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### **Via Electronic Mail**

July 10, 2008

Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

RE: Securities and Exchange Commission Release No. 34-57959  
File No. SR-DTC-2006-16, Notice of Filing of Amended Proposed Rule Change  
Amending FAST and DRS Limited Participant Requirements for Transfer Agents

To Whom It May Concern:

The American Bankers Association (ABA) is responding to the above-referenced amendment to the proposal of the Depository Trust Company (DTC) to amend FAST and DRS Limited Participant Requirements for Transfer Agents, published for comment by the Securities and Exchange Commission (Commission). The proposal would substantially amend (1) the requirements for registered transfer agents to participate in the Fast Automated Securities Transfer (FAST) program and (2) the requirements for transfer agents to become Direct Registration System (DRS) Limited Participants.

The American Bankers Association brings together banks of all sizes and charters into one association. ABA works to enhance the competitiveness of the nation's banking industry and strengthen America's economy and communities. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$13.3 trillion in assets and employ more than two million men and women. Our members include registered transfer agents who are directly affected by DTC's proposal, including many community banks that serve as transfer agent for their own securities.

At the outset, ABA appreciates the inclusion in the amended proposal of an exception from transfer agent registration for transfer agents acting solely for unlisted corporate debt. Nonetheless, ABA continues to oppose the amended proposal generally because we believe (1) DTC should not have the authority to unilaterally impose rules on transfer agents; and (2) the proposed requirements are both unduly burdensome and inconsistent with the movement of the securities industry to a book-entry system for security holder registration. Specifically, we strongly object to the requirement that transfer agents provide to DTC copies of the Annual Study of Evaluation of Internal Accounting Control filed with the Commission pursuant to Exchange Act Rule 17Ad-13 and, if obtained, a SAS-70 audit report. Finally, ABA supports the comments on DTC's amended proposal submitted by the Securities Transfer Association.

## **Discussion**

DTC's proposal comes in the context of new rules by the major securities exchanges requiring, as a listing prerequisite, that issues be eligible for DRS. As we said in our previous comment letters, because transfer agents must be FAST agents to participate in DRS, transfer agents have no alternative but to remain as FAST agents. With DTC being "the only game in town," this proposal must be sufficiently scrutinized to ensure that the proposed changes truly are merited and are fair to the participants in the clearing system.

DTC states that the various requirements of the proposal are warranted by the additional risks to DTC attendant to mandatory book-entry eligibility for listed securities. To the contrary, we again reiterate our position that these proposed requirements become *less* appropriate as securities certificates are replaced by book-entry positions.

### **1. Annual Study of Evaluation of Internal Accounting Control and SAS-70 Reports**

In addition to requiring transfer agents to provide to DTC a copy of the Annual Study of Evaluation of Internal Accounting Control filed with the Commission, the proposal would also require transfer agents to provide a SAS-70 audit report if one is obtained. ABA continues to strongly oppose this requirement. First, bank transfer agents are specifically exempted from the requirement to provide to the Commission the Annual Study of Evaluation of Internal Accounting Control, so there is no report to send to DTC. See 17 CFR § 17Ad-13(d)(3). Second, in the case where a SAS-70 report is obtained, dissemination of the report may be strictly limited by the preparer.

As we said in our previous comment letters, since the Commission, as regulator, has not seen fit to require a SAS-70 report, provision of this report to DTC is well outside the scope of its authority as a Self-Regulatory Organization.

### **2. Transfer Agent Operations**

ABA continues to strongly believe there is no basis for DTC to involve itself in the operational aspects of the bank transfer agent's business as would be the result of its proposed changes to the FAST requirements. DTC should not involve itself in the operation of transfer agents' business, but rather should rely on the Commission and the bank regulators to enforce the rules governing bank transfer agent operations.

*Deficiency Information.* As stated in our earlier comment letters, ABA continues to believe that there is no basis for DTC to seek copies of a transfer agent's two most recent deficiency or compliance correspondences from the Commission and, on an ongoing basis, notices of material deficiencies. Such regulatory actions are the confidential property of the Commission and should not be made available to DTC unless the Commission so directs. Nor has DTC offered justification of its need for these correspondences that would outweigh the significant risk to bank transfer agents that any such information shared with DTC might be discoverable in litigation.

*Insurance policy notifications.* Similarly, ABA believes that DTC has provided no basis for requiring notification to DTC in the event an actual lapse of an insurance policy or change in business practices that would result in increased insurance requirements. Nor has DTC demonstrated that there is a basis for providing evidence of any new or substitute insurance policy that is issued.

### **3. Standard of Care**

Because securities in the FAST program are held by transfer agents, DTC proposes it will not be liable “for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC’s gross negligence, willful misconduct, or violation of Federal securities laws for which there is a private right of action.” Under this standard, DTC would not be liable for its own processing errors so long as they did not rise to the level of gross negligence, thus relegating the consequences of such errors to the transfer agent.

ABA continues to strongly oppose this provision. In a dispute between DTC and a transfer agent, each party should bear responsibility for its own processing errors. No legitimate policy purpose is served when one party to a contract can impose on another party the consequences for its own ordinary negligence.

### **4. Balance Certificate Agreement**

Both the proposal and the Balance Certificate Agreement Section 18 require the transfer agent to warrant to DTC that it is at all times in compliance with all applicable laws and rules under the Securities Exchange Act of 1934 (Act). Because many transfer agents are public entities subject to a wide range of provisions of and rules implementing the Act, ABA requests that DTC specify in both the proposal and Balance Certificate Agreement that these warranties are limited to the transfer agent provisions of the Act and its regulations. In addition, we urge DTC to amend the warranty language to provide that the transfer agent warrants that *to its knowledge*, it is *materially* in compliance with the provisions and regulations of the Act.

In addition, Section 20 of the Balance Certificate Agreement required the transfer agent to immediately notify DTC within two calendar days of its failure to comply with the Agreement. ABA requests that , as a practical matter, this deadline be extended to a minimum of ten business days to enable reasonable compliance by transfer agents.

### **Conclusion**

In conclusion, ABA continues to oppose DTC’s proposed changes to its FAST and DRS Limited Participant requirements. First, ABA believes that it is inappropriate for DTC to demand information from bank transfer agents that is either not required by their primary regulator or not their property to share. Second, many of DTC’s requirements would be most applicable to paper certificates, and yet its rationale for the proposal is that its risks are increasing because of increases in book entry positions. Finally, DTC has provided no supporting basis for the proposed requirements.

If you have any questions about ABA’s comments, please do not hesitate to contact the undersigned.

Sincerely,



Cristeena G. Naser

cc: Erik Sirri, Director  
Division of Trading and Markets  
Securities and Exchange Commission