THE STA
SECURITIES TRANSFER ASSOCIATION, INC.

October 3, 2016

Brent J. Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-DTC-2016-003

Dear Mr. Fields:

I am writing you on behalf of the Securities Transfer Association Inc. ("STA") in further response to the Depository Trust Company's ("DTC") application under the Securities Exchange Act of 1934 ("Exchange Act") seeking approval from the Securities and Exchange Commission ("Commission") of the most recent proposed changes to its rules regarding Deposit Chills and Global Locks ("Latest Proposed Rule Change"). The Latest Proposed Rule Change would specify the process and conditions under which DTC may impose restrictions on the deposit and transfer of an issuer's securities, and also the process available to issuers that wish to challenge a decision of DTC. On September 6, 2016, the Commission published its "Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Impose Deposit Chills and Global Locks and Provide Fair Procedures to Issuers". The Commission invited views "concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 17A(b)(3)(F) and 17A(b)(3)(H) of the Act, or any other provision of the Act, or the rules and regulations thereunder."

We very much appreciate your willingness to receive additional comments on the Latest Proposed Rule Change. We want to emphasize some of the points made in our previous comment letters on the Latest Proposed Rule Changes, which are dated June 30, 2016 and August 29, 2016, as well as our comment letters from the related 2013 DTC rulemaking proposal,[1] and in connection with the recent concept release regarding transfer agents.[2] Collectively, we believe that these comment letters provide a comprehensive statement of our perspective relating to the Latest Proposed Rule Change as well as the relationship between DTC and non-participants that rely on its critical

[1] See, File No. SR-DTC-2013-11 (Dec. 18, 2013).

[2] See Transfer Agent Regulations (Advance Notice of Proposed Rulemaking) Rel. No. 76743 (Dec. 22, 2015) ("Concept Release").

services, including transfer agents, issuers, and investors. We also want to specifically comment on whether, apart from process, the Latest Proposed Rule Change is consistent with the purposes of the Exchange Act.

Under Section 17A of the Exchange Act, the Commission is required to consider whether DTC's rules are designed to "protect investors and in the public interest". In this regard, we note that DTC states that the Latest Proposed Rule change is designed to protect "DTC and its participants" from "imminent harm, injury, or other such material adverse consequences". There is no reference to issuers, or balancing the effect of DTC's actions on innocent shareholders. As we have noted earlier, Global Locks and Deposit Chills are very blunt instruments. A decision by DTC to impose a Global Lock or Deposit Chill can have a devastating effect on investors. Trading in the shares of an issuer comes to a virtual stop and innocent investors may find that their shares are virtually valueless during the period in which the Global Lock or Deposit Chill is in effect. Often, the cure imposed by DTC does little to protect innocent investors and is far worse than the disease.

The Exchange Act also states in Section 17A(b)(3)(F) that DTC's rules may not be designed to *"regulate by virtue of any authority conferred by this title matters not related to the purposes of this section or the administration of the clearing agency"* (Emphasis supplied). As discussed below, the "imminent harm, injury, or other such material adverse consequences" standard in Section 1(d) is very vague and, by DTC's admission, would be used to impose restrictions on an issuer when DTC believes that a "manipulation" is occurring in the issuer's shares or there is a potential "violation of other applicable laws." Plainly, Congress did not intend DTC to act as a fraud regulator or to enforce laws unrelated to clearance and settlement. Other sections of the Exchange Act confer authority for fraud regulation on the Commission, and different Self-Regulatory Organizations ("SROs") with respect to their members. As we have previously noted, issuers are not members of DTC, and DTC does not have the experience, resources, or Congressional mandate to be a "fraud regulator".

Finally, the "imminent harm, injury, or other such material adverse consequences" is far from the standard envisioned by Congress for an SRO denying access to critical services. As noted above, DTC has stated, by way of illustration, that it may impose a Deposit Chill or Global Lock in cases where there is a potential "market manipulation", "corporate hijacking", or in "violation of other applicable laws." Apart from the fact that this standard is so vague as to be superficially unfair, the Commission has no way of knowing whether or not DTC is attempting to "regulate…. matters not related to the purposes of this section or the administration of the clearing agency" or "consistent with the requirements of [the Exchange Act]" as required by Section 19(b)(2)(C) of the Exchange Act. In fact, DTC's own statements suggest that its intent is to use its authority under Section 1(d) of the Latest Proposed Rule Change in a manner that is not consistent with Section 17A(b)(3)(F) of the Exchange Act.

The STA also believes that the amorphous standard proposed by DTC in Section 1(d) of the Latest Proposed Rule Change is inconsistent with the intent of Section 19 and Rule 19b-4 under the Exchange Act, which encourages transparency by requiring an SRO to seek approval of a "stated policy, practice or interpretation." The proposed vague standard is a far cry from the openness envisioned by Congress.[3] Moreover, we also note that DTC has been unwilling to

[3] *Compare*, *In re NYSE et. al.*, Ad. Proc. 3-15860 (May 1, 2014) ("*NYSE Order*") (Emphasizing the importance of transparent standards and noting that "[t]he obligation of national securities exchanges…. to operate in compliance with their own rules is fundamental. It enables the exchange's members and all

publish transparent standards with respect to many aspects of its relationship with non-members, including the process by which DTC permits transfer agents to access its services.[4]

In 2012, in *International Power Group, Ltd.*, Ad. Proc. File No.3-13687 (March15, 2012) ("*IPWG Decision*"), the Commission directed DTC to establish "fair procedures" for imposing Deposit Chills or Global Locks. After four years we do not believe that the Latest Proposed Rule Change represents a serious, good faith attempt to comply with the Commission's directive in the *IPWG Decision*.[5] As we have outlined in our prior comment letters on the Latest Proposed Rule Change, we believe that DTC's most recent efforts continue to allow DTC to exercise unfettered discretion and are not fair or consistent with the purposes of the Exchange Act. With respect to Section 17A(b)(3)(H), we fail to see, for example, how the procedures proposed by the Latest Proposed Rule Change address many of the difficulties experienced by the issuer in the *IPWG Decision* since, among other things, they contain vague standards and the action taken by DTC may be based on activities of third parties unrelated to the issuer. We also continue to question whether the process outlined by DTC is consistent with the examples of fair procedures provided by the Commission in the *IPWG Decision*.

As we have noted in our earlier comments, DTC is a government sanctioned monopoly, owned by its member banks and brokers, which operates for the profit of those members. Its Congressional mandate, as well as its protected status under the antitrust laws, is predicated on its serving as an industry utility for the Clearance and Settlement system, for the benefit of its members, but subject to oversight by the Commission. For the reasons stated herein, and in our prior comments, the Latest Proposed Rule, and in particular Section 1(d) thereof, does not support such mandate, as it neither serves to promote the integrity of the Clearance and Settlement system nor protects investors. We believe that the Latest Proposed Rule Change should be disapproved by the Commission.

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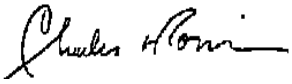
We appreciate the Commission's willingness to receive additional comments on the Latest Proposed Rule Change. Please feel free to contact me if you have any further questions.

Sincerely,



Charles V. Rossi
Chairman
STA Board Advisory Committee
The Securities Transfer Association, Inc.

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participants in the trading that occurs on each exchange, as well as all persons seeking access to the facilities of the exchanges, to understand on what terms and conditions trading will be conducted on that exchange, thereby fostering a fair, orderly, and free and open market…"

[4] As we noted in our comment letter on the Concept Release, a similar lack of fair process exists in connection with the manner in which DTC imposes fees on non-members.

[5] *Compare, NYSE Order*, in which the Commission imposed sanctions on the respondent exchanges, in part, because, over a similar period of time, they "continued to operate ….. despite having been informed *informally by the Commission's staff* that a particular proposal was likely not consistent with the Exchange Act". (Emphasis supplied).