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STP Advisory Services, LLC

June 26, 2007

Ms. Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, DC 20549-1090
Via Internet

Re: Securities and Exchange Commission Release No. 34-55816, File No. SR-DTC-2006-16, Notice of Filing of Proposed Rule Change Amending FAST and DRS Limited Requirements for Transfer Agents.

Dear Ms. Morris:

I am the Chief Executive Manager and Chief Economist of STP Advisory Services, LLC, in Santa Monica, California. I reviewed the subject rule change in detail and must speak out strongly in opposition to these changes. These changes provide an unfair competitive advantage to the SRO and disadvantages to the small transfer agents and the small businesses that rely on them for services.

I was employed by Depository Trust Company (DTC) from August 1987 through August 1993. My title at DTC was Director of Transfer Agent Services. I held day-to-day responsibility for maintaining positive relationships between DTC and the corporate trust community (CTC) in the United States and Canada. CTC includes transfer agents (TAs) and registrars, i.e., those companies that maintain the ownership records for public companies. As DTC's liaison, I served on transfer agent industry association committees, attended quarterly and annual meetings and conferences, and was a frequent speaker at TA industry events.

While I was employed by DTC, my industry-liaison role exposed me to a broad range of DTC activities, not only with the CTC, but with bank and broker-dealer Participants'"activities. Many of the same companies that were TAs were also banks (e.g., US Trust, Bank of New York, Chase, Citibank) that maintained Participant accounts at DTC. The necessity of working with DTC departments and companies on these two complementary sides of the securities business gave me a strategic perspective that was not afforded to most operations managers at DTC.

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When I first arrived at DTC in the fall of 1987, the relationship between DTC and the TAs was quite strained. The TAs believed that DTC was making unreasonable demands for everything from increasing automation in the TAs operations to decreasing payments for services. In fact, DTC had the power to control the prices charged by TAs for their services. Even in 1987, DTC's holdings of many issuing companies were as much as 75% of all shares outstanding. Through their on-going and vigorous efforts at immobilization"(maintaining physical custody of all stock certificates only at DTC) and dematerialization"(making shares exist only in the form of electronic files, rather than as physical pieces of paper), DTCC can now claim to be the registered shareholder of 100% of many issuers'stocks and bonds (through its nominee name, Cede & Co). This makes DTC the largest registered shareholders of the clients of the TAs, i.e., the companies that issue stock.

As has already been stated in other comments here, DTC and the TAs are indeed competitors. As DTC's liaison to the TAs, I served on industry committees, including the T+3 Direct Registration Subcommittee associated with the International Group of Thirty Clearance and Settlement Project, which was known as the G30."G30 was formed in the 1990s by top financial industry representatives from 30 industrialized nations in an effort to improve efficiency in international capital markets by recommending standards for their respective 30 national markets. On the Subcommittee, I worked beside representatives of the Securities Transfer Association ("STA") and the American Society of Corporate Secretaries, as well as representatives of the Securities Industry Association (now part of SIFMA).

The Subcommittee viewed a new Direct Registration System initiative developed by the TAs (DRS-TA") as offering investors an additional choice of stock ownership in the form of an account statement, in which the shares would be registered in the name of the investor and maintained on the books of the issuer in a book-entry format. After consideration, the G30 decided that the complete elimination of certificates was not necessary. The TA community, nevertheless, continued its work to develop DRS-TA. In 1992, the TA community formed the Investor Registration Option Implementation Committee ("IRO/IC") to make DRS-TA a reality. I served as DTC's representative to IRO/IC. This work eventually led the Securities and Exchange Commission (SEC") to solicit comments on the policy implications of, and the regulatory issues raised by, DRS-TA in a release dated December 1, 1994.[1]

DRS-TA was based on dividend-reinvestment programs where, at the shareholders option, a company would use dividend payments to purchase additional shares for the shareholder rather than disbursing the dividend as a cash payment to the shareholder. Some issuers extended the concept to the point where an individual investor could open an account with the company that issued the stock (or the company's TA) into which a shareholder could make additional cash contributions that the issuer would then use to purchase additional shares of the company's stock for the shareholder.

[1] See SEC Release No. 34-35038 for more details regarding the events leading to the development of DRS-TA.

Shareholders participating in DRS-TA would deal directly with the company that issued the stock (or the company's TA) to buy, sell and transfer shares of stock. The issuers accumulated the stock transactions of all of the shareholders together before executing buy and sell trades so that any transaction fees the issuer paid were divided among a great number of shareholders. Therefore, stock issuers were able to offer DRS-TA services at virtually no cost to shareholders.

Before I left DTC in 1993, I proposed and enhanced a service for the direct mailing of certificates by agents to shareholders at the request of financial intermediaries through DTC. I also proposed, developed and tested automated direct withdrawals and deposits at custodians. Both programs are complementary services to DRS-TA, in that these were the refinements necessary to make DRS-TA compatible with DTC services. After I left DTC, I was told by TAs and former co-workers who remained at DTC that the relationship between DTC and the TAs deteriorated almost immediately upon my departure, despite the fact that the department that I headed and developed, Transfer Agent Services, was expanded significantly in the number of staff assigned to the function. I mention this because I believe it places in context the events that follow.

Subsequent to the development of DRS-TA, DTC began a program to develop a depository operated book-entry registration system whereby DTC came into direct competition with the TAs. On October 3, 1996, DTC filed with the SEC a proposed rule change to establish a new service called the Direct Registration System"" DRS-DTC"). In SEC Release No. 34-37778, DTC states that DRS-DTC would allow an investor to transfer its DRS position in the security to a *financial intermediary* in order to sell or pledge the security or to receive a certificate representing the security"" (emphasis added). In contrast, DRS-TA allows an investor to *directly* sell, pledge or transfer their shares. Therefore, DRS-DTC was not a program intended to accommodate the DRS-TA business of the TAs; in fact, as I describe above, that work was completed in 1993. Instead, DRS-DTC was a new service. DTC's new product was distinctly advantageous to DTC and its Participants and *specifically intended to compete with the TAs.*

There are clear reasons why DTC would take such steps to compete with the TAs through DRS. DTC is tantamount to a cooperative owned by its Participants, with such Participants given the right to purchase voting shares of DTC stock in proportion to the quantity and value of services they use at DTC annually. The voting shares are then used to elect Participants' officers to the Board of Directors of DTC.

Likewise, the Participants also have ownership interests in DTCC with concomitant DTCC voting rights and directorships. Moreover, many DTCC Board members are employed by Participants that either are FAST-approved transfer agents or closely affiliated with companies that are FAST-approved transfer agents. For example:

- DTCC Director Ellen Allemany is the Chief Executive Officer of Global Transaction Services for Citigroup Corporate and Investment Bank. Citigroup is associated with Computershare Investor Services, which is a transfer agent approved for the FAST Program.

- DTCC Director J. Charles Cardona is the Vice Chairman of The Dreyfus Corporation, which is now owned by Chase Mellon, which in turn owns ChaseMellon Shareholder Services, which is a FAST Program approved transfer agent.
- DTCC Director Art Certosimo is the Executive Vice President of the Bank of New York, which is a FAST-approved transfer agent.
- DTCC Director David Weisbrod is Senior Vice President of Risk Management, Treasury & Securities Services for JP Morgan Chase & Co., which owns ChaseMellon, a FAST-approved transfer agent.

It is also worthy of emphasis that Mellon Financial recently announced merger plans with Bank of New York, thereby increasing consolidation of market power in this industry.

At the time that DRS-TA was created, some of the Participants were worried that it would take business away from them. They expressed such concerns during the development of DRS-TA. If an investor could buy, sell and transfer shares of stock without a financial intermediary," then the TAs would be in direct competition with the Participants, who own DTC and DTCC.

In fact, DRS-TA was offered at a significantly lower cost to investors than the buy and sell services of DTC's Participants. Many DRS-TA programs charged no fees to buy shares, only minimal fees to sell shares and no account maintenance fees.[2] Therefore, since the TAs seemed to be competing with the Participants, it is reasonable to assume that the Participants, especially those with employees on DTC's Board of Directors, would want to have DTC compete with the TAs.

Finally, in 2006, DTCC filed proposed rule SR-2006-16, the subject of the present comments. This rule represents a particular burden on smaller transfer agents. The STA and its members brought this rule to my attention in October 2006. Based on my experience, I share the STA's members' "concerns that DTC's proposal is deeply flawed and presents an onerous burden to TAs. The proposed rule exceeds the permissible scope of DTC's authority over TAs. The DTC has gone so far as to state in public documents that, in addition to appointing FAST agents, they would incur costs associated with monitoring the agents' "performance." "However according to the Commission:[3]

> There is no SRO that governs transfer agents. The SEC therefore has promulgated rules and regulations for all registered transfer agents, intended to facilitate the prompt and accurate clearance and settlement of securities transactions and that assure the safeguarding of securities and funds. The rules include minimum performance standards regarding the issuance of new certificates and related recordkeeping and reporting rules, and the prompt and

[2] Bear in mind that this was in the 1990s, before online trading pushed many brokerage fees to less than $10 per trade.
[3] Quote from www.sec.gov/divisions/marketreg/mrtransfer.shtml; last visited January 2007.

accurate creation of security holder records and the safeguarding of securities and funds. The SEC also conducts inspections of transfer agents.

I respectfully submit that DTCC's filing of proposed rule SR-2006-16 is part and parcel of an over-arching intention to force some TAs (especially small TAs) out of business. In this regard, in October 2006, at the annual meeting of the STA, a DTCC Managing Director publicly announced a timeline for the complete elimination of any transfer business that handles physical stock certificates, that is, the elimination of any stock transfer business that was not enrolled in FAST and DRS-DTC. Specifically, on October 20, 2006 a DTCC Managing Director stated that by 2008, DTC wanted to be the self-proclaimed Roach Motel"" of stock certificates, in that certificates get deposited to DTC but they never come out. The wording on the slide states that All withdrawals will be done via full DRS,"" referring to DRS-DTC.[4]

The SEC unwittingly supported this intention by approving rule changes in August 2006 for New York Stock Exchange, American Stock Exchange and the NASDQQ to require DRS participation for listing. SEC further approved an additional and similar rule change for NYSE Arca issues in September 2006. (NYSE Arca, formerly known as the Archipelago Exchange and the Pacific Exchange, is the second securities exchange operated by NYSE Group, Inc.) Likewise, in January of 2007, Mr. Lawrence Morillo, Managing Director of Pershing LLC and Chairman of the Securities Industry and Financial Markets Association (SIFMA), publicly stated that the Boston, Chicago and Philadelphia stock exchanges filed rule changes with the SEC in October 2006 to adopt DRS and FAST. Mr. Morillo also stated that the National Stock Exchange (Chicago) would consider such a rule change at their next Board meeting. **Therefore, there would appear to be no limit to the business that will be denied to transfer agents if DTC elects to deny them access to FAST. I challenge DTC's Statement on Burden on Competition and ask that the Commission require proof of analysis that shows that DTC did some analysis before stating that DTC does not believe that the proposed rule change will impose any burden on competition.""**

As further evidence of the anti-competitive intent of DTC, it is worth observing that, in the 30 years since its inception, the number of issues eligible for FAST has increased 2,325 times while the number of agents eligible for FAST has increased by a factor of only 9. Furthermore, the population of small transfer agents is rapidly declining. According to my analysis of data available from SEC publications, the number of small registered TAs declined 34%, from 470 to 310 just in the 4 years since 2003. In the same period, the number of all TAs declined only 13%, from about 900 to 785 today. Clearly, the small businesses in the TA community are suffering more than the larger TAs.

I urge the Commission to look beyond these individual requests for rule changes from DTCC to see the larger picture of a slow slide toward complete monopolization of the financial services operations business.

[4] See DTCC Balbo Oct 2006 Roach Motel.pdf appended to this document.

Finally, I urge the Commission to conduct a complete Regulatory Flexibility Act analysis for this and all DTC proposed rule changes. The Commission should also provide details of their RFA analysis for the 2006 rule changes proposed and approved for New York Stock Exchange (File No. SR-NYSE-2006-29), American Stock Exchange (File No. SR-Amex-2006-40), Chicago Stock Exchange (File No. SR-CHX-2006-33), NYSE Arca, Inc. (File No. SR-NYSEArca-2006-31), NASDAQ (File No. SR-NASDAQ-2006-008), Philadelphia Stock Exchange (File No. SR-Phlx-2006-69), and Boston Stock Exchange (File No. SR-BSE-2006-46). These rule changes were predecessors to the present rule, each of them making DRS-DTC a listing requirement. I can imagine no factual basis for any statement in this matter that small transfer agents and the small public companies that they serve are not unfairly impacted by these rule changes.

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Attach: DTCC Balbo Oct 2006 Roach Motel.pdf

- Q2: Evaluate limited days for physical processing (WTs and Deposits)
- Q3: Implement various DRS processing enhancements.
  - Move “all” shares, sell fractions; move “all” shares, terminate account, sell fractions and move “all” full shares
- Mid 2007 Rule filing for defaulting all WT transfers to statement in mid-2008
- 2008 become the “Roach Motel” All withdrawals will be done via full DRS – No more physical WT’s