", because the potential disruption to shareholder voting in light of the growing urgency of direct shareholder communication could become the next big securities industry breakdown (it is important to note here that DRS system movement to date has been almost entirely from record holder to street name, compounding and accelerating the disruption in communication between investors and their issuers. There is absolutely no indication that this proportion will change).

The securities exchanges themselves emphasized that forcing issues and their shareholders into DRS was not their aim with their new DRS eligibility rules. After protracted and strenuous discussions, DTC acknowledged that the exchange rules specifically did ***not*** require listed issuers to participate in DTC's DRS program, rather, the issuers only had to have a FAST eligible transfer agent, leaving the choice to participate in DRS, as it should be, up to the issuer and its shareholders. (As an interesting side note, the language of the exchanges' rules should be pointed out here: "all securities listed…must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act", as if there actually *were* any direct registration programs run by anyone other than DTC.)

If an issuer chooses not to participate in DRS, which program is operated through DTC's FAST system, then, obviously, there is no need for that issuer to be in DTC's FAST program. Issuers, in our experience do not ask to become FAST, because there is no financial benefit to them or to their shareholders to do so; rather, it is always driven by a broker. And, despite the disinformation that has been propagated regarding lost, stolen or destroyed certificates as a major justification for sweeping all issues headlong into the FAST system, an informal survey of transfer agents serving the vast majority of issuers found that, rather than the 5% of all certificates *claimed* to fall in to those categories yearly, the number is actually about .05%.

There is one party, however, that does benefit from issuers becoming FAST, and perhaps not surprisingly, that party is DTC. When an issuer becomes FAST, DTC unilaterally refuses to pay anything but a pittance for any of the transactions that it, through its FAST system, initiates, nor will it pay for other services it demands from transfer agents as part of FAST processing. Of course, if DTC had not been allowed to become a monopoly in this commercial field, it could never enforce such unilateral actions. Therefore, it is no surprise that DTC, faced with the fact that the exchanges' rules did ***not*** require issuers to participate in DRS, declares in this Rule Change Filing, again unilaterally, and again, without authority, that all exchange listed issuers must be in the DTC FAST program.

In one motion, if this proposal is approved by the Commission, DTC will have swept thousands of issuers from the status under which DTC must actually *pay* for the services it demands, to the status under which DTC *refuses* to pay for those services. It certainly brings into question what the actual motivation behind DTC's urging the exchanges into passing DRS eligibility rules was (or, perhaps, it clarifies the question).

b) If DTC's declaration of authority over issuers is allowed to stand, through its demand that all exchange-listed issues must be DTC FAST, the economic impact upon many small transfer agents, and thousands of small issuers and their shareholders will be severely detrimental. For example, DTC does not permit FAST eligible agents to charge the parties benefitting from the transfer (i.e., the parties requesting the transfer) transfer fees, which is the business model for more than 100 Securities Transfer Association members and many non-members whose small issuer clients have chosen to manage their transfer expenses by having the benefitting shareholders pay for transfer activity. In addition, if an issue is forced into FAST, whether it chooses to be or not, DTC requires the transfer agent to balance daily DTC's position in that issue, and further, to chase down and try to correct any error made by the initiating party, which must be one of DTC's member/owners. Obviously, this takes personnel, systems, time and effort, *none* of which DTC is willing to pay for.

   We understand the huge financial benefit this system will provide to DTC and the brokers and institutions which own DTC; what we cannot fathom, and what we object to, is why the Commission would even consider passing these significant costs onto small issuers and their investors, flying in the face of the Commission's mandate from Congress to "facilitate capital formation". This can only serve to further weaken the U.S. Capital Markets, which have seen a significant reduction in the number of initial public offerings, and an increase in the number of companies going "private" or going to overseas markets, like London's AIM, to list there.

II) DTC's Proposed Audit Requirements :

a) "a report from an external certified public accountant"…"certifying that the transfer agent is complying with all of DTC's requirements relating to FAST agents including and without limitation to (a) those listed herein, (b) the Operational Criteria for FAST Transfer Agent Processing, (c) the Operational Agreement and (d) the Balance Certificate Agreement".

   i) DTC is a Self-Regulating Organization ("SRO") whose members are "full participants" in the DTC system, generally brokers, banks and other institutions. Transfer agents are not members of this SRO. SRO's have no authority to regulate non-members. This principle is especially important when the SRO is a commercial enterprise in a monopolistic position.

Transfer agents have always acted as an independent guardian between brokers, issuers and shareholders, protecting the rights of all three. This is demonstrated by the almost non-existent losses caused by transfer agent defalcation, especially when compared to that caused by broker's and issuer's malfeasance. Why then, and in spite of the self-evident rationale that SRO's can only regulate their own membership, would the Commission grant the authority to the brokers and institutions that comprise DTC to establish arbitrary and capricious regulations for transfer agents, and to compound this lapse by giving DTC's members the right to demand hugely expensive audits to attest to transfer agents' compliance with these regulations? The idea seems to be a perfect example of putting the fox in charge of the hen house. Perhaps there would be less financial loss to the investing public if transfer agents were given the authority to regulate DTC and its members.

ii) Concerning the particulars of DTC's audit requirements as listed above, the cost of meeting the proposed requirements for (b) and (c) will be extremely high and could easily put many small transfer agents out of business. "The Operational Criteria for FAST transfer Agent Processing" and "The Operational Agreement" are extremely complex and voluminous documents. Accountants are no more familiar with these highly specific rules, procedures and terms than they are with surgical procedural manuals. This means that each transfer agent would not only have to pay for the actual examination and certification, but they would have to pay for the extensive education of the accountant that would be required before the accountant could even consider the examination and certification. Our own accountant estimated that for our agency the total cost would be at least $30,000 to $40,000 the first year and approximately two-thirds of that for each subsequent year, if DTC were to make no changes in either of the above documents.

Since DTC is a monopoly operating in a commercial environment, is an SRO with no right to regulate non-members, and has demonstrated no greater security or protection for investors than transfer agents have, why would the Commission allow DTC to establish these requirements for transfer agents? If this were to occur, the Commission would be participating in actions that would surely put out of business many smaller transfer agents, would cause many workers to lose their jobs, and would force many small issuers to pay much higher prices for transfer services, and none of these results would stem from normal, level-playing field commercial operations.

b) The whole concept of the "Balance Certificate" is illogical on its face, let alone establishing audit requirements for the Balance Certificate Agreement. Since the ostensible reason for the DRS rule change proposals by DTC are to prepare for a certificate-less society, why in the world should DTC insist on transfer agents maintaining a physical certificate for each position DTC holds in each issue, and to cancel and issue a new certificate for each change in their position,

particularly since the certificate would never leave the agents' premises? The addition, then, of the requirement for a physical safe to hold these certificates is even more absurd, and requires no additional comment. What does deserve mentioning, though, is the fact that, as usual, DTC does not pay for the constant issuance and cancellation of these certificates and the concomitant recordkeeping.

III) DTC's Assertion that Transfer Agents should be Custodians of DTC's Positions:

a) There is no semblance between a true custodial relationship and the position of transfer agents vis a vis DTC regarding DTC's FAST securities positions:

1) There is no negotiated custodial agreement.
2) The transfer agents have no control over the movement of DTC's positions, they just approve the recording of transactions that have already occurred
3) The transfer agency can be terminated for various reasons and DTC's position will no longer be on the books of the transfer agent
4) The transfer agent is not being paid by DTC for any such custodianship.
5) DTC's position is no different than any other record holder's on the transfer agent's books
6) The transfer agent does not vote or exercise any other right of true custodianship regarding the DTC shares.
7) The entire purpose of FAST is to facilitate rapid and easy transferring of shares; any "Custodial Relationship" between DTC and transfer agents would put necessary legal impediments in the way of achieving that goal.

b) Given the above dissimilarities between the true nature of transfer agents' relationship with DTC and the purported custodial relationship, the obvious question becomes: "What is the purpose behind DTC's request to make transfer agents custodians of DTC's positions?"

The obvious answer is, to further shift to transfer agents the liability for DTC's massive control over the securities positions that DTC has so aggressively sought over the years since its inception.

IV) DTC's Proposal Seeking The Commissions' Approval to Invade the Privacy, Breach the Confidentiality and Compromise the Security of Transfer Agents:

a) "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, the transfer agent on an ongoing basis must provide DTC with notice of any alleged material

deficiencies documented by the Commission within 5 business days of the transfer agent being notified of such material deficiencies".

i) The Commission has always respected and protected the privacy and confidentiality of examination reports, and has, rightfully, reserved to itself the communications with transfer agents aimed at improving transfer agents' performance. Unless the Commission feels that DTC can do a better job than the Commission can in fulfilling its mandated responsibility to regulate transfer agents, there is no reason to allow DTC access to these confidential reports.

b) "The transfer agent must provide on an annual basis to DTC within ten (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."

i) The purposes of the accountants' report required under Exchange ACT Rule 17Ad-13 are two-fold. First, to foster the transfer agent's controls and security procedures, and second, to alert the Commission to any deficiencies in those controls and procedures. These reports are confidential and generally restricted by the accountant to the use of the agent and the Commission only. Again, DTC is being presumptive in asking for these reports and in the implication that the Commission is incapable of fulfilling its mandated responsibilities.

c) "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"

i) Transfer agents must maintain highly restricted access to their premises, as evidenced by the finger-printing requirements of all employees with access to certificates. Transfer agents will have no way of knowing who these purported DTC representatives are, what their authority is, or whether they have passed finger-printing requirements. Additionally, transfer agents keep their books and records both physically and password protected and should not have to breach these security measures by allowing unknown persons into physical and electronic areas. DTC has demonstrated no need for these "inspections", particularly since DTC requires that its positions be balanced on the FAST system every day.

V) DTC's Proposed Insurance Requirements for Transfer Agents:

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 Commission."

b) "$25 million with a deductible of no more than $100,000 for a transfer agent with over 25,000 transfer transactions per year as reported to the Commission."

"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 must show evidence of the policy on applying for FAST status and (ii) have a "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"

i) Insurance required by DTC for transfer agent participation in the FAST system should be reduced, not increased, as a result of increased participation in DRS. Obviously, the fewer physical certificates in existence and the reduction in movement of said certificates, the lesser chance there is for counterfeiting, theft and loss.

ii) DTC has not shown there is a need for such insurance requirements by demonstrating uninsured losses to shareholders or issuers caused by transfer agents negligence or malfeasance.

VI) Self-Regulatory Organization's Statement on Burden on Competition :

a) "DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act."

i) We cannot believe that such a statement can be anything but disingenuous. It is self-evident that DTC's proposed rules will place a substantial deleterious burden on competition in the transfer agency industry.

Nevertheless, for clarity's sake, we list the following parts of the Rule Change Proposal that will be harmful to competition within the transfer industry and/or which will serve to solidify DTC's position as a monopoly and foster its continuing, and, in our opinion, dangerous accumulation of control over the securities transfer processing and clearing functions in the United States:

(1) The self-serving proposal to force all exchange-listed issues into the FAST system, resulting in substantially increased costs to transfer agents, issuers and shareholders, while decreasing DTC's cost for the services it demands. Additionally, this proposal, if approved by the Commission, will strengthen the strangle hold DTC has on securities clearing and processing in the U.S.

(2) The requirement for expensive high levels of insurance and low levels of deductibles, without evidencing the need for such costly impositions, which will be especially burdensome for smaller transfer agents, if such insurance is available at all.

(3) Imposing extensive audit requirements , again, without proving the need for such, without considering the huge costs for such, without offering to contribute to these costs, and without any authority whatsoever to impose such costs on DTC's transfer agent competitors.

(4) Proposing a substantially *decreased* standard of care for themselves, absolving 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." Since all FAST transactions are initiated by DTC's own members, DTC is audaciously trying to pass its obvious liability for its members' mistakes onto transfer agents, who will be the only parties left to sue for any damages under this proposed new standard of *lack* of care on DTC's part.

(5) Requiring transfer agents to "Implement program changes related to DTC systems modifications within a reasonable time upon receiving notification from DTC of such modifications" and "Deliver transaction advices directly to investors…in a format and using functionality as specified by DTC from time to time…". Who is going to pay for these unspecified and unlimited program changes that DTC is asking for? What entity, other than a monopoly, would even have the effrontery to propose an open-ended and unlimited requirement to expend money, time and effort on computer programming and possibly hardware costs to its competitors?

(6) Reserving to itself, ***with no oversight and no required explanation,*** "the complete discretion to include or exclude any particular issue in the FAST program." and "If an agent is not compliant with these requirements… DTC shall have the right using its sole discretion to terminate or to continue the agent's status as a DRS Limited Participants."

In other words, DTC is trying to force all issues into FAST, except for the issues it doesn't feel like having in FAST. And, worse, it is threatening any and all transfer agents with expulsion from the FAST program, again without oversight or explanation. ***What could conceivably be more anti-competitive than DTC's complete and utter control over whether its competitor transfer agents can be in business or not?*** Clearly, any transfer agent that is expelled from, or not allowed to participate in, the FAST

> program will have its potential market of issuer clients shrunk to the point where most agents could not continue in business.

It is indisputable that Congress has specifically and solely given the Commission the authority to regulate transfer agents. The Commission has routinely instituted transfer agent regulations, and routinely audits compliance with those regulations for each and every Commission registered transfer agent. The Commission has indicated that it is working on updated transfer regulations. To devolve to DTC the Commission's authority to regulate transfer agents cannot stand up to scrutiny from any party except DTC.

Due mainly to the activities allowed only because of the monopoly position of DTC, the number of shares held in record form on the books of transfer agents has declined from approximately 70% in 1970 30% today. This means the vast majority of shareholder account records are now under the control of the broker-dealers and banks that own DTC. During this sea-change in favor of one competitor over all the others, both over-voting and short-selling scams have increased dramatically. Predictably, during one of the peaks of the short selling periods, a number of small issuers tried to withdraw from DTC eligibility to enforce delivery of short sales by requiring delivery of physical certificates. Initially, DTC allowed a few companies to withdraw, but, apparently, when it realized that continued movement in this direction would cost them revenue and control they quickly went to the Commission and asked for a rule making it illegal for transfer agents to transfer issues that are restricted from depository eligibility. The Commission acquiesced to DTC's request (see Exchange Act Rule 17Ad-20), reinforcing DTC's control of the processing and the payment for processing, or lack thereof, of securities transfers in the United States.

Issuers today, especially faced with more shareholder activism and the possible requirement of absolute majority votes for corporate issues to pass, are seeking to reach out to their shareholders and increase communication. This communication has become cumbersome, expensive and difficult to achieve because of the many layers of beneficial ownership that has been fostered by the huge growth in control over beneficial accounts that the Commission has allowed to accrue to DTC.

The new Rule Change Proposal by DTC, if approved by the Commission, will only increase the power DTC has over the entire investing public in the United States. As described above, it will have a strongly-anti-competitive effect on all transfer agents, and will endanger the very existence of hundreds of small transfer agents. It will also increase the cost of "being public" for small U.S. issuers, at the very time they are facing their most intense global competition.

Finally, there is absolutely no reason for the Commission to abdicate its congressionally mandated responsibilities and turn them over to a monopoly whose self-interest is evident in every sentence of the proposal. And, in light of the recent Supreme Court decision mentioned above, the Commissions' duty to police against and prevent anti-competitive behavior has become even more vital. We urge the Commission to refuse to approve DTC's totally unilateral proposal and, instead, promote the design and

implementation of true bi-partisan regulations *under the Commission's own aegis* as is its congressional mandate.

We appreciate this opportunity to comment on the 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. We welcome any questions that the Commission may have about the very troubling issues raised by DTC's filing.

Thank you for your consideration.

Sincerely,

Jonathan Miller
President
StockTrans, Inc.