

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-57362; File No. SR-DTC-2006-16)

February 20, 2008

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Amended Proposed Rule Change Amending FAST and DRS Limited Participant Requirements for Transfer Agents

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on October 12, 2006, The Depository Trust Company (“DTC”) filed with the Securities and Exchange Commission (“Commission”) and on March 29, 2007, and May 3, 2007, amended proposed rule change No. SR-DTC-2006-16. On May 25, 2007, the Commission published notice of the proposed rule change as amended by Amendment 1 and Amendment 2.² The Commission received 29 comment letters to the proposed rule change as amended by Amendments 1 and 2.³ On December 31, 2007, DTC filed Amendment 3. The Commission is publishing this notice to solicit comments from interested parties on the proposed rule change as amended by Amendments 1, 2, and 3 and as described in Items I, II, and III below, which items have been prepared primarily by the DTC.⁴

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to amend its rules to update, standardize, and restate the requirements for the Fast Automated Securities Transfer Program (“FAST”), to delineate the responsibilities of

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 34-55816 (May 25, 2007), 71 FR 30648 (June 1, 2007)[File No. SR-DTC-16].

³ The comment letters can be found at <http://www.sec.gov/comments/sr-dtc-2006-16/dtc200616.shtml>.

⁴ The exact text of the DTC’s proposed rule change can be found at www.dtc.org/impNtc/mor/index.html#2006.

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”).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below.

DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.⁵

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Prior to the establishment of the FAST program, transfers of securities to or from DTC occurred by sending securities back and forth between DTC and transfer agents. In the case of securities being deposited with DTC, DTC sent the certificates to the transfer agent for registration into the name of DTC’s nominee, Cede & Co., and the transfer agent returned the reregistered certificates to DTC. In the case of securities being withdrawn from DTC, DTC sent the certificates registered in the name of Cede & Co. to the transfer agent for reregistration into the name designated by the withdrawing DTC participant, and the transfer agent returned the reregistered security to DTC for delivery to the withdrawing participant. This process exposed securities to risk of loss during transit between DTC and transfer agents and resulted in the expense of making physical deliveries of securities.

⁵ The Commission has modified portions of the text of the summaries prepared by the DTC.

Under the FAST program, transfer agents hold FAST-eligible securities registered in the name of Cede & Co. in the form of balance certificates. As additional securities are deposited or withdrawn from DTC, transfer agents adjust the denomination of the balance certificates as appropriate and electronically confirm these changes with DTC. Such “FAST agents” are holding in custody those securities that would otherwise be held at DTC for the benefit of DTC’s participants. As such, the FAST program reduces the movement of certificates between DTC and the transfer agents and therefore reduces the costs and risks associated with the creation, movement, and storing of certificates to DTC, DTC participants, issuers, and transfer agents.⁶

The FAST program has grown substantially since first being introduced in 1975.⁷ Recent changes in the rules of the major securities exchanges are expected to further accelerate this growth.⁸ Those exchange rules require as a listing prerequisite that issues be eligible for processing through DRS. Since becoming a FAST agent is a criterion for a transfer agent’s eligibility for participation in DRS, DTC anticipates significant growth in the FAST program.

DRS allows an investors to hold a security as the registered owner in electronic form on the books of the transfer agent rather than holding through the use of a certificate or holding

⁶ For a description of DTC’s current rules relating to FAST, see Securities Exchange Act Release Nos. 34-13342 (March 8, 1977) [File No. SR-DTC-76-3]; 34-14997 (July 26, 1978) [File No. SR-DTC-78-11]; 34-21401 (October 16, 1984) [File No. SR-DTC-84-8]; 34-31941 (March 3, 1993) [SR-DTC-92-15]; and 34-46956 (December 6, 2002) [File No. SR-DTC-2002-15].

⁷ DTC introduced the FAST program in 1975 with 400 issues and 10 agents. Currently, there are over 930,000 issues and approximately 90 agents in FAST.

⁸ Securities Exchange Act Release Nos. 54289 (August 8, 2006), 71 FR 47278 (August 16, 2006) [File No. SR-NYSE-2006-29]; 54290 (August 8, 2006), 71 FR 47262 (August 16, 2006) [File No. SR-Amex-2006-40]; 54288 (August 8, 2006), 71 FR 47276 (August 16, 2006) [File No. SR-NASDAQ-2006-08]; 54410 (September 7, 2006), 71 FR 54316 (September 14, 2006) [File No. SR-NYSE Arca-2006-31]; 55482 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR-Phlx-2006-69]; 55481 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR-CHX-2006-33]; and 55480 (March 15, 2007), 72 FR 13544 (March 22, 2007) [File No. SR-BSE-2006-46].

indirectly through a financial intermediary (e.g., a broker-dealer) that holds the security in “street name”. DRS also allows for the transfer of a DRS position from the books of the transfer agent to a DTC broker-dealer participant through the facilities of DTC using FAST.⁹

(1) Proposed Amendments to DTC’s FAST Requirements

Despite the FAST program’s robust past growth and expected future growth, the transfer agent eligibility requirements for FAST have not substantially changed since the implementation of FAST and do not: (i) take into account the increased volume and value of securities processed by the transfer agents, (ii) reflect improved technology and currently available safeguards which would enhance the safekeeping of securities held by the transfer agents on behalf of DTC , and (iii) require the use of standardized audit reports to certify transfer agents’ processes and controls.

In light of the FAST program’s growth, DTC reexamined the requirements of the FAST program with a view toward ensuring that DTC’s assets in the custody of transfer agents, which ultimately belong to DTC’s participants and their customers, are adequately protected. As more fully described below, DTC has identified aspects of the FAST program that need revising or additional requirements. The proposed revisions and additional requirements include: (i) insurance requirements that take into account transaction volumes of securities processed by transfer agents, (ii) safekeeping requirements to clarify and to enhance security and fire protection standards and to take into consideration technological advances that allow for economical security improvements, and (iii) bookkeeping requirements to ensure compliance

⁹ For a description of DTC’s rules relating to DRS, see Securities Exchange Act Release Nos. 34-37931 (November 7, 1996) [File No. SR-DTC-96-15]; 34-41862 (September 10, 1999) [File No. SR-DTC-99-16]; 34-42366 (January 28, 2000) [File No. SR-DTC-00-01]; 34-42704 (April 19, 2000) [File No. SR-DTC-00-04]; 34-43586 (November 17, 2000) [File No. SR-DTC-00-09]; 34-44969 (August 14, 2001) [File No. SR-DTC-2001-07]; 34-45232 (January 3, 2002) [SR-DTC-2001-18]; 34-45430 (February 11, 2002) [File No. SR-DTC-2002-01]; and 34-48885 (December 5, 2003) [File No. SR-DTC-2002-17]; 34-52422 (September 14, 2005) [File No. SR-DTC-2005-11].

with applicable laws and regulations and use standardized audit reports addressing transfer agents' processes and controls.

DTC is therefore proposing to amend and to restate the minimum requirements for transfer agents participating in the FAST program in order to improve the safekeeping of securities transfer agents hold for DTC and to provide better defined requirements as more transfer agents participate in the immobilization and dematerialization of securities. DTC's proposed minimum requirements are as follows:

1. Transfer agent must be registered with the Commission or their appropriate regulatory authority, except where the transfer agent's participation in the FAST program is limited to acting solely for municipal issues (transfer agents must provide DTC with evidence of such) and follow all applicable rules under the Exchange Act, as well as all other applicable federal and state laws, rules, and regulations, applicable to transfer agents, including OFAC regulations.
2. The transfer agent must execute and fulfill the requirements of the appropriate form of "Balance Certificate Agreement"¹⁰ with DTC.¹¹
3. The transfer agent must sign and fulfill requirements of the "Operational Criteria for the FAST Transfer Agent Processing"¹² and must comply with all applicable provisions of

¹⁰ DTC currently maintains three forms of the Balance Certificate Agreement: one for transfer agents, one for issuers acting as their own agent, and one for parties using a processing agent. DTC is consolidating these forms into a single form, as attached as Exhibit 2 to its initial filing.

¹¹ DTC notes that these minimum requirements incorporate by reference the Balance Certificate Agreement between the transfer agent and DTC.

¹² The Operational Criteria for the FAST Transfer Agent Processing is attached as Exhibit 2(b) to DTC's initial filing.

DTC's "Operational Arrangements" ("OA"),¹³ as amended from time to time.¹⁴

4. In order to provide for the operational proficiency and efficiency of the program, the transfer agent must complete DTC's training on FAST functionality on being accepted as a FAST transfer agent.
5. In order to protect against a risk of loss, the transfer agent must carry and provide evidence of a minimum of the following standard form Financial Institution Bond or a commercial crime policy providing similar coverage in proportion to transaction volume the agent processes, as follows:
 - a. \$10 million for a transfer agent with 25,000 or fewer transfer transactions per year as reported to the Commission;
 - b. \$25 million for a transfer agent with over 25,000 transfer transactions per year as reported to the Commission; and
 - c. In addition, the transfer agent must carry and provide evidence of a minimum of \$1 million in Errors and Omissions insurance.

In the event that a transfer agent can demonstrate that its existing coverage and/or capitalization would provide similar protections to DTC as the requirements set forth herein, it may apply to DTC for a waiver. DTC shall have sole discretion as to whether or not to grant any such waiver.

¹³ For more information relating to DTC's OA, see Securities Exchange Act Release Nos. 34-45994 (May 29, 2002), 67 FR 39452 [File No. SR-DTC-2002-02]; 34-24818 (August 19, 1987), 52 FR 31833 [File No. DTC-87-10]; 34-25948 (July 27, 1988), 53 FR 29294 [File No. DTC-88-13]; 34-30625 (April 23, 1992), 57 FR 18534 [File No. DTC-92-06]; 34-35649 (April 26, 1995), 60 FR 21576 [File No. DTC-94-19]; and 34-39894 (April 21, 1998), 63 FR 23310 [File No. DTC-97-23].

¹⁴ DTC notes that these minimum requirements incorporate by reference the Operational Criteria for FAST Transfer Agent Processing and all applicable terms in DTC's Operational Arrangements.

6. In order to facilitate consistent protection against losses relating to securities in a transfer agent's control, the transfer agent must notify DTC as soon as practicable of notice of any actual lapse in insurance coverage or change in business practices, such as increasing volumes or other business changes that would result in the transfer agent requiring additional insurance coverage as outlined above. Such notice shall be delivered to:

DTC
Inventory Management – 1SL
55 Water Street
New York, New York 10041

And with a copy to:

DTC
General Counsel's Office
55 Water Street – 22nd Floor
New York, New York 10041

7. The transfer agent must provide proof to DTC of any new or substitute policy with respect to any required insurance within five (5) days after the entry into force of such new or substitute policy.
8. The transfer agent must establish and maintain electronic communications with DTC to balance FAST positions on a daily schedule.
9. The transfer agent must provide on an annual basis to DTC within ten (10) business days of filing with the Commission, a copy of the Annual Study of Evaluation of Internal Accounting Control filed with the Commission pursuant to Exchange Act Rule 17Ad -13 , attesting to the soundness of controls to safeguard securities assets and to the reliability and integrity of computer systems, including confidentiality of customer accounts or other non-public information. If a transfer agent obtains a SAS-70 audit report, the transfer agent shall provide DTC with a copy of the report within ten (10) business days

of the transfer agent's receipt of the report. If a SAS-70 audit report is not available, then the transfer agent must provide to DTC, on an annual basis within ten (10) business days of filing with the Commission an accountant's report (pursuant to Exchange Act Rule 17Ad -13, Annual Study of Evaluation of Internal Accounting Controls), a SSAE-10 report from an external certified public accountant (or an equivalent report) attesting to the soundness of the transfer agent's controls relating to FAST.

10. FAST agents must safeguard all the securities assets as stated under Exchange Act Rule 17Ad-12, with at a minimum the following additional DTC requirements:
 - a. maintain a theft and fire central monitoring alarm system protecting the entire premises and
 - b. maintain all certificates in a vault, safe, or other secure location, accessible only by authorized personnel.
11. Personnel with access to the safe and the codes for the centralized monitoring system must comply with Exchange Act Rule 17f-2, which includes but is not limited to rules for fingerprinting staff that physically handle certificates.
12. Unless prohibited by applicable law, the transfer agent when applying to be a FAST agent must provide DTC with a copy of the two most recent deficiency or compliance correspondences from the Commission as well as any follow-up correspondences. In addition, unless prohibited by applicable law, the transfer agent on an ongoing basis must provide DTC with notice of any alleged material deficiencies documented by the Commission that may affect the activities of the transfer agent as a FAST Agent within five(5) business days of the transfer agent being notified of such material deficiencies.

13. Unless prohibited by applicable law, during regular business hours and upon advance notice, DTC reserves the right to visit and inspect, to the extent such visits and inspections pertain to DTC's position, the transfer agent's facilities, books, and records. DTC, however, is not obligated to conduct such visits or inspections.
14. Existing FAST agents shall have a period of six (6) months from the date of the Commission's approval of this rule filing to comply with these requirements, including the submission to DTC of a signed Balance Certificate Agreement, signed Operational Criteria, and all supporting documentation referenced herein. If an agent is not compliant with these requirements upon the expiration of such period, DTC shall have the right, using its sole discretion, to terminate or to continue the agent's FAST status.
15. An agent acting on behalf of a transfer agent or an issuer acting on its own behalf shall have the same rights and responsibilities under these requirements as if it were the transfer agent.

(2) Proposed Amended and Restated Eligibility Requirements for DRS Limited Participants

DTC is proposing the following restatement of the eligibility requirements for DRS Limited Participants¹⁵ and the DRS eligibility requirements for DRS issues to promote consistency with the FAST program requirements as well as to further ensure the soundness of the DRS system.

In order to be eligible to be a DRS Limited Participant, a transfer agent must:

¹⁵ DRS Limited Participants are transfer agents that participate in DRS through DTC. They are bound to certain provisions of the DTC rules. Securities Exchange Act Release No. 34-37931 (November 7, 1996) [File No. SR-DTC-96-15].

1. Participate in the FAST program and abide by DTC's requirements governing participation in the FAST program, which requirements are proposed to be amended by this filing;
2. Execute a DTC Limited Participant Account agreement;
3. Deliver transaction advices directly to investors relating to DRS Withdrawal-by-Transfer requests and provide DTC with a file containing the information required by DTC (which must include, among other things, the transaction advice delivery date) in a format and using functionality as specified by DTC from time to time;
4. Complete DTC's training program on DRS and Profile Modification System ("Profile") functionality;
5. Participate in the Profile surety or insurance program to initiate Profile transactions;¹⁶
6. Implement program changes related to DTC internal systems modifications within a reasonable time upon receiving notification from DTC of such modifications;
7. Implement program changes to support and expand DRS processing capabilities as agreed to by the DRS Ad Hoc Committee; and
8. Existing DRS Limited Participants shall have a period of six (6) months from the date of the Commission's approval of this rule filing within which they must comply with these requirements. If an agent is not compliant with these requirements upon the expiration of such period, DTC shall have the right using

¹⁶ In DRS, instructions to transfer shares are sent by a broker-dealer that is a DTC Participant or a by a transfer agent that is a DRS Limited Participant through Profile. Profile provides screen based indemnification against false instructions from the party submitting the instructions through DRS. The indemnity is supported by either a surety bond or an insurance policy.

its sole discretion to terminate or to continue the agent's status as a DRS Limited Participant.

(3) Eligibility Requirements for DRS Issues:

In order for an issue to be eligible as a DRS issue, the issue must:

1. Have a transfer agent accepted as a DTC DRS Limited Participant;
2. Be included in the FAST program (An issue may not be added to DRS if an "out of balance" positions exist.)

(4) DTC's Proposed Standard of Care Obligations with Respect to FAST

DTC is proposing to establish a clearer demarcation of responsibility and liability with respect to the FAST program. Historically, DTC believes the Commission has left to user-governed clearing agencies the question of how to allocate losses associated with, among other things, clearing agency functions.¹⁷ In conjunction with its approval of these standards, the Commission noted that while it had "called on registered clearing agencies to undertake, by rule, to deliver all fully-paid securities in their control to, or as directed by, the participant for whom the securities are held," given that registered clearing agencies had demonstrated a high level of responsibility in safeguarding securities and funds, a standard of care based on a strict standard of liability was not required either with respect to failures of the clearing agency or a sub-custodian. DTC notes that securities in the FAST program are held by a transfer agent and are not within the immediate custody and control of DTC. As such, after a transfer agent is accepted to the FAST program, DTC is proposing the addition of a clarifying provision to Rule 6 to state

¹⁷ Securities Exchange Act Release Nos. 34-20221 (September 23, 1983) and 34-22940 (February 24, 1986). In this regard, DTC adopted a uniform standard with respect to certain of its procedures, or Service Guides, such that DTC is not liable for any loss incurred by a participant other than one caused directly by gross negligence or willful misconduct on the part of DTC. See Securities Exchange Act Release No. 34-44719 (August 17, 2001) [File No. SR-DTC-2001-01].

that DTC will not be liable for the acts or omissions of FAST Agents or other third parties, unless caused directly by DTC's gross negligence, willful misconduct, or violation of federal securities laws for which there is a private right of action. In addition, DTC proposes that under no circumstance shall DTC be liable for selecting or accepting any third party as an agent of DTC, including a transfer agent participating in the FAST Program.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act, as amended,¹⁸ and the rules and regulations thereunder because it improves standards relating to the eligibility of transfer agents and issues for its FAST and DRS programs. As such, it assures the safeguarding of securities and funds which are in the custody or control of DTC or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

DTC has neither solicited nor received written comments on the proposed rule change.¹⁹

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the Federal Register or within such longer period: (i) as the Commission may designate up to ninety days of such date if

¹⁸ 15 U.S.C. 78q-1.

¹⁹ The Commission received 29 comment letters to DTC's proposed rule change as amended by Amendments 1 and 2. The comment letters can be found at <http://www.sec.gov/comments/sr-dtc-2006-16/dtc200616.shtml>.

it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve such proposed rule change or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-DTC-2006-16 in the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-DTC-2006-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those

that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:30 p.m. Copies of such filings also will be available for inspection and copying at the principal office of the DTC and on the DTC's Web site, www.dtcc.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-DTC-2006-16 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.²⁰

Florence E. Harmon
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).