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January 14, 2014

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

Re: File No. SR-DTC-2013-11

Dear Ms. Murphy:

I am writing you on behalf of the Securities Transfer Association Inc. ("STA") in response to the Depository Trust Company's ("DTC") application under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act") seeking approval from the Securities and Exchange Commission's ("Commission") of proposed changes to its rules ("Proposed Rule Changes"). As explained more fully below, the Proposed Rule Changes would add Rule 22(A) and Rule 22(B) to DTC's Rules and Procedures to specify the process and conditions under which DTC may impose restrictions on the deposit and transfer of an issuer's securities, and also the process available to issuers that wish to challenge either a proposed or actual decision of DTC under these rules.

The STA is an organization of professional recordkeepers that interact daily with both issuers and their investors. Founded in 1911, the STA's membership is comprised of over 150 large and small transfer agents in the United States maintaining records of more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public companies to small privately held companies). Because of our involvement with the issuer community on a daily basis, we can offer expert views with respect to some aspects of the Proposed Rule Changes.

DTC is a central player in the clearance and settlement of securities transactions in the United States ("U.S.") and views itself as a "gatekeeper". Although the primary purpose of this letter is to comment on the Proposed Rule Changes, which affect issuers, the STA also believes that DTC must apply similar fairness protections to other persons seeking access to its services, including transfer agents.

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OVERVIEW

We would like to first acknowledge the efforts of DTC and the Commission's staff in preparing the Proposed Rule Changes. We want to specifically note the White Paper produced by DTC prior to submitting the Proposed Rule Changes. We also agree with the goals of DTC in attempting to prevent the distribution of securities in violation of Section 5 of the Securities Act of 1933 ("1933 Act"), particularly in instances that may involve fraudulent activity. At the same time, however, it also is important to assure that any actions taken by DTC do not inappropriately affect the interests of issuers and their shareholders where not necessary.

Most of the issuers affected by DTC's actions will likely be small and midsize companies. While restraints on the settlement of transactions in their securities are not likely to have any broad market impact, they can dramatically affect the lives of the officers, directors and shareholders of these companies. Moreover, the events that may trigger action by DTC can occur without the knowledge of, or participation by, the issuer or its officers or directors. For this reason, the STA believes strongly that the Proposed Rule Changes must assure that a fair process is observed that will reduce the likelihood of harm to innocent parties – including the issuer and its investors.

The Proposed Rule Changes have been submitted to the Commission for approval in the wake of the Commission's decision in *International Power Group, Ltd.*, Ad. Proc. File No.3-13687 (March15, 2012) ("IPWG Decision"). The IPWG Decision resulted from an appeal to the Commission by an issuer whose shares were subject to restrictions imposed by DTC in the wake of a Commission injunctive action in 2009. That action involved defendants, apparently unaffiliated with the issuer, who allegedly sought to sell restricted securities of the issuer representing three percent (3%) of its public float.

The Commission found that DTC's suspension of its book clearing and settlement services in the issuer's securities was a denial of access to its services. It also determined that DTC did not provide the issuer "with adequate fair procedure in connection with the suspension" as required by Section 17A(b)(3)(H) of the Exchange Act. Accordingly, the Commission remanded the matter to DTC to further develop a record in light of its fair process requirement. In addition, the Commission indicated that DTC should "adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases."

In the IWPG Decision, the Commission provided a roadmap to assist DTC in developing new procedures. It stated:

> DTC may design such processes in accordance with its own internal needs and circumstances. It may look for guidance to the processes provided: (1) under Federal Rule of Civil Procedure 65(a) and (b), Fed. R. Civ. P. 65(a) and (b), with respect to requests for preliminary injunctions and temporary restraining orders; and (2) under FINRA Rule 9558 with respect to actions authorized by Section 15A(h)(3) of the Exchange Act. These processes include (1) specification of the type of evidence that must be included in an initial notice to justify immediate action; and

(2) processes that provide an expedited opportunity for the opposing party to be heard.

In response to the IPWG Decision, DTC has prepared and submitted the Proposed Rule Changes to the Commission for approval.

As the Commission noted in the IPWG Decision, "[a]ny suspension by DTC of clearance and settlement services with respect to an issuer's securities means that all trades in that issuer's stock would require the physical transfer of stock certificates, which affects the issuer of the suspended securities directly, because of the potential impact on liquidity and price for the issuer's stock due to the difficulties and uncertainties inherent in physical transfer of stock certificates." In light of the effect of DTC's actions, the STA agrees that the process observed by DTC must afford adequate notice to the issuer of the grounds for any suspension of services (either in the form of a "Deposit Chill" or a "Global Lock") and a fair process to prevent or appeal DTC's actions.

COMMENTS AND CONCERNS

"Fairness" or "due process" is the subject of many judicial decisions and is reflected in the U.S. Constitution.[1] While there may be a balancing of interests, generally fairness or due process requires that prior to depriving a person of their property or other rights under the law, that they receive adequate notice, a hearing, and a neutral judge. Another element of due process - substantive due process - requires that laws or standards applied not be overly vague (in some contexts, these types of laws are challenged from a Constitutional perspective as "void for vagueness").

The STA's comments presented below are intended to address some of our concerns about the Proposed Rule Changes, both in terms of their fairness to issuers, and with respect to pragmatic issues encountered by transfer agents. We also want to note, however, that while we have strong views on particular issues, we appreciate the thoughtful effort that DTC has taken to prepare and submit the Proposed Rule Changes. Overall, we believe that the Proposed Rule Changes are an important and positive step by DTC.

A. Scope of Proposed Rule Changes

The preamble in Section 1 of proposed Rule 22(A) states that "[t]his Rule shall provide the fair procedures available to issuers of Eligible Securities where the Corporation detects unusually large volumes of deposits of a low priced or thinly traded Eligible Security and, as a result, determines to restrict additional deposits of the Eligible Security (a "Deposit Chill")". The STA understands that in most instances securities subject to the Rule's provisions will be low priced and thinly traded. However, this may not always be the case. Regardless of their status (large or small), or DTC's reasons for imposing a Deposit Chill, all

[1] In the IPWG Decision, the Commission notes the language from the Senate Report accompanying the 1975 amendments to the Exchange Act, which provided for a national system for clearance and settlement of securities: "[w]ith respect to non-members, the Committee believes the Exchange Act should be amended to require all self-regulatory agencies to adopt procedures which will afford constitutionally adequate due process to non-members directly affected by self-regulatory action." S. Rep. No. 94-75 at 25 (1975), *reprinted in* 1975 U.S.C.C.A.N. 179, 204.

issuers that use the facilities of DTC are entitled under the Exchange Act to benefit from a fair process to challenge a decision by DTC to deny access to its facilities. Thus, we recommend that the language in the preamble be broadened, or removed, to assure that all issuers are afforded a fair process to challenge a decision by DTC.

B. Authorization to Initiate a Process to Deny Access

DTC does not indicate in the Proposed Rule Changes what level of position or authority within DTC is required to act on its behalf, referring only to an "Officer" as defined in Section 3.1 of its Bylaws, which appear to be a broad class of persons. Because of the serious effect that the imposition of a Deposit Chill or Global Lock will have on an issuer and its investors, the STA believes that such decisions should be made by experienced, senior personnel within DTC. FINRA Rule 9558, which the Commission cited as a guide for DTC, requires that an emergency action be initiated by "FINRA's Chief Executive Officer or such other senior officer as the Chief Executive Officer may designate." Thus, STA recommends that the Proposed Rule Changes be amended to require that the initiation of an action to impose chills should be authorized by a senior officers of DTC designated by the Board of DTC, or its Chief Executive Officer, to take such actions.

C. Deposit Chill Notice

We further note that the Deposit Chill and Global Lock Chill Notices must indicate the reason for DTC's actions, including the "legal authority" for which they are being imposed. As we noted earlier, fair process also means that a law or standard is not so vague that the person affected is not on notice that their conduct is subject to the law. To assure that issuers have the opportunity to fully understand and respond to the issues raised in these notices, we believe the Proposed Rule Changes should be revised to state that DTC will provide "the reason(s) for the [Deposit Chill or Global Lock] in light of DTC's Eligibility Requirements…"

D. Decisions to Deny Access

If an issuer responds to a Deposit Chill Notice, or Global Chill Notice, then a final written decision also will be made under the proposed rules by an officer of the Corporation who played no part in making the initial decision to issue a notice. We appreciate that DTC has given thought to the issue of "neutrality" and has developed a process to assure independence. However, as we noted above, Section 3.1 of DTC's By Laws permits a wide range of persons who may be considered "Officers" of the Corporation. We are concerned that any decisions affecting issuers also should be given serious and formal consideration by senior, experienced professionals that are familiar with securities markets and the federal securities laws, and that have the authority and independence to make decisions. With respect to the latter point, any officer of DTC assigned to make a decision not only should not have been part of the decision to initiate an action, but in order to mitigate possible influence we believe must also be in a separate reporting line within DTC, or at least senior to the officer who made the initial decision. For this reason, we feel that DTC's Board of Directors should appoint specific officers to review issuer responses and make decisions.

E. Appeals of Decisions to Deny Access

Once an initial decision has been made by DTC, which under the Proposed Rule Changes is based on written responses, we believe that affected issuers should have the opportunity to request a hearing and appeal that decision within DTC. The opportunity for appeal, whether or not utilized by an issuer, will assure that all those participating in the decision-making process give serious consideration to their responsibilities. In addition, while DTC's actions may be appealed to the Commission, the time delays and costs associated with an appeal to the Commission may make this option impractical for many issuers.

FINRA, in similar contexts, has required approvals by a Hearing Officer, Hearing Panel, or the National Adjudicatory Council. Under FINRA Rule 6490, which relates to processing notices of corporate actions, issuers may appeal any initial decision not to process information submitted in accordance with Exchange Act Rule 10b-17 to current or former industry members of FINRA's Uniform Practice Code Committee. Similarly, NASDAQ delisting procedures in Rule 5815 permit issuers to appeal to a "Hearings Panel", which is an independent panel made up of at least two persons who are not employees or otherwise affiliated with NASDAQ, or its affiliates, and who have been authorized by the NASDAQ Board of Directors.

Within DTC there presently is a process that would be helpful. DTC's Rule 22 "Right to Contest Decisions" permits issuers to contest any decision by the Corporation to deny their status as an Eligible Security by filing a request for a hearing with the Secretary of the Corporation. During this hearing, the issuer may be represented by counsel. Section 5 of Rule 22, in relevant part, states:

> A hearing requested in connection with any matter…shall be before three members of a panel (a "Panel") selected by the Chairman of the Board from a pool (a "Pool") of Persons employed by or partners of Participants. Persons shall be appointed members of the Pool by the Board of Directors or the Chairman of the Board.

In the event that an issuer is subject to a Deposit Chill or a Global Lock, the effect of that decision by DTC is the same as though it has been denied status as an "Eligible Security". Because appeals to the Commission are time consuming and expensive, and may not result in a decision for an extended period of time during which there may be harm to an innocent issuer and its shareholders, we believe strongly that issuers subject to a decision of DTC imposing either a Deposit Chill or a Global lock should have the opportunity to avail themselves of DTC's Rule 22 due process protections. We recommend that either the Proposed Rule Changes, or amendments to current Rule 22, should reflect this fact. Specifically, we believe that Rule 22 should be amended to state that issuers that are subject to a decision made pursuant to Rule 22(A) or 22(B) should be able to use the hearing process outlined in Rule 22.

We also request one additional modification of Rule 22 with respect to the selection of a panel to review any formal petition by issuers in the context of appeals based on DTC's decisions pursuant to Rules 22(A) and (B). Specifically, it is the STA's view that any three

person panels convened to hear appeals from decisions made by DTC under Rules 22(A) and (B) should also be comprised of one person that is employed by, or a partner of, a registered transfer agent. As the Commission is aware, transfer agents are only Limited Participants in DTC and currently not included in the persons from whom panelists for appeals pursuant to Rule 22 may be drawn. However, transfer agents work daily with issuers and shareholders effecting transfers, and would bring a valuable, balanced insight to any panel decisions made in this context.

F. Notice also should be Provided to an Issuer's Named Transfer Agent

With respect to notice, we are pleased that the Proposed Rule Changes attempt to provide some certainty with respect to the time periods under which notice must be provided to the issuer. We believe that the notice provisions reflected in the Proposed Rule Changes generally are consistent with those followed by other SROs, particularly with respect to emergency action. We note, however, that the Commission has increasingly sought to impose obligations on transfer agents in this area; and is emphasizing its view that under some circumstances they may face liability under Section 5 of the 1933 Act. For this reason, the STA believes that the named transfer agent of an issuer that is provided with a Deposit Chill Notice or Global Lock Notice should receive from DTC some form of contemporaneous notice. Providing the named transfer agent with notice is consistent with the policies emphasized by the Commission, since it would alert the transfer agent to potential problems and allow it to protect the interests of other registered shareholders of the issuer, as well as its own interests.

G. Standards with Respect to Imposition of a Global Lock

We believe that some additional clarity is warranted with respect to the standards under which a Global Lock may be imposed pursuant to Rule 22(B). We understand that section 1(a) of this rule refers to a formal action by a regulatory agency and not simply the announcement of an investigation by either the issuer or the regulatory agency, although this should be clarified. We are concerned with provisions of the proposed Rule that address the release of a Global Lock for issuers based on the criteria in section 1(a). Section 3(a) permits the release of the Global Lock only on a resolution of the matter reflected in a judicial order or an administrative decision, or some other indication that the issuer was incorrectly identified.

We appreciate some of the considerations that DTC made in developing these standards. In the IPWG matter, for example, three years after the Commission's injunctive action DTC had not lifted its ban, addressed in the Commission's subsequent IPWG Decision, due to lack of any guidance from the Commission. The difficulty with the standard formulated by DTC is that matters instituted by regulatory agencies, in particular, may or may not be resovled in a formal fashion. For example, they may be resolved with respect to some defendants, but not others; may be resolved with respect to some claims, but not others; or may not be resolved for many years, if at all. Moreover, the Commission's staff may not be willing to provide any

certainty as to the status of an action.[2] Thus, the STA believes that in some cases the certainty that DTC is requesting in Section 3(a) will not be available from the Commission, its staff, or federal or state enforcement agencies due to the nature of their internal processes.

In the STA's view, issuers affected by a Global Lock in the circumstances noted above (as well as any Deposit Chill), should be permitted to apply to DTC one year after the imposition of any Deposit Chill or Global Lock to have their affected securities declared Eligible Securities. This process involves an opinion by a law firm that DTC may rely on regarding the status of the issuer's securities. If DTC decides at that time not to remove any Deposit Chill or Global Lock, or to decide that the issuer's securities are not Eligible Securities, the issuer should have the protection of the hearing process set forth in DTC's Rule 22.

H. DTC Needs to Expand the Proposed Rules to Provide Fairness in Other Contexts

The IPWG Decision highlighted the procedural deficiency with respect to only one aspect of DTC's operations. An equally important fairness issue, one not addressed by the Proposed Rule Changes, is the redress of other non-Participants, including transfer agents, who are denied access to DTC's facilities. As noted above, DTC's Rule 22 presently provides a fair process only for issuers, "Participants" and "pledgees", to seek redress of DTC's decisions. However, other entities that use the facilities of DTC are not full Participants of DTC and may not be able to rely on this process.

For example, as the Commission is aware, transfer agents seeking access to certain of DTC's services, which are necessary to conduct business,[3] may submit an application to DTC to use its services in which there simply is no action taken. In some cases, there are no published standards for participation in these programs, or for DTC's review. DTC also may not provide the applicant with any information about its rationale for denying access. In these instances, the applicant then has no way of determining why its application has not been acted upon, or whether it has been reviewed and rejected for some reason.

We believe the Commission was crystal clear in the IPWG Decision that Section 17A(b)(3)(H) requires DTC to adopt fair procedures for denying or limiting access to its services. Fairness requires that DTC adopt reasonable (not vague) standards, act to either

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[2] The STA notes that the standards contained in Section 3(a) would address the uncertainty in the IPWG matter. In 2013, the issuer wrote to the Staff of the Division of Trading and Markets ("Division") seeking a no-action letter which would provide the factual certainty with respect to the injunctive action that DTC claimed was necessary to end the ban. However, the Division denied the issuer's no-action request stating:

> As this and other matters that would need to be considered in addressing your request involve factual inquiries that are outside the Division's purview and are best resolved by counsel and the parties involved through the investigation and determination of facts more readily available to them, we are unable to provide you with the assurances you request.SEC No-Action Letter from the Division of Trading and Markets (February 28, 2013).

[3] By way of example, transfer agents must have access to DTC's "Fast Automated Securities Transfer" system ("FAST") in order to provide services to public issuers listed on an exchange. If DTC denies the transfer agent access to its FAST system, the transfer agent cannot conduct business with public companies. However, there are no published standards and no defined time period in which DTC must act.

grant or deny access to its facilities in a defined time period, and provide any applicant denied access to its services with the benefit of a process similar to those in the Proposed Rule Changes and Rule 22.

DTC is a central player in the clearance and settlement of securities transactions and views itself as a “gatekeeper”. Firms that are denied access to its services may not be able to operate. The STA therefore strongly recommends that the Commission consider not approving the Proposed Rule Changes until DTC has demonstrated a commitment to apply similar fairness protections to other persons, including transfer agents, seeking access to its services. However, we believe that the Proposed Rule Changes are a very positive step, and we hope that DTC, the Commission, and industry can work together to develop fair processes in other areas.

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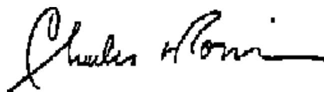
The STA appreciates this opportunity to present its views on the Proposed Rule Changes. We welcome the opportunity to discuss the issues raised in this letter or address any other questions you may have.

Sincerely,



Charles V. Rossi
Chairman, STA Board Advisory Committee
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