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30 January 2001

Jonathan G. Katz, Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, DC 20549-0609

Re: File Nos. SR-DTC-00-10 and 600-32

Dear Mr. Katz:

On behalf of GSTP AG, we are writing in response to the January 12, 2001 letter to you of Carl Urist, Managing Director and Deputy General Counsel, of The Depository Trust & Clearing Corporation ("DTCC"), which was submitted in response to our prior letter to you dated January 3, 2001. Our prior letter was written to express GSTP AG's comments in regard to the proposed rule change by DTCC's subsidiary The Depository Trust Company ("DTC") (File No. SR-DTC-00-10) and exemptive order application filed by The Global Joint Venture Matching Services - U.S., LLC ("GJV") (File No. 600-32).

INTRODUCTION

DTCC's letter addresses competitive and technical concerns raised by GSTP AG and others in connection with DTC's and GJV's above-referenced applications. While DTCC expresses its support of the concept of fair and open access to the U.S. securities settlement operations (over which DTC maintains a monopoly by virtue of its role as the primary U.S. central securities depository), it is important that certain issues be resolved as to the manner in which it proposes to permit interoperability with, and access to, DTC.

Before these issues can be resolved, it must be clearly understood which functions will continue to be performed exclusively by DTC and which will be performed by the GJV. DTC has not yet issued to its Participants a description of how its operations will be affected by the transfer of some of its Trade Suite products and services to the GJV. These changes however may be very subtle and may have very material consequences on the U.S. settlement process.

GSTP AG is strongly supported by a large number of industry participants in its initiative to provide significantly enhanced matching and information exchange capabilities to the securities industry at large. We have asked the DTC management to meet with us on this very subject, outside of any discussion about possible interoperability with the GJV in the future. We view these discussions as an integral part of

the clarification process that is needed to ensure that a competitive level playing field exists after the implementation of the GJV.<sup>1</sup>

Accordingly, we urge the Commission to withhold approval of both applications pending further acceptable clarifications of the parties to the application (the "Parties"). If acceptable, those clarifications should be included within Orders governing both Parties. In addition, we urge the Commission to encourage DTC to express its intentions immediately with respect to the technical and operational issues addressed in this letter as well as in our letter dated January 3, 2001. (*See* Note 1, above.)

1. DTCC's Representations As To "Access and Pricing" Need Clarification.

DTCC's letter states: "Vendors acting on behalf of DTC Participants will be able to transmit settlement instructions directly to DTC without the involvement of the Global Joint Venture. DTC will charge fees for such services to the Participants on whose behalf the vendors are acting with no additional charges to the vendors." (DTCC Letter at 3.) Such policies, however, are expressly "subject to [continuing] review by DTC's Board of Directors...." (*Id.* at 3-4.)

Left unclear in this statement is whether DTC will consider the GJV to be a "vendor" at the same level as the GSTP AG or any other matching service or whether DTC will accord the GJV with some form of preferential treatment. It is essential to GSTP AG's ability to compete with the GJV for the provision of trade matching services that DTCC make a credible, verifiable and public commitment that DTC's relationship with the GJV will be at arm's-length and that the DTC Board be accountable for the enforcement of that arm's-length relationship.

2. DTCC Does Not Address the Vital Issue of Communications With Settlement Agents.

In today's environment, DTC offers through its Trade Suite products (1) a service to an institutional investor and its broker/dealer to confirm the details of the trade they entered into (the affirmation/confirmation process) and (2) a service to all the US settlement agents who have an account with DTC for settlement whereby the trades confirmed and/or affirmed are relayed to the settlement agent involved in the trade. This second feature of the service is an integral part of the clearing and settlement process as it is used by all settlement agents to update their records and by the DTC to proceed with the settlement. The DTC/settlement agent link will take on even greater significance in the future as the industry moves toward a T+1 environment. Fair and open access to DTC settlement functions for all matching services must encompass a requirement that DTC – not the GJV – continue to provide this second service. This function should be performed only by a regulated entity such as DTC. Comments in the DTC letter that DTC and Thomson Financial have agreed that settlement procedures would continue to

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<sup>1</sup> By letter dated 19 January, 2001, from C. Steven Crosby of GSTP AG to Jill M. Considine and Dennis J. Dirks, both of DTCC and DTC, GSTP AG requested a meeting with DTC to discuss issues relating to interoperability between GSTP AG and DTC. Previously, in several telephone calls, Mr. Crosby had requested a meeting to discuss interoperability issues with Robert J. McGrail, a DTCC Managing Director who has been named to serve as Chairman of the GJV.

be as they are today does not clarify whether or not the central depository would continue to perform these functions.

In a competitive model for the U.S. industry, DTC must act as the hub with information spokes running to it from matching engines collecting and enriching information and from it to settlement agents informing them of pending settlements. Figure 1, below, is a representation of how the information should flow in a competitive environment among trade matching information collectors, DTC as the depository and entity performing settlement, and settlement agents.

Figure 1

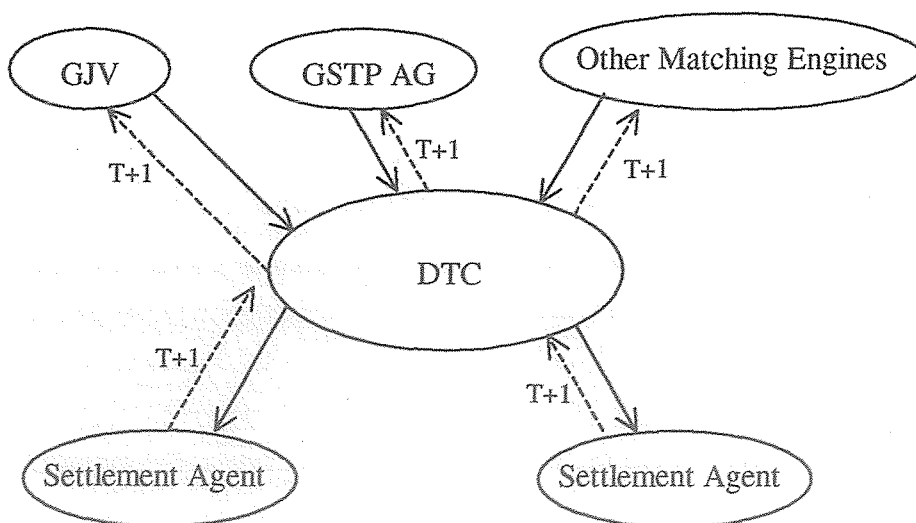
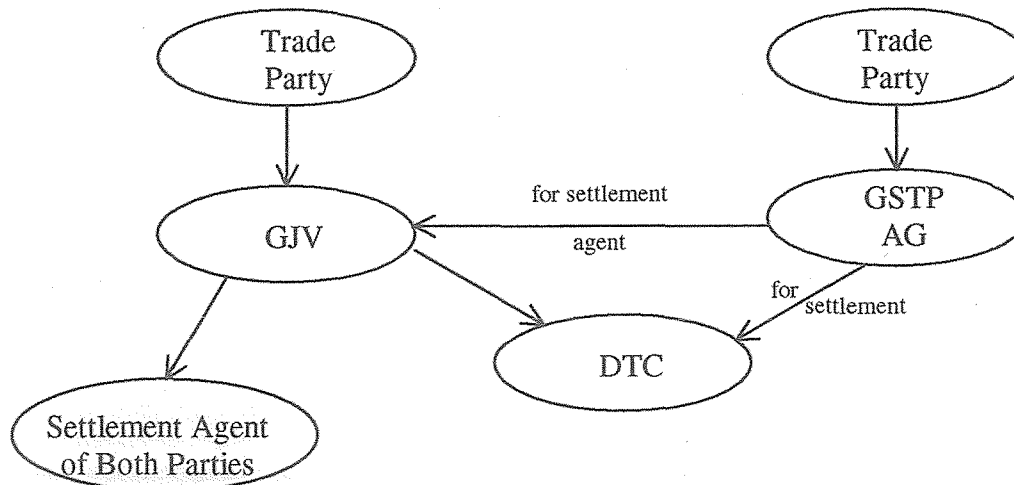


Figure 2, below, is a representation of how information would flow among information collectors, DTC and settlement agents in a model that would result from the DTCC contributing its entire Trade Suite product to the GJV, rather than its affirmation/confirmation segment only. In Figure 2, GSTP AG and other potential matching information service providers serve as concentrators of information to the GJV, which in turn assumes the former DTC function of providing instructions to settlement agents.

Figure 2<sup>2</sup>



The competitive model, described in Figure 1, is believed to be the model sought by Thomson Financial when it requested and obtained its exemption letter from the Commission to operate a matching service in the USA, competing with the DTC matching service.

3. DTCC's Representations As To "Interoperability" Need Clarification.

The DTCC letter points to unspecified "legal restraints" that prohibit it from beginning to negotiate the terms of interoperability between GSTP AG and the GJV prior to "regulatory approval." (DTCC letter at 2.) GSTP AG is unaware of the existence of any such "legal restraints." In any event, these concerns should not limit the ability of the DTC as central depository to meet with an entity intending to provide a matching service in its own right (GSTP AG).

GSTP AG believes that interoperability between DTC and GSTP AG is not a complex matter, and that this subject should be concluded well before the Commission issues its orders regarding the referenced application.

As far as interoperability between two matching systems is concerned, GSTP AG does agree with DTCC's observation that "[i]nteroperability is a complex subject that must be worked out through good faith discussions between the staffs of competing trade management systems." (*Id.* at 3.) GSTP AG strongly believes that the industry and the regulatory community would benefit from early discussions between the Parties to the

<sup>2</sup> Alternatively, Figure 2 might be depicted without any direct link between GSTP AG and DTC in which case a directional arrow running from GJV to DTC for settlement information would be added.

GJV and GSTP AG. GSTP AG further believes that such negotiations should be limited to the parties, with results or periodic progress reports to be provided to appropriate regulatory agencies. These discussions should commence well before the Commission issues its orders regarding the referenced applications.

4. DTCC's Representations As To "Customer Service" Require Additional Detail.

DTCC's comments under the heading "Customer Service" address only sales and do not mention customer service, technology, telecommunications, standards settings, operations, and dispute resolution. It is unclear that steps are being taken to establish the "arms-length relationship" that is so needed when essential services are transferred from a regulated entity to an entity that is exempted from registration.

With respect to sales, the DTCC letter states that "DTC's sales force will have no involvement in selling the services of the Global Joint Venture." (See DTCC letter at 4.) To the extent this statement is a commitment that DTC will not in any way "steer" trade participants to the GJV, or in any other way favor the GJV over competitors, GSTP AG supports this essential policy.

Because these policies are essential to providing a level playing field for competition at the trade matching level, GSTP AG strongly urges the Commission to incorporate the arm's-length relationship requirement into any order approving the referenced applications.<sup>3</sup>

If you have further questions or we can be of further service, please contact C. Steven Crosby at 203-406-8326.

Sincerely,



Burkhard H. Gutzeit  
Chairman  
GSTP AG



C. Steven Crosby  
Acting Chief Executive Officer  
GSTP AG

<sup>3</sup> Similarly, GSTP AG interprets DTCC's statement with respect to intellectual property (see DTCC letter at 4) as representing that neither DTCC, DTC nor the GJV will assert a patent, including a business method patent, as a means to lessen competition for matching services. Again, GSTP AG urges that this policy be incorporated into an order approving the referenced applications.