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June 30, 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") with respect 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.

DTC is a monopoly provider of essential services in connection with the clearance and settlement of equity securities transactions. Very generally, Section 17A(b)(3)(H) of the Exchange Act provides that a clearing agency, such as DTC, must provide fair procedures to "persons" that are denied access to the facilities that it operates. Similar provisions of the Exchange Act apply to national exchanges and some of the other self-regulatory authorities ("SROs").

Despite the clear language of the Exchange Act, for many years, and unlike other SROs, DTC has sought to reserve for itself absolute discretion with respect to denial of access to its services. However, in the *International Power Group, Ltd.*, Ad. Proc. File No. 3-13687

(March 15, 2012) ("*2012 IPWG Decision*"), an issuer challenged the fairness of DTC's procedures relating to the "denial of access" to its facilities resulting from the imposition of indefinite restrictions on the book-entry clearing and settlement services in the issuer's shares. In the *2012 IPWG Decision*, the Commission specifically directed DTC to: *"adopt procedures that accord with the fairness requirements of Section 17A(b)(3)(H), which may be applied uniformly in any future such issuer cases."* (Emphasis supplied).

On December 18, 2013, over a year and a half after the *2012 IPWG Decision*, DTC made a rule filing that purported to comply with the Commission's directive.[1] That filing was widely criticized by commenters which noted, among many other things, that DTC continued to reserve for itself undefined discretion to deny access to its services. In connection with this filing, the STA and others also outlined the harm to issuers and shareholders when DTC arbitrarily denies access to its facilities - noting the critical importance of having fair procedures to quickly resolve any misunderstandings. The Commission extended the comment period. The initial rule proposal was amended by DTC and subject to further adverse comment by the industry. On August 18, 2014, DTC withdrew its proposal. Now, over four years after the *2012 IPWG Decision*, and almost two years after the previous rule proposal was withdrawn, DTC has reproposed its new view of a rule which it believes contains "fair procedures."

The STA believes that the Latest Proposed Rule Change, while in some respects an improvement over the prior proposal, ultimately suffers from the same vague standards and procedural problems that led the Commission to write its directive in the *2012 IPWG Decision*. At first blush, the proposal seems to provide uniform standards because DTC enumerates three concrete conditions for imposing a Deposit Chill: (1) an SEC trading halt; (2) a FINRA trading halt; or (3) a court order. Moreover, the Deposit Chill or Global Lock is removed once the condition no longer is present (*e.g.*, the SEC's ten day trading halt has expired, the FINRA ten day trading halt is removed, or the court lifts or modifies its order). But, then DTC adds a fourth condition permitting it to exercise unfettered discretion, and:

> "impose a Restriction when it becomes aware of a need for immediate action to avert an imminent harm, injury, or other such material adverse consequence to DTC or its Participants that could arise from further Deposits of, or continued book-entry services with respect to, an Eligible Security."

This is an extremely broad standard that would allow DTC to take action without any real evidence of the likelihood of actual harm or violation of objective standards. Further, this arbitrary Restriction would not be removed unless:

[1] Exchange Act Rel. No. 71332 (December 18, 2013).

> "… [DTC] reasonably determines that the release of the Restriction would not pose a threat of imminent adverse consequences to DTC or its Participants, obviating the original basis for the Restriction." [2]

The STA fears that this condition would expose issuers to the same quagmire that they encountered prior to the *2012 IPWG Decision*. Among other things, the STA notes that there are no time periods for review and the issuer may not have access to the information relating to the condition that concerns DTC (for example, the concerns about "imminent harm" may be related to the conduct of brokers not affiliated with the issuer).[3]

In addition, once the Restriction is imposed, any Response by the issuer seeking to remove the restriction will be reviewed by a "DTC officer who did not have responsibility for the imposition of the Restriction" (the "DTC Review Officer"). However, the DTC Review Officer may be located in the office on either side of the person that imposed the Restriction, and may have been involved in – but not "responsible" for – the imposition of the initial Restriction. This DTC Review Officer could be charged with overturning the decision made by his or her colleague. Moreover, the STA notes that there are no time periods for the DTC Review Officer's review to be completed. Thus, in some cases issuers and investors could be harmed for an indefinite period while waiting for DTC to reach a decision.

The STA does not believe that the Latest Proposed Rule Change reflects a good faith attempt to comply with the Commission's directive in the *2012 IPWG Decision*. Instead, while we applaud the certainty afforded by the first three conditions, we ultimately view the current proposal as a reprise of the earlier proposal, invoking the same ambiguity and procedural problems. We suggest that if DTC is concerned about imminent adverse consequences to itself or its Participants, that it should limit its discretionary Restriction to only a single ten day period (not a succession of ten day periods). This Restriction would still allow DTC to act quickly. And, any "fair process" should surround that ten day Restriction.[4]

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[2] The STA does not understand the following statement in DTC's latest proposal, but is concerned that this "carve out" may be misused:

> The proposed rule change would not affect DTC's ability (A) to lift or modify a Restriction; (B) to operationally restrict book-entry services, Deposits or other services in the ordinary course of business, as such restrictions do not constitute Deposit Chills or Global Locks for purposes of proposed Rule 33……;

[3] The STA also notes that DTC will only notify the issuer and transfer agent within three days after the imposition of a Restriction. The STA believes that prior - or at least contemporaneous - notice should be provided of a Restriction, particularly in the case of a Restriction imposed based on DTC's assessment of "imminent harm".

[4] Given the ten day window, it seems unlikely that an issuer would seek to develop a record to support an appeal to the Commission.

A hard ten day limit is consistent with the Commission's own authority to issue trading halts under the Exchange Act. During this ten day period, DTC would have time to resolve concerns based on a misunderstanding, or to inform the Commission or FINRA of its concerns, and allow either organization to take further action to protect DTC, investors, or DTC's Participants, from "imminent harm." Among other remedies, the Commission or FINRA also could then issue their own ten day trading halts – giving DTC as well as the SEC or FINRA time to gather information. As a result of the information gathered, the Commission also could seek to obtain a court order restricting settlement of the issuer's securities, freezing assets of wrong doers, and it could impose fines as well as seek disgorgement.

Both the Commission and FINRA have experienced enforcement and trial attorneys, and greater powers and resources to marshal facts than DTC. These powers include the ability to issue subpoenas to the issuer as well as third-parties (that may not be related to the issuer).[5] Moreover, if DTC's concerns about imminent harm are based on the conduct of broker-dealers, both FINRA and the SEC have the authority to conduct examinations.

During any period in which a trading halt or court ordered restriction is in effect, DTC's Deposit Chill or Global Lock would also remain in effect. However, if the SEC or FINRA decline to act during the ten day period in which DTC's discretionary Restriction is in effect, then DTC's Restriction would expire. The STA believes that this process should address DTC's concerns. At the same time, an issuer that is wrongfully tainted could seek to remove the Restriction through an established, more independent, and transparent process that may be fairer than the process which DTC is willing to offer at this time. This proposal also may be less costly to DTC, since it would not require the creation of new internal processes.

Regrettably, despite the Latest Proposed Rule Change, the STA also must note the obvious fact that it does not believe DTC has complied with the Commission's directive *for over four years*. Moreover, while the Commission's directive concerned the denial of access to an existing user of DTC's services, the reasoning in the *2012 IPWG Decision* should also apply to issuers as well as transfer agents seeking initial access to DTC's facilities.[6]

DTC's actions primarily affect small business and transfer agents without significant capital, who depend on access to DTC's facilities. We noted in our comment letter on the Transfer Agent Concept Release,[7] the same vague standards apply to transfer agents

[5] We also do not see how, under DTC's Latest Proposed Rule Change, any record could be "complete" for Commission review if the issuer does not have the ability to compel evidence from third parties that may be the cause of DTC's concern.

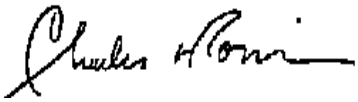
[6] Issuers are not DTC Participants and transfer agents are only Limited Participants of DTC.

[7] *See*, STA Comment Letter (dated April 13, 2016) on *Transfer Agent Regulations*, Exchange Act Rel. 76743 (Dec. 22, 2015). The STA noted in its comment letter that denial of eligibility creates a bifurcated system of FAST eligible issuers and certificated issuers which will be a major impediment to T+2

seeking initial access to DTC's facilities. As an example, we also cited DTC's recent denial of access to its facilities - for reasons that are not clear - to hundreds of issuers seeking to access its FAST program.[8]

DTC has many talented internal staff members as well as access to highly qualified external counsel. However, we believe that DTC is delaying compliance with the Commission's directive in the 2012 IPWG Decision by failing or refusing to propose uniform, transparent processes. Instead of forcing the industry to respond to further potential amendments of the same ilk, we request that the filing be reviewed by the Commission itself, rather than acted upon pursuant to delegated authority by the Commission's staff. We also request that the Commission undertake a broader review that encompasses other areas in which DTC does not afford a fair process for non-Participants and Limited Participants (including those seeking initial access to its services).

Sincerely,



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

settlement. The STA's comment letter also addresses the manner in which DTC imposes fees on transfer agents and issuers outside the Commission's notice and comment process.

[8] The STA believes that the failure of DTC to adopt transparent standards may interfere with industry initiatives to implement a T+2 settlement cycle in 2017.

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