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June 22, 2007

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Electronic Submission

Re: Self-Regulatory Organizations; The Depository Trust Company; Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents; Release No. 34-55816; File No. SR-DTC-2006-16.

Dear Ms. Morris:

This letter responds to the request of the Securities and Exchange Commission ("the Commission") for comments on the above-referenced Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents (the "Proposal"), prepared by The Depository Trust Company ("DTC"), and published by the Commission for comments.

The Proposal would substantially amend the requirements for registered transfer agents to participate in the Fast Automated Securities Transfer ("FAST") program. Additionally, the Proposal would substantially amend the eligibility requirements of securities issues for the Direct Registration System ("DRS"), and for transfer agents to become DRS Limited Participants.

Wells Fargo & Company is a diversified financial services company which through its subsidiary, Wells Fargo Bank, National Association ("Wells Fargo"), a registered transfer agent, offers transfer agent, registrar, paying agent, dividend disbursement agent, and related services to more than 430 equity issuers, and maintains nearly three million shareowner accounts for the owners of those equity securities. Additionally, through its Corporate Trust Services unit, Wells Fargo offers transfer agent, registrar, paying agent, and related corporate trust services to debt issuers and the investors who own the debt securities issued by these issuers. Both Wells Fargo Shareowner Services and Corporate Trust Services will be significantly affected by the Proposal.

We have consulted with the American Bankers Association ("ABA"), and the Securities Transfer Association ("STA") and have participated in the preparation of their comment letters on the Proposal. We concur with the positions taken by the ABA and the STA in their comment letters.

We do wish to highlight certain issues of particular significance to Wells Fargo relating to the Proposal:

Introduction -- Transfer Agent not Custodian

We will comment below on the specific new FAST and DRS limited participant requirements contained in the Proposal, but first will address a point of confusion that appears to be the Proposal's guiding principle: its flawed assumption that a transfer agent serves as custodian for DTC by virtue of the fact that the transfer agent maintains securities records that include records of securities for which DTC or its nominee, Cede & Co., are the registered holders. DTC's position is registered to Cede & Co., not to "Transfer Agent as Custodian FBO DTC."

A transfer agent serves under contract with an issuer of securities, and maintain records reflecting the ownership of securities by registered holders (including many nominees), and yet the transfer agent is not serving as custodian for any of these registered holders. How can DTC assert rights under a "custodial" relationship which does not exist between the transfer agent and DTC as registered holder? Then at the same time, how can DTC also prohibit Transfer Agents from charging them for the services they are now trying to require?

The Proposal relies heavily on DTC's alleged concept of custody in several places. A custodian, as the term is commonly understood in financial services, is a financial institution that holds securities or other financial assets on behalf of its customers. DTC apparently believes that transfer agents are custodians for DTC and therefore assumes it has standing as a customer to its vendor to make demands of transfer agents. However, a transfer agent is not a custodian for DTC, but serves as the duly appointed agent of the issuer, under appointment documents executed by the issuer and the transfer agent that set forth the duties and obligations of the transfer agent.

First, a transfer agent is the agent of the issuer, and has one customer, the issuer. The transfer agent has discretion whether to serve a particular issuer and to negotiate with the issuer mutually acceptable terms for that service—including compensation. The transfer agent does not have any such discretion regarding how to maintain a particular security holder's records. If the security holder is a direct owner of the issuer's securities, the transfer agent must maintain a record of that position. The security holder does not have any standing to require any operational or other standards of the transfer agent. This is the prerogative of the issuer in its written agreement with the transfer agent, and, of course, the transfer agent's regulators.

Second, a transfer agent is a recordkeeper appointed by the issuers; the transfer agent does not hold securities as custodian for a registered holder. The transfer agent's vault generally hold only blank or cancelled stock certificates. Certificates reflecting actual ("live") securities are held by the registered holder.

In the case of DTC's position held as registered holder under its FAST system, there is no certificate except in the most nominal sense--a legended certificate referencing the transfer agent's systems for the number of shares, which has no separate value distinct from the transfer agent's records. As DTC is aware, many transfer agents maintain DTC "balance certificates" electronically in a book-entry position, resulting in no physical certificate. The number of securities represented by that registered position changes daily, in only one place: the systems of the transfer agent. Thus, the value is nothing more than a systems record. As the clearance and settlement system rapidly moves away from physical stock certificates and toward a book-entry model, this fundamental attribute of transfer agent's limited role as recordkeeper (and not as custodian) becomes increasingly unmistakable.

Yet DTC states that the advent of mandatory book-entry eligibility for listed securities is the triggering event that prompts its need to impose costly and onerous new requirements on the entire transfer agent industry.[1] In fact, the long list of proposed "custody" requirements (*e.g.*, insurance deductibles and minimum coverage amounts, the weight and fire-rating of safes, safekeeping of physical certificates instead of encouraging book-entry positions) becomes less appropriate at this point in time, not more, as physical certificates rapidly become supplanted by book-entry positions.

Similarly, DTC as registered holder lacks standing to impose any of its proposed regulatory related requirements (*e.g.*, DTC access to SEC regulatory examination reports, annual auditor attestation reports, notice and inspection rights for DTC, or registered holder statement requirements). DTC's bold efforts to assert new authority over the transfer agent industry, while never appropriate for one commercial participant in the financial services industry to impose on other participants, is especially untimely now, as the appropriate regulatory body, the Commission, readies a series of rulemaking releases covering similar subject matter.

As if all of the above were not enough, the Proposal also contains specific provisions that would block any fees that transfer agents could charge to DTC, despite the additional costs and burden imposed on transfer agents by the new DTC requirements, and that would insulate DTC from acts or omissions caused by its own negligence, while imposing a higher liability standard for transfer agents.

As expressed in comment letters submitted by the American Bankers Association and the Securities Transfer Association, each representing major segments of the transfer agent community, Wells Fargo believes that DTC lacks authority to impose these costly proposed requirements on the transfer agent industry. Although many of these costly and unnecessary proposed requirements appear to be submitted under the guise of "safety and soundness," DTC's main goal appears to be trying to create benefit for itself and its owners in the commercial relationship it has with Transfer Agents through the assumption of far reaching regulatory authority. In addition, we have specific objections to the Proposal, which are discussed below.

Insurance Requirements

Wells Fargo joins the ABA and STA in strongly objecting to the costly and onerous insurance requirements of the Proposal: excessively high minimum insurance coverage levels, excessively low deductibles, as well as notice and loss payee/named insurance requirements that are at odds with industry practice. For large transfer agents, the deductibles set forth are not reasonable and may not even be obtainable from insurers with acceptable credit ratings. If obtainable, the insurance premium costs for transfer agents will be significantly above current levels, and DTC has failed to establish any relevant loss history or potential risk (particularly with regard to book-entry securities) to justify such enormous cost increases. This may be especially onerous for Transfer Agents that are financially strong (stronger than DTC) who choose to self insure various risks up to levels different than those proposed by DTC. For some smaller transfer agents, the

[1] In fact, the new DRS Rules of the NYSE, AMEX and NASDAQ have now been conceded by DTC and the Exchanges to not require actual participation in a DRS program, but rather require only that the issuer use a transfer agent which is DRS eligible through DTC.

large minimum coverage amounts proposed will actually exceed the value of the DTC shares on the books of the transfer agent, and will not be available at affordable rates. Indeed, we support the STA's belief that there is not one STA transfer agent member currently meeting the insurance and deductible requirements that DTC seeks to impose.

As noted previously, because there will be fewer physical certificates as they are replaced with holdings in book-entry (non-physical) form, the potential liability for lost, stolen or counterfeit certificates will in fact result in the significant reduction of risk to DTC and transfer agents. However, despite this reduction in risk, the Proposal seeks to mandate increased insurance requirements.

The decrease in the number of physical certificates also makes it difficult to understand why DTC is attempting to impose significant mail insurance requirements. Moreover, mail loss insurance should not be of legitimate interest to DTC since the very nature of the FAST program is that all the securities registered to DTC would be reflected in a balance certificate, the legended certificate (or book-entry position) kept by the transfer agent and which is never mailed anywhere.

Although the Proposal would allow a waiver of the required levels and deductibles, as this is at DTC's sole discretion, we strongly believe this offers no real possibility of relief on which transfer agents may rely, and may be "window dressing" to make the filing more palatable within the approval process. .

The Proposal attempts to mandate that DTC become a protected party under the insurance by being named as an additional insured or a "loss payee" on mail insurance, and this is highly objectionable. We have been advised by insurance placement experts that this is not standard insurance industry practice, as insurance carriers do not want to be in a position to face competing claims from multiple loss payees. If the Proposal stands, DTC would have the ability to control settlement of disputed insurance claims, and favor its interests over that of the transfer agent and other securityholders. There is no reason why DTC and its constituency, street name holders, should enjoy a favored position over record holders, again with no rationale beyond DTC's particular commercial interests, especially when it is understood that street name holders enjoy SIPC coverage and other protections.

Wells Fargo also objects to the proposed notice requirements to DTC regarding insurance coverage, including in the event of the issuance of a new or substitute policy, an actual or threatened lapse in coverage, and proof of changed coverage. Under the Proposal, DTC even seeks to require insurers to include language in their policies to notify DTC within five (5) days of a threatened or actual lapse of a policy. DTC as registered holder has no authority to impose onerous notice requirements on transfer agents or their insurance companies. It may be beyond a transfer agent's ability to require insurance companies to include such language in policy documents.

Importantly, DTC and other registered holders have sustained virtually no economic losses as a result of under-insured transfer agent activities, and, accordingly, the proposed insurance requirements are unnecessary, onerous and overly broad. DTC has failed to establish any relevant loss history or potential risk (particularly with regard to book-entry securities) to justify such onerous and costly requirements.

Safekeeping Requirements

Wells Fargo supports the STA position that DTC should have no authority to dictate the physical security levels maintained by transfer agents, such as the rating of the vaults, the nature of alarm systems and so on. As stated above, DTC is not a transfer agent's customer under custody contract, nor its regulator. Further, we believe such requirements are especially untimely now, since the advent of FAST makes vaults and alarms less important, not more so—since the balance certificate reflecting the securities allocated to DTC is specially legended on both sides (and therefore of no value to a thief), or is maintained as a book-entry position by the transfer agent. Universal DRS even allows the physical balance certificate to be *eliminated entirely*. If, notwithstanding the legends which make unauthorized transfer impossible, DTC is so concerned about the safekeeping of its balance certificate, the DTC position should be held book-entry in DRS like that of any other registered holder.

Execution of DTC's Documentation

The Proposal requires that all FAST transfer agents execute a new Balance Certificate Agreement and agree to DTC's Operational Criteria and other documentation. As noted in the STA comment letter, we oppose DTC's practice of establishing self-serving boilerplate agreements and procedures and refusing to negotiate their terms with transfer agents. Under the Proposal, DTC would have the ability to be completely inflexible with a transfer agent over a six-month period and then in its "sole discretion, to terminate or to continue the agent's FAST status." DTC's forms remain largely unchanged from the original documents dating back to the 1980s, despite the movement to book-entry recordkeeping and other changes in securities processing that would permit eliminating the outdated use of physical certificates representing DTC's position.

Audit Requirements

The Proposal would require transfer agents to provide an annual report from an external Certified Public Accountant, certifying compliance with DTC requirements, Commission requirements concerning business continuity planning, and attesting to the soundness of the transfer agent's controls (in the form of a SSAE-10 or SAS-70 report). These reports would be in addition to the independent accountant's audit of internal controls already required by Rule 17Ad-13 of the Securities Exchange Act of 1934. These additional audit report requirements would be superfluous and would introduce substantial additional expense. It is unclear whether any accounting firms are willing to undertake performing such an examination, and under what conditions or at what cost. DTC as a registered holder has no right to impose such requirements on a transfer agent.

The Commission, as the regulatory authority for transfer agents, performs examinations and requires a specific auditor report under its rules. This existing regulatory framework should be sufficient to satisfy any of DTC's stated concerns. In any event, the Commission, not DTC, is the appropriate party to impose audit report requirements on transfer agents.

Services Rendered to DTC Without Compensation

The Proposal would prohibit transfer agents from charging DTC fees that are not contractually agreed to by the issuer and are more than those charged to other registered holders for providing the same services. While appearing merely to request parity with other security holders, this language would rule out any compensation for the myriad specialized services now being demanded by DTC, which transfer agents do not provide to other shareholders. The concept that DTC should be charged just like any other shareholder is at odds with the fact that DTC, by way of the Proposal, has sought to add new requirements that no other registered holder could demand, or that solely benefit DTC. Based on the language of the Proposal, DTC apparently expects transfer agents to provide such services (as well as other enhanced services mandated by DTC in its sole discretion) without compensation. This is clearly not acceptable to transfer agents and would not be allowed in any other commercial relationship. If one commercial party provides services to another, it is entitled to compensation. If DTC refuses to pay transfer agents fees for services rendered, transfer agents should be entitled to refuse to provide the services without the sword over their heads that DTC could throw them out of FAST (and therefore out of business). DTC may argue that transfer agents should simply pass these costs along to issuers, and indirectly their shareholders, but we maintain that neither of these parties should have to bear the cost of services being provided to DTC. DTC should not be permitted to require more services from transfer agents, offset by no compensation to transfer agents, without the discipline of DTC bearing the cost for its extensive and particular demands.

Shareholder Statements

The Proposal would require transfer agents to send "a transfer advice or statement to holders within three (3) business days of each DRS account transaction that affects the holder's position, or more often as required by the Commission's regulations." DTC clearly has no authority to mandate notifications to all holders with DRS holdings. Such authority lies solely with the Commission. DTC has absolutely no place regulating transaction advices to be received by registered holders. It remains baffling why this requirement is part of a DTC Proposal, since it would apply exclusively to parties other than DTC, and the Proposal gives no explanation or justification for this requirement.

Confidential Regulatory Reports and Inspections

The Proposal would require transfer agents to supply DTC with copies of Commission regulatory examination reports, notifications of regulatory action, and immediate notification of "any alleged material deficiencies documented by the Commission." The last of these items is a new requirement added from previous draft versions of the rule filing. It would also give DTC the right to visit and inspect a transfer agent's facilities, books and records.

Like other transfer agents, Wells Fargo does not disclose to issuers or registered holders any confidential notices or reports received from the Commission. Since DTC is not customer but a registered holder, the disclosure of confidential correspondence with regulators to DTC appears to be based on DTC's faulty assumption that transfer agents are acting as DTC's custodian, which as previously discussed is not the case. Most importantly, DTC is not entitled to this confidential information under applicable law and regulation, and DTC has failed to demonstrate need for such confidential information.

Standard of Care

The Proposal would also absolve DTC from liability "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." This standard would absolve DTC for responsibility for its own negligent errors. If a third party, such as, a broker-dealer or a registered holder, were to suffer a loss caused by an error at DTC in its interactions with a transfer agent, DTC's exculpatory language would in almost all circumstances force the injured party to seek recovery from the transfer agent alone. DTC wishes to escape liability for even its own ordinary negligence, so that losses might be borne by a transfer agent that is at no fault whatsoever. In a dispute between DTC and a transfer agent, each party should bear responsibility for its own processing errors. There is no legitimate policy purpose that would be served in absolving DTC from responsibility for its own negligent errors. In addition, the effect of this position would be, similar to that described with respect to insurance above, to favor DTC and its constituency, street name holders, over record holders, again with no rationale beyond DTC's particular commercial interests.

Implementation of Program Changes

The Proposal would require transfer agents to implement program changes related to DTC systems modifications and to support and expand DRS processing capabilities. Although the changes related to DRS processing would have to be approved by the DRS Ad Hoc Committee, of which transfer agents are members, there is no similar requirement for changes related to DTC systems modification. The Proposal fails to address the reasonableness and necessity of any such changes, and the attendant significant costs that may be incurred by transfer agents.

As noted by STA, Wells Fargo objects to DTC unilaterally determining what changes to make to FAST and DRS, and thereby requiring transfer agents to make changes to their operations and systems to implement the same, without any agreement upon the necessity of changes and costs incurred. There is absolutely no justification presented in the Proposal for the "blank check" that DTC is requesting. As the Proposal itself makes abundantly clear, DTC left to its own devices could inflict tremendous harm on transfer agents through unilateral rule changes.

Negative Effects on Smaller Transfer Agents and Small / Mid-Cap Issuers

DTC's Proposal, taken in conjunction with the new mandatory DRS listing requirements already adopted by the NYSE, AMEX and NASDAQ, will require all listed issues to use a transfer agent that is a DTC FAST agent (i.e., a transfer agent that has met the eligibility requirements imposed by DTC, as interpreted by DTC in its sole discretion) and has signed the boilerplate Balance Certificate Agreement as required by DTC. As part of this arrangement, DTC historically has prohibited issuers and their transfer agents from charging presenters (i.e., registered holders and broker-dealers) certificate transfer and issuance fees for any DTC FAST issues.

The result is that for those smaller transfer agents and their thousands of small issuer clients now being forced into the DTC's FAST system, DTC is refusing to allow alternate pricing arrangements (e.g., certificate and transfer fee billing structures), which have heretofore been used by small agents and issuers. Whereas large and medium-sized full service transfer agents typically charge issuers monthly administrative fees for their broad array of services, smaller agents offering only core services have been able to offer small issuers alternative billing structures that include nominal or no monthly charges to the issuer and transaction fees paid by presenters. The Proposal would prohibit these alternative billing arrangements for all DRS eligible issues, thereby having a significant negative financial impact for both smaller transfer agents and their small to mid-sized issuer clients. In its comment letter, the STA warns that many smaller transfer agents will be forced out of business. For those that are able to remain in business, they will have to charge (and small and mid-sized issuers will have to bear) the higher costs of the pricing model generally used by medium-sized and large transfer agents, that will be even higher based on the onerous requirements imposed by the Proposal.

The number of commercial transfer agents in the U.S. has reduced steadily over the last thirty years. In 1970, approximately 70% of all publicly-traded shares were recorded in directly registered form on registers maintained by transfer agents, while DTC's position (through its nominee, Cede & Co.) represented the remaining 30%. Since the 1970s, as a result of market conditions and actions taken by DTC, there has been a dramatic shift so that now more than 70% of all publicly-traded shares are represented by DTC's position, and 30% or less are kept in registered form on the books of transfer agents. This means the vast majority of shareholder account records are now under the control of the broker-dealer and bank participants that own DTC.

DTC is registered as a clearing agency with the Commission, and clears virtually all equity securities in the United States. It is 100% owned and operated by banks and broker-dealers. While DTC asserts that it is not a competitor of commercial transfer agents, the wording of its charter[2] and the history of the last three decades indicate this is not the case. DTC performs similar recordkeeping and related functions for its broker-dealer and bank participants as transfer agents perform for registered shareholders.

As noted by the STA, many smaller agents have expressed strong concerns that the Proposal would have the effect of forcing out of business many small transfer agents which provide valuable, cost-effective services to thousands of smaller issuers around the country. DTC seeks, through the Proposal, unfettered authority and discretion to mandate what services transfer agents must provide to DTC and its members, while at the same time, refusing to pay for these extensive and particular mandated services. The relationship between transfer agents and DTC is a commercial relationship, and both parties should be able to negotiate services to be provided and any compensation for those services. Further, as noted by the STA, Wells Fargo believes that DTC is interfering with the Congressionally-granted, exclusive authority of the Commission, in attempting by way of the Propose to impose strict new eligibility requirements, not only on transfer agents that are DTC participants, but on all transfer agents, which are direct competitors of DTC.

In summary, as noted in the STA comment letter, by way of the Proposal, DTC seems to be acting as a defacto depository/clearing agent monopoly engaged in anti-competitive conduct. The effects of this anti-competitive behavior are far-reaching as mandated services required of all transfer agents, accompanied by DTC's refusal to pay compensation for the onerous new requirements, and may result in many small transfer agent competitors being forced from the marketplace.

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[2] DTC's own Organization Certificate, Section 12, provides that DTC shall have certain general powers in connection with providing transfer agent services.

DTC's Operational Arrangements

The requirement that transfer agents "must comply with all applicable provisions of DTC's Operational Arrangements ("OA") as amended from time to time" is unworkable for certain structured finance transactions, according to corporate trust managers responsible for administering these complex transactions. Among other things, the Proposal states that the FAST transfer agent must balance to DTC's position and resolve the any out-of-balance conditions within a specified number of days. Failure to do so could mean termination of a FAST transfer agent's agreement. But DTC has failed to provide a workable process for FAST agents to reconcile positions with DTC. It may often be the case that DTC cannot give accurate current balances because of realized losses/gains, accretions, leading zeros and future month factors. This in turn leads to delays in completing the reconcilement process.

These are concerns the corporate trust community has previously presented to DTC, in the context of meetings arranged by ABA or SIFMA, without any corrective action being taken on the part of DTC. Even if DTC finally does take steps to resolve these OA issues, the timing of receipt of information by FAST agents and transmittal of that information to DTC remains an issue. The current version of DTC's OA requires FAST agents to provide rate information to DTC two days prior to payment date, which is even prior to the time such information is available to the FAST agent. While DTC has expressed their intent to revise the OA to reflect structural issues, it has not yet done so. Consequently, if FAST agents were required to obtain an accountant' attestation of compliance with the OA (as required by the Proposal), agents with structured finance transactions in their corporate trust area would fail to meet such requirement.

DTC's Usurpation of the Commission's Jurisdiction

One of the most objectionable aspects of DTC's Proposal is that it will have the effect of making DTC a supervising regulator of the entire transfer agent industry. Congress did not vest DTC with this authority; instead, it vested exclusive authority for regulating and overseeing transfer agents solely with the Commission. Moreover, DTC is an SRO which, through the Proposal, is seeking to regulate conduct and pricing for non-member vendors which provide services to DTC. The STA submits that there is a major structural problem in this regard, which needs to be addressed by the Commission.

Conclusion

As noted in the ABA and STA comment letters, adoption of the Proposal would be impose significant new costs and burdens on transfer agents, and could be disastrous for smaller transfer agents and issuers. If the Proposal is not substantially revised to address the concerns urgently raised by transfer agents, it would amount to a transfer by the Commission of its authority to regulate the transfer agent industry, handing this authority to a private sector entity (and competitor of many transfer agents) whose ultimate goal is not the protection of investors, but the protection of its own interests.

In addition, as the Commission is aware, DTC has a long history of streamlining its own operations by pushing additional service requirements on transfer agents while refusing to pay for almost all of these services despite the concerted efforts of individual transfer agents, acting through the STA or ABA to enlist the Commission in urging DTC to bargain with transfer agents in good faith. Furthermore, the advent of mandatory book-entry eligibility would give transfer agents no choice but to adhere to DTC rules, lest DTC in its sole and unfettered discretion throw them out of FAST and DRS and, therefore, out of business.

Wells Fargo appreciates the opportunity to comment on the Proposal and would welcome the opportunity to discuss our concerns further. We urge full consideration by the Commission of the comments made herein and by the ABA and the STA in their comment letters, and we will be happy to discuss the issues in more detail. Please contact the undersigned at 651-450-4054 to discuss any concerns addressed or questions raised by this letter.

Sincerely,

Lennie M. Kaufman

Lennie M. Kaufman
Executive Vice President
Wells Fargo Shareowner Services

cc: Brian Bartlett
JoAnn E. Vincent
John D. Wright