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October 17, 2016

Brent J. Fields, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: File No. SR-DTC-2016-003**

Dear Mr. Fields,

The Depository Trust Company ("DTC") hereby submits a third comment letter to supplement its previous explanations of the captioned rule filing,<sup>1</sup> in response to the seven comment letters ("Comment Letters") filed with the Securities and Exchange Commission ("Commission").<sup>2</sup> The proposed Rule 33 ("Proposed Rule 33") provides for the imposition of deposit chills and global locks ("Restrictions") on securities held at DTC under specified circumstances and affords issuers a process for objection.<sup>3</sup> With Proposed Rule 33, DTC's goal is to impose Restrictions only when necessary to protect DTC and its Participants,<sup>4</sup> and not to impose Restrictions when there is little or no risk.

Some of the Comment Letters raised questions about why DTC would impose a global lock on an issue of securities during a FINRA halt of trading ("FINRA Halt") or Commission suspension

<sup>1</sup> See Securities Exchange Act Release No. 78774 (September 6, 2016), 81 FR 62775 (September 12, 2016) (SR-DTC-2016-003) for a chronology of the rule filing, the subsequent amendment, and Commission notices.

<sup>2</sup> See *id.* for a list of six of the prior Comment Letters. In addition, the Commission received a Comment Letter from Charles Rossi, The Securities Transfer Association Inc. Board Advisory Committee, dated October 3, 2016, available at <https://www.sec.gov/comments/sr-dtc-2016-003/dtc2016003.shtml>.

<sup>3</sup> Rule 33 is being proposed to fulfill the directive set forth in the Commission's opinion in the *In re International Power Group, Ltd.* ("IPWG") proceeding. See Securities Exchange Act Release No. 66611 (March 15, 2012), 2012 SEC LEXIS 844 (March 15, 2012) (Admin. Proc. File No. 3-13687) ("DTC should adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), . . .").

<sup>4</sup> The standard throughout the Rules, By-Laws and Organization Certificate of DTC is to protect DTC and its Participants. It should be understood that since DTC holds for its Participants, and Participants hold for their customers, and those customer themselves may be, or hold for, investors, the standard of protection ultimately protects investors and the public interest.

of trading (“SEC Suspension”).<sup>5</sup> Some of the Comment Letters also challenged the breadth of DTC’s discretion to impose a Restriction when DTC “identifies or otherwise becomes aware of a need for immediate action to avert an imminent harm, injury or other such material adverse consequence to the Corporation or its Participants that could arise from further Deposits of, or continued book-entry services to, [the securities].”<sup>6</sup>

This letter responds to those questions, providing, for illustrative purposes only, a few examples of the circumstances contemplated by those provisions.

#### FINRA Halts and SEC Suspensions

The Commission may issue an order suspending trading for up to ten days, pursuant to Section 12(k) of the Securities Exchange Act of 1934 (the “Exchange Act”). FINRA may, with respect to members governed by the oversight of FINRA (most broker-dealers), halt trading by those members of a specified issue of securities and/or prohibit the publication of quotations or indications of interest. Sections 1(a) and 1(b) of Proposed Rule 33 address the imposition of a global lock on securities in those instances.

It is important to understand that trading activity takes place outside of DTC. DTC, as the central securities depository in which such securities are held for the benefit of its Participants, provides a settlement location for market trades or other transfers of interests in securities held at DTC. If there were no trading in certain securities, then there should be no trade settlement but other book-entry transfers might continue, notwithstanding a FINRA Halt or SEC Suspension. For instance, Participants may direct the transfer of securities through DTC for financial transactions, including pledge, repo or securities lending. A FINRA Halt or SEC Suspension would not foreclose these activities.

A global lock would freeze these Participant activities, including the withdrawal or further deposits of securities. By restricting these activities, DTC would be furthering the regulatory purpose of the FINRA Halt or SEC Suspension by halting the flow of questionable securities.

However, DTC does not want to burden issuers, agents or investors with unnecessary restrictions without good cause, if the additional restrictions of a global lock are not needed to further the regulatory purpose of the FINRA Halt or SEC Suspension. The last paragraph of Section 1 of Proposed Rule 33 permits DTC to decline to impose a global lock under Sections 1(a) and 1(b) if it determines that the global lock would not further the regulatory purpose of the halt or suspension.

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<sup>5</sup> See Sections 1(a) and 1(b) of Proposed Rule 33.

<sup>6</sup> Section 1(d) of Proposed Rule 33.

DTC could exercise this discretion and decline to impose a global lock if, for example, the reason behind the FINRA Halt is to pause the market to give market participants time to assess news of a pending event that may affect the security's price. Similarly, DTC may decline to impose a global lock on a company's securities if the sole reason for an SEC Suspension is the lack of current and accurate information about the company because it failed to file certain periodic reports with the Commission. In these cases, the purpose of the halt and suspension would be to mitigate the risks of buyers and sellers of transactions in the security without full information. A global lock preventing non-trading related activity would likely not be necessary, because it would not add any extra protection for buyers and sellers of the security.

In sum, a global lock under Sections 1(a) and 1(b) would not be automatic; DTC would have the discretion to decline to impose a global lock if the restriction of non-trading related activity at DTC would not further the regulatory purpose of the FINRA Halt or SEC Suspension nor mitigate any underlying risks to DTC and its Participants.

#### Discretion to Restrict to Avoid Imminent Harm

It is impossible to anticipate each circumstance under which immediate action could be needed to prevent harm to DTC or its Participants. While DTC does not anticipate such circumstances arising frequently, discretion to act is critical. The purpose of Section 1(d) of Proposed Rule 33 is to provide DTC with the discretion to take the necessary action as problems arise. DTC views Section 1(d) as a tool for urgent situations, to be exercised rarely.

For example, DTC could use this discretion if there is looming adverse effect to DTC's inventory, for instance if DTC receives information from an authorized officer of the issuer that another company has usurped the identity of their company and issued unauthorized shares (known as a corporate hijacking), provided that DTC could corroborate the information as plausible. Similarly, if an authorized officer of an issuer (or its transfer agent) provides DTC with corroborated and plausible information that forged certificates representing shares (or debt) of the issuer are being deposited at DTC, DTC may exercise its discretion in Section 1(d) of Proposed Rule 33.

It is also possible that problems could arise with respect to foreign issues, if DTC receives information from a foreign regulatory authority about fraudulent certificates, or if DTC holds foreign sovereign debt that will be materially impacted by insolvency, defaults or political issues. There could also be material recordkeeping issues that would warrant a Restriction under Section 1(d), if a transfer agent suddenly goes out of business or loses all data.

On the other hand, if the harm, injury or other material adverse effect is not imminent, or if there is no apparent threat to DTC or its Participants, DTC would not take action under Section 1(d). These less urgent circumstances might include a situation where DTC learns of a harm, injury

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or other material adverse effect to itself or its Participants that had already occurred. For instance, if DTC becomes aware of an improper issuance of shares that were deposited at DTC several years prior, any consequence to DTC's inventory would have long since occurred and so this scenario would likely not meet the "imminent" requirements of Section 1(d) of Proposed Rule 33.

Another possible circumstance where action under Section 1(d) would not be appropriate may be where the CEO of a company is convicted of a corporate crime that has no apparent effect on the validity of the company's securities at DTC. If there was no apparent possible harm to DTC or its Participants, such circumstance would likely not meet the requirements of Section 1(d) of Proposed Rule 33.

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In conclusion, the premise of Proposed Rule 33 is to impose Restrictions only to the extent necessary to protect DTC, its Participants and the market and to provide fair procedures for issuers to challenge such Restrictions. DTC believes that Proposed Rule 33 complies with the requirements of Sections 17A(b)(3)(H) and 17A(b)(3)(F) of the Exchange Act and the Commission's directive in *IPWG*, and respectfully urges that Proposed Rule 33 be approved as filed.

Sincerely,



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Managing Director and Deputy General Counsel