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Securities and Exchange Commission
450 Fifth Street, N.W.
Washington DC 20549
Attn: Jonathan G. Katz, Secretary

Comments on S7-13-04; Section IV
Re: Immobilization and Dematerialization of Securities Certificates
- Transmitted via email -

I am pleased to submit some comments on the above-captioned release in the hope that they will help to pave the way for the *final thrust* toward the complete immobilization and ultimate dematerialization of securities certificates.

Because I believe, as the discussion section points out that "There is significant risk, inefficiency, and cost related to the use of securities certificates", I believe that the SEC should set a goal to require that all NYSE and NASDAQ listed companies be in the DRS system by January 1, 2010.

But, as I will try to explain in my comments, the current "hybrid system", coupled with the underdeveloped state of the DRS system and an equally underdeveloped regulatory scheme, also poses significant risk, inefficiency and cost that must be dealt with if the goal of "a certificateless society" - first articulated way back in 1971 - is to be achieved in our lifetime.

Let me begin by enumerating some of the risks to investors that the current "underdeveloped system" creates, and to note too that these risks also inure to issuers of securities, since they have moral and legal obligations to holders of their securities:

1. My primary concern arises from the ever-growing likelihood that DRS holders who wish to sell their shares will suffer market losses by being unable to sell efficiently and *quickly* – partly because of lack of knowledge on their part, or on the part of their heirs or assigns (which, they will assert - often correctly in my opinion - is the issuer's fault) and partly because of underdeveloped systems linkages between transfer agent custodians and brokers, and the current lack of knowledge on *their* part as to the way the DRS system "works." This widespread lack of knowledge is, in fact, often the cause of needless delays, with consequent investor losses when markets are falling.

2. A related set of concerns revolves around relying on DRS agents' records as the sole "proof of ownership in the event of the loss of electronic records of ownership" referred to in the release. Here, I believe the biggest set of risks revolve around the *financial and operational soundness of the agents who are allowed to be custodians of DRS system shares*, rather than around the potential "loss of electronic records" per se.

3. Especially important for the SEC to note in its review, I think; when securities are dematerialized at the transfer agent, the agent becomes, in effect, the custodian of the shareholder-owned assets. I consider this to be a fiduciary, rather than the traditional "agency" relationship - as would most courts in my opinion - and accordingly, one which should impose much higher standards on such agents in terms of capital, insurance, operational safeguards, audit requirements and regulatory oversight and inspection, relative to those that presently exist for mere agents. And, please note, this observation is *before* considering the enormous amount of cash value that would be held in custody by transfer agents if *all* "registered securities" issued between now and January 2010 were to reside in DRS accounts. Clearly, many of today's "registered transfer agents" are not, and are not likely to become "eligible DRS transfer agents" if what I would consider to be an appropriate regulatory scheme in light of "assets under control" were to be adopted.

With this as background, let me respond to the first five questions in the release itself; then sum-up my views on questions 6-13 in the form of an "action plan":

1. Given the amazingly long life of the average stock certificate – and the fact that hundreds of millions of them are still salted away somewhere – it seems likely that we will have to deal with a "hybrid" or bifurcated system well into the future. Nothing would be gained - and a lot of expense would be incurred - were we to declare existing stock certificates null and void, and "replaced" by bookkeeping entries…even if state laws were to allow such a thing. *But more importantly, in light of the total reliance on DRS-agent systems that DRS ownership creates, I believe that investors - as well as state and federal securities regulators - should be very wary of enforced dematerialization – even where state laws currently allow it – and even where the "agent" appears to have impeccable financial and operational credentials - until SEC regulation of such agents is significantly enhanced.*

2. The "cost-benefits" of immobilization/dematerialization are obvious – and enormous ones, even where the fixed costs of "exception processing units" to handle stock certificates must be maintained – since stock certificates require intensely labor-intensive handling, processing and forwarding steps at every stop along their way.

3. The major "impediments" standing in the way of mandatory immobilization/dematerialization by 2010 - all of them closely interrelated, I'd say - are, in my opinion, (1) lack of "critical mass" – both in terms of interested issuers and capable agents; (2) lack of customer (i.e. issuer and shareholder) interest in, knowledge of and "delight" with the scope and capabilities of the DRS system as it currently exists, coupled with (3) a basic *satisfaction* on the part of issuers and shareholders with the "old" certificated system, which, from their perspective, ain't broke; (4) lack of a formal "roadmap" that includes a "compelling" set of actions and deadlines for action; (5) a truly appropriate and well-communicated regulatory scheme, that will assure issuers and shareholders that their interests will be *at least as well protected* in a certificateless world, and (6) a compelling "story" about DRS, that convinces issuers and investors that DRS is indeed a "better mousetrap," as I believe it can be.

4. Stock certificates have a few important advantages over "book-entries" that the DRS regulatory system needs to address: (i.) Certificates *look important* and are *treated as important by their owners*. Thus, a "statement of ownership" *must* be sent to shareowners at least once a year (something that not every DRS issuer appears to be doing at present), and it too must *look like*, and *be treated like* an *important document*. (ii.) Stock certificates also provide a highly noticeable and very valuable "sign and signal" to ones' heirs. In their absence, and especially given the fact that issuers and their agents have been increasingly quick to escheat the underlying assets of "lost shareholders" to state treasurers - thus erasing the true owners from their books under current procedures - the SEC "mandatory search provisions" become even more important. (Here too, in my own experience and as numerous people in the 'abandoned property business' have told me, not every agent appears to be doing the right thing at present). (iii.) As noted, a stock certificate is generally proof-positive of ownership. I could cite numerous instances from my personal experience where transfer agent records were found to be incomplete or inaccurate upon the presentation of a stock certificate or where the shareholder records were *unavailable* because of systems shortcomings, or because of operational or financial "difficulties" at or with the agent. These experiences convince me that far more stringent regulations and far more audits of transfer agents for DRS issuers are essential if we are to increase the number of issues enrolled in DRS in a safe and sound manner. (iv.) Stock certificates essentially guarantee that the owner can conclude a sale without having to hire a broker or some other intermediary. This is no small advantage in my opinion - and in my own experience. Thus, DRS agents should be allowed (and maybe required) to offer "no-cost transfers" and actively *encouraged* to provide "low-cost sales" if they so desire. (iv.) Further, stock certificates are often used as collateral. Thus, an effective DRS system ought to have the capability of recording - and *securing* - a pledge. This is yet another area where the financial viability of the guarantor is critically important. (Also worth noting, a book-entry pledge could provide far greater assurance to a lender than a stock certificate does… unless the lender routinely transfers the stock to its own name before disbursing the loan, as smart ones do, thereby creating an *extra* stock certificate.

Many lenders fail to do this, however…only to find, belatedly, that the certificate it is holding has been replaced!)

5. It is especially worth noting that currently, paper stock certificates – stamped with various kinds of "legends" – are the primary way that potential buyers and sellers of securities are forewarned about shares with "restrictions" on their sale or distribution, because, for example, they are not registered under the '33 Act, or belong to "insiders" and/or have not met required conditions, such as holding periods. Ironically, restricted certificates are usually the *only* stock certificates issued in a new offering these days! Thus, the DRS system must have a much more effective system than it has now to "network" among the many parties that need to do proper due diligence – such as share owners, buying and selling brokers, issuers and their counsel – before sales are effected and recorded. (I am puzzled as to why this system has not been enthusiastically embraced by issuers, transfer agents and brokers, because, if operated effectively, it greatly reduces the very significant liabilities they incur when sales - invariably large ones - are delayed while sellers try to find and "network" with the people who are both "in the know" and who are authorized to release the restrictions. Perhaps the system needs to be bid-out competitively, as the SEC did with the SIC.)

A SUGGESTED ACTION PLAN:

1. Announce that all companies that have issued *any* "dematerialized shares" must become DRS-eligible by year-end 2005 and that they, and *all other DRS issuers* must clearly explain to all their registered shareholders - at the end of each year, at a minimum - (a) how many of their shares are dematerialized with the DRS agent and how many are held by the shareholders themselves; (b) exactly how they can *move their shares* - in either direction - between brokerage and DRS accounts; (c) their "options" as to exactly how they can sell or transfer their shares should they so desire, and (d) the pros and cons of selling through a broker and through the DRS agent, if a "selling plan" is in place. (Most of the dematerialized but non-DRS shares are in dividend reinvestment plans…many of which became "inactivated" when issuers stopped paying dividends…leaving the investor positions in limbo, so to speak. It should also be noted, however, that many investors have physical shares at home, dematerialized shares with a DRS agent and dematerialized shares in a brokerage account and that normally, it is advantageous - both for the issuer and for the shareholder - to have the positions consolidated in one place.)

2. Announce that all NYSE and NASDAQ listed companies (a) must become DRS-eligible by January 2010; (b) must explain to shareholders by then - in writing - how they can move, transfer, sell or liquidate any or all of their holdings and (c) must explain that future transfers or distributions of company stock will be via book-entry unless a certificate is specifically requested and (at the option of the issuer, and assuming a change in NYSE

listing requirements) upon payment of the company's "reasonable cost" (the actual stock certificate cost - plus the actual cost of stationery, postage and insurance - but NOT a "handling charge" we would urge).

3. Develop new eligibility criteria for DRS-eligible transfer agents that take into account the fact that such agents, as custodians for shareholders, have fiduciary duties to them…and that provide significant protection, equivalent to that at brokerage firms (an area that we believe should also be revisited) in the form of capital, surplus and insurance against errors and omissions, fraud and various financial or operational events that could prevent share owners from being able to promptly take control of their assets…all to take effect as soon as possible.

4. Develop "turnaround requirements" for all key DRS activities, also to take effect as soon as possible.

5. Develop plain-English educational and instructional materials aimed at each one of the key market-segments that need to understand DRS… and highlighting the benefits to each of them; specifically, investors, back-office and front- office brokerage personnel, back-office, front-office and "communications center" personnel at DRS agents and issuers of securities and their attorneys.

   In my frequent interactions with all these constituencies I can state categorically that there is a nearly universal lack of understanding of the way the DRS system works…of its potential benefits to issuers and investors…and the potential liabilities that are created when the "system" fails to work smoothly.

6. Insist that DRS agent call-center representative be able to explain - and to follow-up with written materials and forms in plain-English when shareholders ask about moving share positions between agents and brokers - regardless of the "direction"…instead of advising them, as many now do, to "call your broker". Conduct periodic tests of DRS agents for compliance.

7. Insist that all front-office and back-office personnel who speak with individual investors at brokerage firms be equally conversant with DRS, and equally obligated to furnish the same plain-English materials and forms…and conduct periodic compliance tests.

8. Review the current "Networking For Equities System" with a view toward making it mandatory for all new securities offerings or distributions of restricted securities on or after January 1, 2006, so that *no physical securities will be needed* in connection with such offerings.

Ladies and gentlemen, I firmly believe that if we follow this roadmap – and begin this year - we can stop issuing stock certificates by January 1, 2010, except in the most unusual circumstances.

I realize, however, that it simply may not be possible to bring all the agents for NYSE and NASDAQ listed companies "up to speed" in terms of DRS readiness - or to force issuers to hire replacements - even over a five-year period. Accordingly, I would urge the industry to focus on identifying the percentage of all such issuers, or some percentage of total market-cap, where DRS eligibility would eliminate, say, 80% of all certificate movement.

I sincerely hope that these comments will be helpful to you.

Respectively submitted,

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