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July 21, 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,

On May 27, 2016, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, as amended, (the "Exchange Act")¹ and Rule 19b-4 thereunder,² The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission (the "Commission") a proposed rule change on Form 19b-4 (the "Filing")³ that would adopt Rule 33 ("Proposed Rule 33"). Proposed Rule 33 describes the circumstances under which DTC would impose or release deposit chills and global locks ("Restrictions") with respect to securities held at DTC and provides for procedures that issuers of restricted securities may follow to challenge a Restriction. On June 30, 2016, the Securities Transfer Association ("STA") filed a letter commenting on Proposed Rule 33 (the "STA Letter").⁴ DTC appreciates this opportunity to respond to the STA Letter.

DTC Has Provided Fair Procedures as Required by the IPWG Decision

The STA incorrectly asserts that DTC has not complied with the Commission's directive in

¹ 15 U.S.C. § 78s (b)(1).

² 17 C.F.R. 240.19b-4.

³ Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232 (June 9, 2016) (SR-DTC-2016-003).

⁴ The Commission published notice of the STA letter on June 30, 2016, *available at* <https://www.sec.gov/comments/sr-dtc-2016-003/dtc2016003.shtml>.

its decision in *In re International Power Group, Ltd.* (“IPWG Decision”)⁵ to provide fair process to issuers of securities that are subject to a Restriction.⁶ Following the IPWG Decision, DTC developed and implemented fair procedures that afford issuers impacted by Restrictions appropriate notice and an opportunity to provide additional information to DTC demonstrating that a Restriction should not be imposed or should be lifted. As noted in the Filing,⁷ these procedures were upheld by the Commission in *In re Atlantis Internet Group Corp.* (“Atlantis Decision”).⁸ In affirming the procedures utilized by DTC in *Atlantis* – the same procedures that DTC applied to numerous issuers following the IPWG Decision – the Commission stated, in part, “the procedures afforded to [the issuer] here satisfied DTC’s obligations under Section 17A to provide an issuer with notice and an opportunity to be heard.”⁹ The STA Letter acknowledges neither the *Atlantis* Decision nor the fair procedures DTC adopted and afforded to issuers in response to the IPWG Decision.

Proposed Rule 33 Provides DTC with Necessary and Proper Authority to Take Immediate Action to Avert Imminent Harm to DTC and Its Participants

The STA argues that Section 1(d) of Proposed Rule 33 would vest DTC with “unfettered discretion” to impose Restrictions.¹⁰ This is also incorrect, and STA’s position that the Commission should not approve Proposed Rule 33 if it contains this provision would deny DTC the flexibility to impose Restrictions if necessary to avoid imminent harm to DTC or its Participants.

Sections 1(a)-(c) of Proposed Rule 33 provide objective trigger events for the imposition of Restrictions. These three provisions will be the principal focus of the Deposit Chill and Global Lock program going forward. In Section 1(d) DTC additionally retains discretion to impose Restrictions as may be necessary in limited circumstances in order to avoid imminent harm. The Filing expressly states that DTC does not anticipate imposing Restrictions pursuant to Section 1(d) frequently and provides examples of imminent harm that both demonstrate why it is not possible to

⁵ *In re International Power Group, Ltd.*, Admin. Proc. File No. 3-13687, Securities Exchange Act Release No. 66611, 2012 SEC LEXIS 844 (March 15, 2012).

⁶ STA Letter at 2.

⁷ Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232, 37235 (June 9, 2016) (SR-DTC-2016-003).

⁸ *In re Atlantis Internet Group*, Admin. Proc. File No. 3-15432, Securities Exchange Act Release No. 75168, 2015 SEC LEXIS 2394 (June 12, 2015).

⁹ *Atlantis*, 2012 SEC LEXIS 844 *19.

¹⁰ STA Letter at 2.

anticipate all circumstances under which imminent harm could arise in the future and illuminate the basis for DTC's expectation that it will rarely impose Restrictions under this provision. The STA Letter ignores this important discussion.¹¹

In both the *IPWG* Decision and the *Atlantis* Decision, the Commission recognized that DTC must retain discretion to avert imminent harm, including the discretion to take action before providing notice to the issuer if necessary.¹² The STA ignores the Commission's rulings on imminent harm. Moreover, the STA fails to acknowledge that issuers would be entitled to the full panoply of fair procedures to challenge a Section 1(d) Restriction, including Commission review.

The STA's suggestion that Restrictions imposed under this subsection should expire after ten days¹³ is unreasonable. The STA suggests that either the Commission or FINRA could take action within the ten-day period to allow the Restriction to be extended by imposing a trading halt or suspension thereafter.¹⁴ This would not be effective. It would not be reasonable or practical for DTC to premise its proposed rule on the assumption that the Commission or FINRA would or could act that quickly in all cases. The Commission and FINRA must comply with their own requirements and procedures for imposing trading halts or suspensions, over which DTC has no control. Moreover, imminent harm to DTC or its Participants could arise from circumstances that would neither justify nor be impacted by a trading halt or suspension (for example, an impending deposit at DTC of illegally distributed securities). This scenario is specifically discussed in the Filing.¹⁵

¹¹ See Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232, 37234 (June 9, 2016) (SR-DTC-2016-003).

¹² See *IPWG*, 2012 SEC LEXIS 844 at *32 ("If DTC believes that circumstances exist that justify imposing a suspension of services with respect to an issuer's securities in advance of being able to provide the issuer with notice and an opportunity to be heard on the suspension, it may do so. However, in such circumstances, these processes should balance the identifiable need for emergency action with the issuer's right to fair procedures under the Exchange Act. Under such procedures, DTC would be authorized to act to avert an imminent harm, but it could not maintain such a suspension indefinitely without providing expedited fair process to the affected issuer."); *Atlantis*, 2015 SEC LEXIS 2394 at *19 ("DTC may design such processes [for the suspension of services in advance of notice and an opportunity to be heard] in accordance with its own internal needs and circumstances.")

¹³ STA Letter at 3.

¹⁴ *Id.* at 4.

¹⁵ Securities Exchange Act Release No. 77991 (June 3, 2016), 81 FR 37232, 37233 (June 9, 2016) (SR-DTC-2016-003).

The Proposed Rule Provides for a Fair and Unbiased Review of an Issuer's Challenge to a Restriction

The STA expresses concern that the requirement in Proposed Rule 33 that the DTC review officer (the "Review Officer") "shall not be an officer who had responsibility for the imposition of the Restriction, or his delegate," is insufficient to ensure fair process.¹⁶ DTC believes that the language in Proposed Rule 33 is sufficiently clear to require that the Review Officer not be conflicted and that the Review Officer's decision will be unbiased and independent. DTC believes that a reasonable review in a timely manner is implicit in the proposed process, recognizing that it is bound to perform a prompt review, and to do otherwise may conflict with its obligations under Section 17A of the Exchange Act.

The STA Does Not – and Cannot – Establish Any Basis to Revoke the Delegation of Authority

The STA requests¹⁷ that the Commission abrogate the delegation of authority to the Director of the Division of Trading and Markets to approve or disapprove Proposed Rule 33.¹⁸ While DTC would welcome any questions from the Commissioners about DTC Restrictions and Proposed Rule 33, Commission Staff is well-versed in the specifics of this program and has been engaged at length with DTC in the development of the fair procedures set forth in Proposed Rule 33. The STA's request is inconsistent with the rules and regulations governing the Commission's review process for proposed rule changes, and the STA provides no legal, factual or policy support for its unusual request, which, if accepted, would further delay final approval of DTC's proposed rule change that supports procedures that respond to the *IPWG* Decision and that are consistent with the Commission's *Atlantis* Decision.¹⁹

¹⁶ STA Letter at 3.

¹⁷ *Id.* at 5.

¹⁸ See 17 C.F.R. 200.30-3(a)(12).

¹⁹ The STA also inexplicably states that DTC's fair process procedures should apply to transfer agents seeking initial access to its facilities and to issuers applying for DTC's Fast Automated Securities Transfer (FAST) System. (STA Letter at 4-5.) These matters are not at all germane to Proposed Rule 33.

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Accordingly, DTC urges that Proposed Rule 33 be approved as originally filed.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. K. Shuman', written in a cursive style.

Ann K. Shuman
Managing Director and Deputy General Counsel