THE STA
SECURITIES TRANSFER ASSOCIATION, INC.

August 29, 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. Our original comment letter was dated June 30, 2016. We very much appreciate your willingness to extend the comment period.

In the *International Power Group, Ltd.*, Ad. Proc. File No.3-13687 (March15, 2012) ("*2012 IPWG Decision*") the Commission directed DTC to establish "fair procedures" for imposing Deposit Chills or Global Locks. We appreciate the effort that DTC has made in proposing new rules that are more responsive to the needs of issuers and investors. However, we believe that DTC's most recent efforts, while labeled as "fair" procedures, and which at first blush appear to contain concrete standards, continue to allow DTC to exercise unfettered discretion and are not fair.

Fairness

The Exchange Act requires that a non-member only can be denied access to a national exchange if they do not meet specific eligibility qualifications. For example, under section 6(d)(3) of the Exchange Act, exchanges may deny access to their services to non-members "if the exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such

access with safety to investors, creditors, members, or the exchange." As explained below, the Latest Proposed Rule Change does not identify truly tangible standards for denial of access to non-members based on anything like "qualification requirements or other prerequisites." DTC seeks in Section 1(d) of the proposed rules to afford itself the authority to impose a Deposit Chill or Global Lock when "imminent harm" is threatened, but is unwilling to define the specific conditions that might give rise to "imminent harm."

Section 17A(b)(5)(B) of the Exchange Act requires that whenever DTC determines to impose a Deposit Chill or Global Lock, it afford issuers a "fair process" to challenge its actions. This includes DTC's providing a "statement setting forth the specific grounds on which the denial or prohibition or limitation is based." The Commission noted in *2012 IPWG Decision* that its view of "fair process" was consistent with the Constitutional notion of "fair process." The term "imminent harm," however, is a vague and unknowable standard that is inconsistent with a "fair process".

DTC does not define the terms "harm" or "imminent." Instead, DTC notes in its filing that "imminent harm" might include instances in which it "becomes aware that marketplace actors were about to deposit Securities at DTC in connection with an ongoing corporate hijacking, market manipulation, or in violation of other applicable laws…." Similarly, according to DTC, the restrictions would be removed, for example, "when DTC determines that the perceived harm has passed or is significantly remote…. [or] when an Eligible Security had been previously Globally Locked based on a Commission enforcement action but there is no indication that illegally distributed Securities are about to be deposited."

It is not clear to us that an issuer would in many cases be able to address DTC's suspicions, particularly if third parties were involved. We believe that the "imminent harm" standard proposed by DTC undermines any notion of "fairness" because of its ambiguity. In *Atlantis Internet Group Corporation*, Ad. Proc. File No. 3-15432 (June 12, 2015), the Commission suggested that the touchstone should be whether activity is "not consistent with DTC's Rules and Operational Arrangements and their definition of what constitutes an 'eligible security'". These rules and arrangements deal largely with whether a security is properly registered in accordance with Section 5 of the Securities Act of 1933, or whether it is exempt from registration. They are not like the vague standards proposed by DTC in Section 1(d), that DTC claims would permit it to invoke restrictions based on, among other things, potential "market manipulation" or a violation of "applicable laws".

DTC also notes in its August 22, 2016 comment letter: "Section l(d) is not intended to broaden DTC's authority but to protect the clearing agency and its stakeholders…." DTC ignores the affect its actions may have on many innocent investors and issuers – in many cases with no tangible benefit to those investors or the markets. For example, if DTC imposes a Deposit Chill, then an investor's shares will not be accepted for trading or deposit by the clearing firms. An investor is totally unable to monetize or trade his or her shares, and issuers are impeded in raising new capital. For this reason, we do not believe that the proposed "imminent harm" standard is consistent with the purposes of the Exchange Act, which broadly seeks to protect the "public interest," including the interests of issuers, investors, and the markets.

Timeliness and Resources

We are also disappointed that DTC has rebuffed our proposal to establish only a ten-day limit on Deposit Chills or Global Locks, absent conditions such as those specified in Sections 1(a), (b) and

(c). We understand, based on its August 22, 2016 comment letter, that DTC's concern with the STA's proposal is that neither the Commission nor the Financial Industry Regulatory Authority ("FINRA") have the resources to pick up the ball during the proposed ten day DTC suspension period. DTC states in its August 22, 2016 comment letter:

> As noted, a proposal that a Restriction should expire after a short period, premised on the assumption that a regulator could act quickly within that period, is neither reasonable nor practical, and would not address all circumstances in which a Restriction would be imposed.

We believe that both the Commission and FINRA have resources and authority in this area that far exceed those of DTC. As we noted in our earlier comment letter, both organizations frequently conduct examinations or preliminary investigations within short time periods. The Commission itself has ordered ten-day trading halts over 40 times already in 2016. The comment letter from Harvey Kesner, Esq. (dated August 11, 2016) provides an illustration of the large volume of Nasdaq and FINRA collaborations on trading halts. If DTC's concerns are well-founded, we are certain that either the Commission or FINRA can act within the ten-day proposed window to impose its own further ten-day trading restriction while gathering more information.

On this point, Mr. Kesner also states: "Nasdaq and the other national exchanges frequently impose trading halts, but do not attempt to supplant the role of government regulators for law enforcement and violations."(footnote omitted). DTC is not a "fraud regulator" and we are not aware, for example, that it has any expertise in determining whether "market manipulation" is occurring. Both FINRA and the Commission, however, have broader mandates, internal expertise, and the ability to protect the interests of all concerned parties, including DTC, its participants, and investors.

As you are aware, the Commission may seek a court order imposing appropriate limits on trading, or on DTC's ability to accept shares for deposit; and, if appropriate, freezing the assets of wrong doers or obtaining other equitable relief. From an investor protection perspective, it is far more important to allow FINRA or the Commission to take action, than DTC. Moreover, in the case of an action by the Commission which would require it to seek a court order to continue the suspension beyond ten days, the issuer, investors, and other affected parties would have the ability to be present with their counsel at any hearing before the court and could: contest the Commission's action; seek to remove any court ordered restrictions at some point in the future; or, appeal the court's decision.[1]

We do not know DTC's motivation for not proposing more definite standards and resisting our proposal. If DTC is concerned about its "gatekeeper" status, we suggest that it seek a Commission no-action letter, or comparable relief from other relevant agencies, conditioned on DTC's prompt provision of information to the Commission or the other relevant agencies. This would not prevent the Commission, FINRA, or other agencies from taking action against third parties, including the issuer, transfer agents, brokers, banks, and others seeking to deposit shares in violation of the law. However, it may alleviate at least some of DTC's unspecified concerns and encourage it to provide a "fair process" to issuers and investors affected by its actions.

[1] In lieu of our proposal, as outlined in our most recent comment letter, we believe that DTC should provide for a truly independent review of its initial decision.

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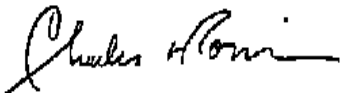
We appreciate the Commission's willingness to reopen the comment period for Latest Proposed Rule Change. While we applaud DTC's concerns about potential harm to innocent investors, we are also mindful that DTC's actions also can harm many of those same innocent investors. Please feel free to contact me if you have any further questions.

Sincerely,



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