June 27, 2007

Via Electronic Mail

The Honorable Christopher Cox, Chairman
U.S. Securities and Exchange Commission
Attn: Nancy M. Morris, Secretary
100 F Street, NE
Washington, DC 20549
Electronic Address: rule-comments@sec.gov

Re: SEC 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 (72 Fed. Reg. 30,648)

Dear Chairman Cox:

The Office of Advocacy (Advocacy) of the Small Business Administration (SBA) respectfully submits this comment letter on the above-referenced proposed rule. Advocacy appreciates the Commission's stated willingness to accept our letter as timely filed and that our letter will be placed in the docket of this rulemaking.

Since the publication of this proposal on June 1, 2007, Advocacy has heard from several small businesses in the securities transfer industry. They have told Advocacy that the rule will severely impact them. In particular, these small businesses told Advocacy that the rule would raise the cost of doing business to the extent that many of them will cease doing business as securities transfer agents. Advocacy has also reviewed the comments of small businesses that have been submitted to the docket; these comments support the contention that the rule as proposed will have a significant economic impact on a substantial number of small entities.

Based on these small business comments, Advocacy believes that the SEC should commence proceedings to disapprove the rule, which was proposed by a self-regulating organization in accordance with Section 19(b)(1) of the Securities Exchange Act. The rule will have a disproportionate impact on small businesses and their ability to compete, to the extent that these businesses will no longer be able to offer their services as securities transfer agents.

I. The Office of Advocacy

Congress established the Office of Advocacy in 1976 by Pub. L. 94-305 to represent the views and the interests of small business within the federal government. Advocacy is an independent office within SBA, so the views expressed by Advocacy do not necessarily reflect the views of

the SBA or the Administration. The Regulatory Flexibility Act (RFA),[1] as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA),[2] gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, federal agencies are required by the RFA to assess the impact of the proposed rule on small business and to consider less burdensome alternatives.[3] Advocacy regularly hosts small business roundtables to solicit feedback and information from small business representatives on regulatory proposals.

II. Background

This rule was proposed by the Depository Trust Corporation (DTC), a self-regulating organization, "to amend its rules to update, standardize, and restate the requirements for the Fast Automated Securities Transfer program (FAST) and to delineate the responsibilities of DTC and the transfer agents with respect to the securities held by transfer agents as part of the FAST program, and to restate the requirements for transfer agents participating in the Direct Registration System (DRS)."[4]

The FAST program allows for transfer of securities without the need for physical deliveries of securities, reducing the risk of loss or other mishandling of certificates. Major exchanges are requiring that issues be eligible for processing through the DRS; registration as a FAST agent is required for participation in the DRS.[5]

The proposed rule imposes several new requirements on securities transfer agents. Among those are requirements for securities transfer agents to become DRS-eligible, if they are not already, and to participate immediately in FAST. It requires insurance coverage which is generally higher than current industry practice, and with deductibles which are so low that the insurance industry is not sure coverage would even be available.[6] The rule as proposed specifies requirements for new vaults within which certificates must be stored. It would prohibit transfer agents from using certain forms of business relationships which are now commonly used. The proposed rule also requires an independent evaluation of internal controls, even though SEC rules already require such a report.

III. Small Entities Have Expressed Serious Concerns with the Proposals

After the proposal was published, Advocacy heard from representatives of small transfer agents. According to the Securities Transfer Association, there are 723 transfer agents registered with the SEC, 578 are considered small, with less than $6.5 million in annual volume.[7] Advocacy notes that estimates by commenters indicate that the cost of the rule will be measured in the tens of thousands of dollars, and will, according to the Securities Transfer Association, put small

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[1] Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. § 601).
[2] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, 110 Stat. 857.
[3] 5 U.S.C. § 603(b).
[4] 72 Fed. Reg. 30648.
[5] 72 Fed. Reg. 30649 (citations omitted).
[6] *See generally* Comment, Walter E. Grote, Senior Vice President, The Travelers, June 19, 2007.
[7] U.S. Small Business Administration, Office of Size Standards; table of size standards available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf .

transfer agents out of business as a result.[8] One estimate of the cost of just the proposed new auditor's report is $40,000 for the first year, and $30,000 for subsequent years.[9] Small entities have expressed to Advocacy that the costs of insurance as required under the proposal would be very high, if it is at all obtainable at the terms required by the proposal.[10] The American Bankers Association has pointed out that the limitation on fees that transfer agents may charge to the DTC will create problems in light of the additional requirements imposed by the rule.[11] These and other costs are more easily borne by larger businesses, but will have a significant impact on small transfer agents.[12]

In 2002, the last year for which annual receipts are available, there were 883 securities transfer agent firms with less than $5 million in annual receipts. The smallest of these had average annual receipts of $46,171, while the average receipts of the 60 largest small firms was $2,148,292. The following chart was prepared by the Office of Advocacy using data available from the U.S. Department of Commerce, Bureau of the Census:

NAICS	Type of Data	Total	$0-99,999	$100,000-499,999	$500,000-999,999	$1,000,000-4,999,999	Total
523999	Firms	469	140	166	48	60	883
523999	Establishments	526	140	166	49	65	946
523999	Est. Receipts ($)	1413644	6464	37015	33780	139639	1630542
	Average receipts ($)		46171	22982	703750	2148292	

If the cost of the rule can be put at $40,000, it would represent two percent of the annual receipts of the largest of these companies, while it would represent almost all of the annual receipts of the smallest category.

IV. The SEC should disapprove the proposed rule because it imposes a burden on competition, does not foster cooperation and coordination in the clearance and settlement of securities transactions, and will have a significant economic impact on a substantial number of small entities.

The DTC is a registered clearing agency, and as such, DTC's rules must conform to the requirements set forth in the Securities Exchange Act of 1934 ("the Act").[13] Specifically, section

[8] "The STA believes 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…" Comment, Charles V. Rossi, President, The Securities Transfer Association, Inc., June 22, 2007, p. 8.
[9] Comment, Jonathan Miller, President, Stocktrans, June 21, 2007, p. 5.
[10] See for example, Comment, The Surety and Fidelity Association of America, page 2: "[T]he maximum deductibles … of the proposed Rule are too low, and will have a negative financial impact on transfer agents participating in the FAST program, and … the notification requirements of paragraph 9 are not workable or normally available in the marketplace."
[11] Comment, Cristeena G. Naser, Senior Counsel, Center for Securities, Trust and Investments, American Bankers Association, June 22, 2007, page 3.
[12] Comment, Thomas L. Montrone, President and CEO, Registrar and Transfer Company, June 19, 2007, page 2.
[13] 15 U.S.C. § 78q-1(b)(3)(A) (2004) (requiring a clearing agency "to comply with the provisions of this title and the rules and regulations thereunder").

17A(b)(3)(I) states that clearing agency rules cannot "impose any burden on competition not necessary or appropriate in furtherance of the purposes of this title."[14] In addition, section 17A(b)(3)(F) requires that clearing agency rules be designed to "foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions."[15]

Advocacy is concerned that the proposed rule change at issue will place inappropriate burdens on small transfer agents. According to the STA, most transfer agents qualify as small businesses under the SBA definitions. As small businesses, the transfer agents will have more difficulty complying with the proposed rule change, and in some cases, will find it impossible, requiring the customers of those transfer agents to obtain services from their larger competitors. Because Advocacy anticipates a significant economic impact on a substantial number of small transfer agents, it seems the proposed rule change violates the pro-competition language set forth in sections 17A(b)(3)(F) and (I).

Under Pub. L. 94-305, one of Advocacy's primary functions is to "make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses."[16] Advocacy is also required to make recommendations that foster an environment in which all businesses can compete.[17]

As noted above, under the Regulatory Flexibility Act an agency must provide an initial regulatory flexibility analysis (IRFA) when a proposed rule is expected have a significant economic impact on a substantial number of small entities. An essential element of an IRFA is the proper consideration of appropriate alternatives which would accomplish the regulatory goal while minimizing the impact of the rule on small entities. No economic analysis has been provided with this proposed rule, and no consideration of appropriate alternatives is present. Presently, small companies have a role to play in this part of the market, competing for customers on price and service. Neither the DTC nor the Commission has made a case for phasing out small entities who are currently able to provide services to issuers and the DTC.

V. Conclusion

Both the Regulatory Flexibility Act and the Securities and Exchange Act require the Commission to analyze the impact of proposed rules on small entities. For the foregoing reasons, Advocacy recommends that the Commission disapprove the rules proposed by the DTC until such time as a reasonable alternative can be developed that would minimize the impact on small transfer agents.

[14] Id. § 78q-1(b)(3)(I).
[15] Id. § 78q-1(b)(3)(F).
[16] See 15 U.S.C. § 634b (2007).
[17] Id.

Advocacy is pleased to forward these comments and concerns of small businesses. Please feel free to contact me or Janis Reyes at (202) 619-0312 (Janis.Reyes@sba.gov) if you have any questions or require additional information.

Sincerely,

//signed//
Thomas M. Sullivan
Chief Counsel for Advocacy

//signed//
Charles A. Maresca
Director, Interagency Affairs

cc: The Honorable Susan Dudley, Administrator, Office of Information and Regulatory Affairs