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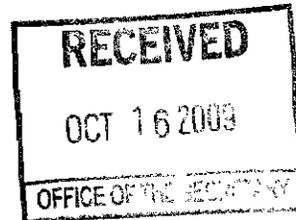
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BY FEDERAL EXPRESS

October 15, 2009

Ms. Elizabeth M. Murphy
Secretary
United States Securities and
Exchange Commission
100 F Street, NE
Washington, DC 20549



Re: Self-Regulatory Organizations; The Depository Trust Company;
Order Granting Approval of a Proposed Rule Change as Amended Relating to
FAST and DRS Limited Participant Requirements for Transfer Agents (the "Order")
Release No. 34-60196; File No. SR-DTC-2006-16

Dear Ms. Murphy:

This firm is counsel to The Depository Trust Company ("DTC"). Enclosed please find The Response of The Depository Trust Company to the Securities Transfer Association, Inc.'s Petition For Review.

Thank you for your cooperation.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gregg M. Mashberg". The signature is fluid and cursive, written over the typed name.

Gregg M. Mashberg

Cc: James A. Brigagliano
Jerry W. Carpenter
Susan M. Petersen

UNITED STATES OF AMERICA
SECURITIES AND EXCHANGE COMMISSION

-----X
: **RESPONSE OF THE**
: **DEPOSITORY TRUST**
Re: Securities Exchange Act Rel. No. 34-60196 : **COMPANY TO THE**
: **SECURITIES TRANSFER**
(June 30, 2009): File No. SR-DTC-2006-16 : **ASSOCIATION, INC.'S**
: **PETITION FOR REVIEW**
-----X

The Depository Trust Company (“DTC”), by its undersigned counsel, hereby responds to the Petition (the “Petition”) filed by petitioner the Securities Transfer Association, Inc. (“Petitioner”) seeking to have the Commission review and set aside the June 30, 2009 order (the “Approval Order”) approving DTC’s rule filing (the “Rule Filing”) relating to the standards pursuant to which DTC may authorize transfer agents to participate in DTC’s Fast Automated Securities Transfer program (“FAST”).

Background and Introduction

DTC’s FAST program was introduced in 1975 and approved by the Commission in 1976.¹ Transfer agents selected by DTC to participate in the FAST program maintain custody of securities certificates for FAST issues for which they act as transfer agent. The FAST program is designed to eliminate some of the risks and costs related to the re-registration and transportation of securities certificates and thereby increase the efficiency of the nation’s clearance and settlement system. Transfer agents that are admitted to the FAST program are responsible for safeguarding securities that otherwise would be held in custody by DTC.

¹ Securities Exchange Act Release No. 34-12353 (April 20, 1976), 41 FR 17823 (April 28, 1976).

DTC is not obligated to add any particular issue to the FAST program and retains the right and discretion to perform all custody services itself. Similarly, transfer agents have no statutory or regulatory right to be accepted into the FAST program by DTC.

For several years, the Commission expressed concern that DTC did not have explicit written guidelines and standards for transfer agent eligibility for the FAST program. Notably, and as the Petition readily concedes (p. 14), Petitioner and the transfer agent industry in general have encouraged the Commission to adopt such standards and procedures.

In response to concerns expressed by the Commission *and the securities transfer industry*, as well as DTC's obligations pursuant to Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"),² on October 12, 2006, DTC filed the Rule Filing proposing to amend its minimum requirements for transfer agent participation in the FAST program.³ On March 29, 2007 and May 3, 2007, DTC filed amendments to the proposed rule change. On May 25, 2007, the Commission published notice of the Rule Filing, as amended by Amendment 1 and Amendment 2.⁴ On December 31, 2007, DTC again filed an amendment. Notice of the amended proposal was published in the Federal Register on February 20, 2008.⁵ On May 31, 2008, DTC again filed an amendment. Notice of the amended proposed rule change was published in the Federal Register on June 19, 2008.⁶

² Section 17A(b)(3)(F) mandates, *inter alia*, that clearing agencies adopt rules designed to safeguard securities in custody. *See, infra*, pp. 4-5.

³ 15 U.S.C.78s(b)(1).

⁴ Securities Exchange Act Release No. 55816 (May 25, 2007), 71 FR 30648 (June 1, 2007).

⁵ Securities Exchange Act Release No. 57362 (February 20, 2008), 73 FR 10849 (February 28, 2008).

⁶ Securities Exchange Act Release No. 57959 (June 12, 2008), 73 FR 57959 (June 19, 2008).

Notably, the repeated amendments to the Rule Filing were made, in substantial part, in response to comments filed with the Commission by Petitioner and the transfer agent industry. (*See* Pet. p. 2.)

On June 30, 2009, the Commission approved DTC's Rule Filing, as amended. Notice of the Approval Order was published in the Federal Register on July 13, 2009.⁷

On August 4, 2009, Petitioner filed the Petition requesting that the Commission review and disapprove the Approval Order.

The issue presented by Petitioner does not turn on the substantive standards for FAST agent review adopted by the Approval Order. The Petition (p. 14) states explicitly that Petitioner,

[D]oes not necessarily object to the substantive standards in the DTC Rule Filing. In fact, as noted above, historically Petitioner and the transfer agent industry have encouraged the Commission to propose similar measures.

Similarly, the Petition states (p. 7), "Petitioner and its members' strong opposition to the new rules, however, stems primarily from the fact that they intrude upon the Commission's jurisdiction over transfer agents." Thus, rather than contest the standards approved by the Approval Order, the Petition contends (p. 2) that the Approval Order was *ultra vires* because the new rule makes DTC "a *de facto* regulator" of transfer agents.

As demonstrated below, the Approval Order was entirely consistent with DTC's role in the securities industry, does not unlawfully delegate the Commission's regulatory authority to DTC and was, in all respects, proper.

⁷ Securities Exchange Act Release No. 60196 (June 30, 2009) 71 FR 33496 (July 13, 2009).

Argument

The issue presented for Commission review is not the substantive standards for admitting transfer agents into the FAST program. Petitioner acknowledges that it is not challenging the standards themselves; indeed, Petitioner acknowledges that it had urged adoption of specific procedures for reviewing applications for FAST agent approval. Rather, Petitioner is really seeking to advance a “turf battle,” arguing that by approving the proposed amendment, the Commission effectively delegated to DTC the Commission’s obligation to regulate transfer agents. Petitioner’s claim is unfounded.

(1)

Section 17A(b)(3)(F) of the Exchange Act mandates that clearing agencies such as DTC have rules “designed to . . . assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, . . . to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.” DTC’s Rule Filing, as approved by the Approval Order, is fully consistent with the statutory obligations imposed on the nation’s principal securities depository.

DTC introduced the FAST program in order to advance its ability to meet the goals established by Congress, and implemented by the Commission, to improve efficiency and reduce risk in the securities handling process. The Rule Filing reflected DTC’s obligation, pursuant to Section 17A, to define standards for determining whether a transfer agent can fulfill the obligations imposed upon FAST agents.⁸ By approving

⁸ As acknowledged by the Commission, DTC has developed a high level of competence and responsibility in safeguarding securities, “whether in vaults, in processing areas, or in transit.” *See* Securities Exchange

DTC's efforts to adopt specific standards – standards that are not challenged here by Petitioner – the Approval Order cannot be characterized properly as being *ultra vires*. To the contrary, the Approval Order is entirely consistent with the obligations imposed on DTC by Section 17A.⁹

(2)

Petitioner's claim that the Approval Order is *ultra vires* because DTC does not have authority to "regulate" transfer agents misstates the relationship between DTC and FAST agents. The Approval Order approved what, in reality, are risk management measures that DTC and, after review and considering comments, the Commission staff believed were appropriate under the circumstances. Many of the requirements merely state that FAST agents give DTC copies of documents, already required by the Commission. Other requirements set forth insurance and capital requirements that any counter-party or commercially reasonable entity under these circumstances would require for a party holding its securities at a remote location.

Given that FAST agents undertake to perform important services that DTC would otherwise perform, DTC arguably was entitled to adopt the new standards simply in furtherance of the commercial relationship between DTC and the agents. That is, the standards could have been incorporated in the contract between the FAST agent and DTC. Nonetheless, by including the standards as part of a proposed rule change, Petitioner and its members were able to participate in the rule making process. Their

Release No. 20221 (September 23, 1983) [File No. 600-1; et al.]. DTC is certainly obligated to ensure that transfer agents participating the FAST program comply with similarly high standards.

⁹ Since 1975, the Commission has approved amendments to DTC's FAST program on a number of occasions without in any way relinquishing its statutory authority. The current agency action is no different in that regard. *See* Securities Exchange Act Release Nos. 13342 (March 8, 1977)[File No. SR-DTC-76-3]; 14997 (July 26, 1978) [File No. SR-DTC-78-11]; 21401 (October 16, 1984) [File No. SR-DTC-84-8]; 31941 (March 3, 1993) [SR-DTC-92-15]; and 46956 (December 6, 2002) [File No. SR-DTC-2002-15].

comments were carefully considered and the proposed rule was repeatedly amended as a consequence. The result has been to advance basic safety and soundness considerations, protect the interests of DTC and its participants, while ensuring that Petitioner and its members were able to have their voices heard. See Petition p. 2 (“Each of these amendments was made substantially in response to comments from Petitioner and its members.”) This cannot be properly characterized as improper regulation; rather it merely reflects essential standards that Congress and the Commission have required DTC to set for FAST agents performing custody responsibilities.

Indeed, one must question whether the Petition is merely pretextual in the sense that it complains that FAST agents are not entitled to become DTC participants and are unable to participate fully in rulemaking, developing policies or determining fees. (Pet. pp. 12-14.) This purported issue is clearly outside the scope of the Approval Order and any permissible challenge to it. It should be rejected for that reason alone.¹⁰

In any event, Section 17A(b)(3)(B) of the Exchange Act puts to rest any notion that Petitioner has any legitimate basis to complain that its members are not entitled to become participants of DTC. This provision provides that (i) registered broker-dealers, (ii) registered clearing agencies, (iii) registered investment companies, (iv) banks, (v) insurance companies and “(vi) other persons or class of persons as the Commission, by rule, may from time to time designate as appropriate to the development of a national system for the prompt and accurate clearance and settlement of securities transactions,”

¹⁰ Again reflecting Petitioner’s apparent pique in being subject to standards adopted by DTC, the Petition contends (p. 3) that DTC is a “direct competitor of transfer agents” and DTC’s rule filing is contrary to public policy and the intent of Congress. DTC does not “compete” with transfer agents. See *Olde Monmouth Stock Transfer Co. v. DTCC and DTC*, 485 F.Supp. 2d 387, 392-94 (S.D.N.Y. 2007).

may become participants in a clearing agency. Neither the statute nor the Commission have included transfer agents among those who may become DTC Participants.¹¹

Conclusion

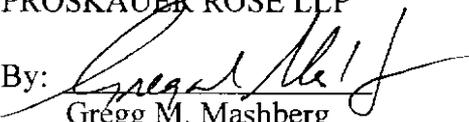
The Approval Order was a proper exercise of authority pursuant to Section 19(b)(1) of the Exchange Act. The Petition should be denied.

October 15, 2009

Respectfully submitted,

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¹¹ Nonetheless, while complaining that its members are not DTC participants and not entitled to full participation in various DTC activities, Petitioner ignores the fact that they were given every opportunity to participate in the rule making process at issue and that its voice was heard loud and clear.