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OFFICE OF THE SECRETARY

Vivian Lewis
35 Sutton Place
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Senator Charles E. Schumer
757 Third Avenue, suite 17-02
New York NY 10017

Cc: Nancy M. Morris, Secretary,
Securities and Exchange Commission,
100 F Street NE,
Washington DC 20549-1090.

Dear Senator Schumer,

Re: SR-DTC-2006-21 (release No. 34-55306)

I am writing to you as my Senator, and because you have joined with Mayor Bloomberg to try to enhance the competitiveness of New York's financial market. U.S. competitiveness will suffer from the SEC granting brokers the right to charge custody fees for American Depositary Receipts (ADRs). ADRs are how foreign shares trade in the U.S., for both Americans and by people from third countries, a Briton buying Brazilian shares for example.

To defend against the charge that it was imposing illegitimate fees on my account, *Fidelity Investment* has sent documentation on the SEC's authorization of ADR custody fees by the *Depository Trust Co.* (DTC). The DTC the SEC considers to be a "self-regulatory organization". Fidelity is merely acting as an enthusiastic agent for DTC "ADR pass-through fees". They are charged by the DTC to brokers who may pass them on to their public clients.

The fees may be charged by other brokers too. Officially they go into effect on July 10 of this year, but Fidelity, whose main business is mutual funds, has begun passing them through a few weeks early.

As of end-May, Fidelity imposed new "custody" fees for the following dividend-paying ADRs in my personal account: **Italcementi**; **Volvo**; **ABN**; **Eisai**; **Hongkong Electric**; and **Orkla**. The shares include both listed (NYSE and Nasdaq) and pink sheet stocks.

The SEC officially under its SR-DTC-2006-21 gave DTC permission to charge fees on ADRs which do not pay dividends. All the stocks on which Fidelity charged the fee, however, do pay dividends.

The new rules spell out for shareholders fees which the DTC charged on dividend-paying ADR stocks in the past. Unfortunately, the impact of this "transparency" is to increase the taxes imposed on ADR-holders, since the separately notated fees are not tax deductible from dividends received. Before the rule change, the fees were deducted on the sly from dividends, and taxes only had to be paid on net dividends after fees and taxes. Fees along with taxes were deductible from other taxes owing. Now you will pay taxes on the money you did not receive, because it was a fee. The IRS still wants to tax the dividend even if you did not receive it in full.

My Fidelity brokerage statements now include ADR pass-through fees for shares which pay dividends, the amount of which is no longer deductible from taxes the owner pays to the IRS. Transparency is in the interest of the tax authorities rather than the investor.

The DTC won new SEC rules on custody fees last year by claiming that "the costs incurred in providing the collection function have decreased". Ostensibly to change the rules of its fee schedule "to align fees for services with the associated cost", the DTC succeeded in imposing new fees which are not tax deductible.

No fewer than three SEC committees signed off on the DTC's new collection system: the Securities Industry Association; the Corporate Actions Division, Dividends Division; and the Securities Operations Division. This is required under the Securities Exchange Act of 1934 which created the SEC to protect U.S. shareholders.

Public comment was supposed to be called for, but I cannot find any indication that this was done.

The fees Fidelity charged me were linked to payments of dividends, but came in a bunch at the end of the month. They were at different percentages of the dividends and I cannot figure out how they were calculated. I have no idea if the SEC has authorized these fees to be taken by DTC from shareholder dividends every time they are received, or only once a year. I fear that every dividend will be subject to the fees.

Directly buying in foreign markets until now has been more expensive than using ADRs. But with this new bite, depending on how often the fees hit your brokerage account, there is a risk that U.S. fees are moving toward the levels imposed by foreign exchanges or banks. If the fees imposed at the rate of $2 to $8 per share are imposed quarterly, this is real money. It will hurt the competitiveness of U.S. exchanges and U.S. financial markets.

Thank you,

Vivian Lewis