Securities Industry Association
1401 Eye Street, NW • Washington, DC 20005-2225 • (202) 296-9410, Fax (202) 296-9775

Via Electronic Mail

December 13, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Compliance with Regulations Administered by the Office of Foreign Assets Control

File No. SR–DTC-2005 -14

Dear Mr. Katz:

The Securities Industry Association ("SIA")[1] appreciates this opportunity to comment on the proposal by the Depository Trust Company ("DTC") to revise its Deposit Service, Custody Service, and Withdrawals-By-Transfer procedures. The proposal is based upon guidance provided by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). SIA supports strong compliance with the OFAC requirements, and we have outlined below recommendations to enhance the effectiveness of the rule changes and prevent any disruptions to the orderly operation of the securities markets.

OFAC administers and enforces U.S. economic and trade sanctions against targeted foreign countries, terrorism-sponsoring organizations and international narcotics traffickers. As the SEC may be aware, SIA and the securities industry have actively

---

[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available on its home page: www.sia.com.)

worked for many years with OFAC to enhance the effectiveness of OFAC's rules for the securities industry and to increase awareness among our member firms of the trading restrictions and asset freezes imposed by OFAC. We are committed to further efforts to help improve compliance with OFAC's programs in order to prevent our financial system from being used by terrorists or other parties targeted by the sanctions.

Under the proposed rule change, for the Custody and Withdrawals-By-Transfer ("WT") Services, DTC will now be required to screen the names of relevant parties against OFAC's list of targeted countries, Specially Designated Nationals, and other parties designated by OFAC. Under the Custody Service, DTC will act on the instructions of the depositing participant only after DTC has screened the parties on the deposit against the OFAC list and has determined that there are no matches. Similarly, under the WT Service, DTC will act on the instructions of the withdrawing participant – for securities on deposit that are sought to be withdrawn – only after DTC has screened against the OFAC list the investor in whose name the securities are to be registered. For the Custody and WT Services, if DTC were to identify what appeared to be a match, DTC would present the matches to broker-dealers that are DTC participants through a new terminal system function called "OFAP." Participants would then be required to review each certificate registration identified as a potential match and provide information to DTC so that DTC can conclude whether or not the person or entity is a valid match with a person or entity on the OFAC list.

Under the Deposit Service, DTC participants would be required to do the OFAC screening. Specifically, under the Deposit Services, a participant firm would be required to compare the "parties identified on the deposited certificate (*e.g.*, the issuer, the party in whose name the deposited security is registered, and all assignees) against" OFAC's list. The participant would then be required to certify to DTC that it has screened the names and that there were no matches.

Our recommendations are aimed at providing clarification of the rule's requirements for broker-dealers, enhancing the effectiveness of OFAC requirements, and preventing any disruption to the normal flow of securities transactions. SIA recommends that the SEC should: 1) allow for a reasonable implementation period that recognizes the significant changes broker-dealers will likely have to make to their systems and procedures; 2) clarify a firm's obligations to screen names that appear as prior owners on stock certificates; 3) clarify how introducing and clearing brokers are to implement certain provisions of the rule; and 4) provide guidance on the application of the SEC's Regulation S-P, which governs the privacy of consumer financial information, to the process by which firms provide information to DTC.

**1. Reasonable Effective Date**

We strongly urge that the industry be allowed sufficient time to make the required changes to their systems before the rule's provisions are to become effective. The proposed OFAC procedures have never been required for the industry, and accordingly, firms will have to make significant changes, including operational, systems and procedural changes. Depending upon the terms of the final rule, firms may have to undertake system changes to ensure that the relevant information is captured, transmitted and retained. For some firms, further time will be required because they rely on third party vendors for their OFAC screening.

Firms have been assessing what changes will be required, and, based on DTC's initial proposal, the changes appear to be considerable. However, compliance systems and processes cannot be finalized until firms receive the final requirements and technical specifications for their system from DTC regarding, among other things, file layouts and what fields need to be added or changed. Once a final rule is issued, firms will need time to assess what changes will need to be put in place. Our initial estimate is that the changes required are likely to take firms at least 180 days.

**2. Obligations Regarding Non-Customers (Prior Owners & WT Transferees)**

We believe that clarification is needed on the rule's requirement that under the Deposit Service a firm screen not only the name under which the deposited security is registered, but names of all assignees. This would mean that firms would be required to screen the names of previous owners with no current ownership interest in the certificate, which is, generally, not the current practice of the industry. The list of previous owners on the certificate is distinct from the current ownership, and often has no relation to the current owner. Most significantly, the previous owners are likely not customers of the firm and would not be in the firm's system. Thus, firms would not have in their systems supporting information about the previous owners (such as date of birth, address, tax identification number) in order to determine if the name was a valid match on the OFAC list. We also question the utility of checking all previous owners in that the current ownership—which has more relevance—is being screened, and prior owners were at some point already screened.

Another issue concerning the proposed screening of previous certificate owners relates to the legal and regulatory uncertainties surrounding how to address the results of such screening. If participant screening were to reveal that an OFAC sanctions target previously owned a certificate and has no current ownership interest in the certificate, it is not clear whether the OFAC sanctions program would require or even authorize a broker-dealer to impede the certificate's deposit into the participant's DTC account. There is also uncertainty as to whether OFAC sanctions would require or even authorize

DTC to block a certificate held through the Custody Service solely because DTC discovered through its newly proposed screening process that the sanctions cover a previous owner who has no current ownership interest in the certificate.

It is also not clear, under the WT Services, how firms would obtain the necessary information on third parties – not customers of the firm – to whom certificates are being transferred. The firm would only be in a position to obtain this information from its own customers, and this may not be doable within the timeframes set out by DTC.

Last, we want to clarify that the proposal would not require firms to screen the names of issuers. The proposal states that firms are required to screen issuers of the deposited certificates. However, we understand from our discussions with DTC that DTC has decided to eliminate this requirement and will revise its proposal accordingly. This is a sensible change, given that DTC itself already screens all issuers of DTC-eligible securities.

**3. Introducing-Clearing Firm Relationships**

We also seek clarification of the responsibilities of clearing and introducing brokers under the proposed rule changes. Under the Custody and WT Services, it is unlikely that the clearing firm will have information on the certificate registration names, because the customer contact role lies primarily with the introducing broker, not the clearing broker. As the initiator and manager of the customer relationship, the introducing broker is generally in the best position to either have or obtain the information. The clearing broker does not maintain the customer files, and only could obtain certain necessary information by going to the introducing broker. Under the Deposit Service, the introducing broker is in the best position to certify to DTC that there are no OFAC matches. Indeed, many introducing brokers send certificates that they accept from customers directly to DTC for deposit into their clearing broker’s account without providing the certificates to the clearing broker. Thus the proposal would require clearing brokers to begin gathering, screening and retaining certain information from certificates that they do not receive in the normal course of business today. There is also an issue as to whether the clearing firm would be able to respond within the tight timeframes DTC seeks to mandate. A better approach would be to allow the clearing broker to rely on and pass to DTC the certification of the introducing broker.

We respectfully request that the SEC clarify in the final rule these issues relating to introducing brokers and clearing firms.

**4. Investor Impact**

The crediting of investor accounts and the investor's ability to use shares deposited and proceeds of deposits would not be as timely under the proposal as they were previously. Even a delay of as little as one day could cause significant negative investor financial impact and market exposure, depending on the nature and size of the transaction. Moreover, it is likely that most of the investors who will be negatively impacted due to the potential delay in researching, certifying, and subsequently processing the deposit credit will be innocent parties wholly unrelated to the terrorists, narcotics traffickers and others subject to the sanctions.

Additionally, canceling a WT would negatively impact investors because OFAC-related cancellations are not part of a process employed today. Thus, the introducing broker will be required to re-submit (possibly several times) the request until sufficient information to confirm a false positive can be researched and provided.

**5. Allocation of Screening Resources; Duplication**

We are concerned that the vast majority of alerts that DTC will send participants under the Custody and WT proposals will be in situations where the registered owner on the certificate will be the same as the registered owner of the relevant account and thus will already have been screened as clients by the introducing and clearing brokers. The time and resources expended on responding to DTC requests to research information might detract from more important efforts by compliance personnel to address new accounts and relationships that have not yet been screened. Accordingly, it would be preferable under the Custody and WT proposals to allow participants the option of, instead of researching and providing client data to DTC, merely certifying that a registered certificate owner is the same as an existing client that has already gone through the participant's client screening process.

**6. Guidance under Regulation S-P**

Finally, we request guidance regarding the obligations of securities firms under the SEC's Regulation S-P when responding to the possible matches found by DTC under the Custody and WT Services. As proposed, DTC would be presenting the possible matches to participants' firms through the new automated OFAP function. The proposal then requires participants to review each certificate registration identified and respond "by providing factual information sufficient for DTC to conclude, in its sole discretion, that the investor is or is not the person or entity listed on the OFAC list."

Regulation S-P imposes requirements on financial institutions' treatment of customer non-public personal financial information, including providing consumers a reasonable opportunity to "opt out" of disclosures to nonaffiliated third parties. The issue presented here is whether the provision of information to DTC would be a disclosure under the regulation to a nonaffiliated third party, requiring firms to give notice and opportunity to opt out. Regulation S-P does permit financial institutions in certain circumstances to share customer nonpublic information with nonaffiliated third parties without providing an "opt-out." Such circumstances include where it is necessary to effect or process a transaction or service requested by the customer or to comply with legal requirements. Accordingly, we request that the SEC clarify that a firm will not be considered to have violated Regulation S-P for disclosures made to DTC of any customer non-public personally identifiable financial information to address possible OFAC matches, where the firm has not provided customers with an opportunity to opt out.

* * *

We understand the challenges facing law enforcement and the importance of vigorous compliance programs on the part of the securities industry. SIA remains committed to effective compliance with the OFAC requirements and to working with government authorities to stem the activities of terrorists, international narcotics traffickers and other criminals.

SIA appreciates the opportunity to comment on this proposal. Please contact us if you would like to discuss our recommendations further.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 216-2000

cc: Ms. Barbara Hammerle
Mr. David Karasik
Ms. Nancy Leo
Mr. Dennis Wood