DTCC
Securing Today. Shaping Tomorrow.

ISAAC MONTAL
Managing Director & Deputy General Counsel

55 WATER STREET
NEW YORK, NY 10041-0099
TEL: 212 855 3253
FAX: 212 855 3265
[redacted]
www.dtcc.com

May 6, 2014

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: **Response to Comments: Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Specify Procedures Available to Issuers of Securities Deposited at DTC for Book Entry Services When DTC Imposes or Intends To Impose Restrictions on the Further Deposit and/or Book Entry Transfer of Those Securities, as amended; Release No. 34-71745; File No. SR-DTC-2013-11**

Dear Ms. Murphy:

The Depository Trust Company ("DTC") submits this letter to respond briefly to the comment letter dated April 29, 2014 submitted by Sichenzia Ross Friedman Ference LLP ("Sichenzia") in connection with the above-referenced rule change application[1] filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended,[2] and Rule 19b-4 thereunder.

(1)

A key premise of the Sichenzia letter is that "in relation to the [Bank Secrecy Act] it is not at all clear that Congress intended to either regulate the DTC itself or mandate that it take on a role as an independent market regulator and enforcer."[3] Sichenzia's references to the BSA stray wide from the mark.

In the first instance, it is unequivocal that DTC *is* subject to the Bank Secrecy Act's anti-money laundering ("AML") provisions.[4] DTC is a "limited purpose trust company" formed under the Banking Law of the State of New York.[5] As a trust company, DTC is a "financial

[1] *See* DTC Rule Filing SR-DTC-2013-11, as amended, a*vailable at* http://www.dtcc.com/~/media/Files/Downloads/legal/rule-filings/2013/dtc/DTC-2013-11.ashx (the "Initial Rule Filing") and http://www.dtcc.com/~/media/Files/Downloads/legal/rule-filings/2013/dtc/DTC-2013-11-amendment.ashx ("Amendment No. 1).
[2] 15 U.S.C. § 78s (b)(l), as amended.
[3] *See* Sichenzia letter at 2.
[4] *See* 31 U.S.C. §5318; 31 C.F.R. Title X.
[5] *See Organization Certificate of The Depository Trust Company,* available at http://www.dtcc.com/~/media/Files/Downloads/legal/rules/dtc_rules.ashx.

institution" within the meaning of the BSA.[6] The BSA requires that financial institutions maintain AML programs.[7] Further, regulations promulgated by the U. S. Secretary of the Treasury provide that financial institutions such as DTC, which are regulated by a federal functional regulator, are deemed to satisfy their AML requirements under the BSA if they implement and maintain an AML program.[8]

The BSA requires that DTC monitor and report suspicious activities.[9] As a result of its monitoring program, DTC takes appropriate action when it detects that deposited securities may not be freely tradeable and thus do not satisfy DTC's eligibility requirements.[10] Contrary to the theme of the Sichenzia letter, DTC does not purport to function as a regulatory or enforcement agency under the BSA or otherwise in imposing restrictions when non-freely tradeable securities have been deposited at DTC. Throughout the comment process, DTC has repeatedly distinguished itself from market place regulators and enforcement agencies, such as FINRA.[11] It is simply administering its own eligibility requirements for deposited securities and protecting the integrity of its fungible bulk.[12]

(2)

In again urging that DTC provide full evidentiary hearings in connection with Deposit Chills and Global Locks, Sichenzia ignores the essential point that Deposit Chills and Global Locks do not present the type of factual disputes that require or justify a trial-like dispute resolution process.[13] To the contrary, where DTC detects deposit activity deemed suspicious by the regulatory agencies,[14] DTC relies on the issuer's independent counsel to opine that the deposited securities are freely-tradeable and thus meet DTC's eligibility requirements, empowering the issuer to resolve the problem without any fact-finding by DTC. This process does not require an evidentiary hearing, as Sichenzia insists. Similarly, where DTC imposes a Global Lock because the Commission has brought an enforcement action alleging a violation of Section 5 of the Securities Act, the federal district court must provide the trial. DTC cannot provide a duplicative or alternative courtroom, including of the type contemplated by DTC Rule 22.[15]

---

[6] *See* 31 U.S.C. § 5312(a).
[7] *See* 31 USC §5318.
[8] *See* 31 C.F.R. § 1020.210.
[9] *See* 31 U.S.C. §5318(h); 31 C.F. R. §1020.210.
[10] *See* DTC Rule 5; Operational Arrangements (Jan 2012), Section 1.A.
[11] DTC's February 10, 2014 Response at 5-7.
[12] *See* Initial Rule Filing at p. 4 of 56, *supra* n. 1.
[13] *See* DTC's February 10, 2014 Response at 7.
[14] *See* Initial Rule Filing at pp. 6-8 of 56, *supra* n. 1.
[15] Sichenzia's citation to DTC Rule 22 (Sichenzia letter at 2-3, 6) similarly misses the point. These procedures were designed to apply where DTC takes action based upon a factual record disputed by the participant, pledgee or, in a narrow case (revocation or denial of eligibility) an issuer. Deposit Chills and Global Locks, by contrast, implicate principally *legal* determinations. Thus, upon submission of an appropriate legal opinion from the issuer's securities counsel, the Deposit Chill is resolved. And following resolution of the enforcement action, the Global Lock will be

Sichenzia further argues that constitutional standards should be applied in evaluating the proposed fair procedures.[16] Not only is this argument erroneous, it misses the point. Section 17A requires that "persons" be afforded "fair procedures"[17] and provided "notice" and an "opportunity to be heard."[18] The proposed rules unquestionably satisfy these requirements. They provide issuers with notice and, moreover, a clear cut and fair procedure to establish that deposited securities are freely-tradeable or that its securities are not the subject of an enforcement action.

(3)

Finally, Sichenzia again argues that DTC adversely affects "private interests" when it imposes restrictions due to the deposit of ineligible securities, and that DTC actually "punish[es]" issuers and shareholders.[19] Neither a Deposit Chill nor a Global Lock prevents trading of an affected security. Moreover, the proposed rules permit issuers to resolve Deposit Chills quickly by submitting an appropriate legal opinion. It is only in those cases where the issuer does not submit an opinion substantiating that its securities satisfy DTC's eligibility standards that DTC imposes or maintains the restriction. Similarly, where the Commission has brought an enforcement action against the issuer's investors for violating Section 5, any adverse effects are the responsibility of those defendants whose illegal distributions have tainted DTC's fungible bulk for that issue. In either case, DTC is obligated to protect the integrity of its inventory in order to comply with its Commission-approved Rules and its obligations as a registered clearing agency under Section 17A.

Sincerely,

Isaac Montal

---

terminated immediately or following the stated waiting period. (*See* proposed Rule 22(B)§§3,4.) The Rule 22 procedures are plainly inapplicable to this process.

[16] *See* Sichenzia letter at 2-3.

[17] *See* Section 17A(b)(3)(H), 15 U.S.C. §78q-1(b)(3)(H).

[18] *See* Section 17A(b)(5)(B), 15 U.S.C. §78q-1(b)(5)(B).

[19] *See* Sichenzia letter at 3-4; 6-7.