

THE ASSOCIATION OF GLOBAL CUSTODIANS

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April 1, 2009

Donald Donahue
The Depository Trust and Clearing Corporation
55 Water Street
New York, NY 10041

Dear Don:

We write on behalf of the Association of Global Custodians ("Association") to convey the Association's request for a data printout from the Depository Trust Company ("DTC") that would display statistics relating to fails to receive/deliver securities in the context of corporate actions as described below. As Association members have confirmed to DTC personnel, the requested data will materially assist Association members in completing the risk analyses described below.

As background to this request, Association members are currently in the process of re-evaluating broadly the risks custodians face when having to issue protect guarantees against pending-but-unsettled/incompleted transactions during corporate actions. Such transactions typically involve securities loaned-but-not-returned or securities that are pending trade settlement; and custodians typically issue protect guarantees in respect of both of those circumstances. Risks custodians face in these circumstances, including reputation risk and financial exposure, are present whenever a custodian is unable to deliver a position that had been elected by a client during a corporate action and protected by the custodian on the client's behalf. In volatile markets, those risks and potential damages can be substantial and difficult to predict.

Risk reviews today are typically undertaken by individual custodians event by event. Those reviews include an assessment of the terms and nature of a given corporate action event and an evaluation of the extent to which their positions in question are covered. Members have concluded, however, that a generic review supplemented by Association assistance and industry data would provide a broader base of useful information. In addition, members anticipate that the broader information base would not only assist custodians in making qualitative decisions about when to issue protect guarantees but would form a basis for industry action to improve the underlying guarantee/liability processes, thereby reducing risk overall in this context.

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In members' experience, these risks are aggravated by the customary way in which letters of liability are treated within the intermediary community following a custodian's issuance of a liability letter. To illustrate – it is customary, in connection with issuing a protect guarantee, for custodians to research the status of relevant settlement fails and pending receives to identify the short broker and, once identified, to issue that broker a liability letter, pursuant to NYSE Rule 180 or clearing agency rules. Such liability notices enable the custodian as a receiving party (in industry parlance, a "long broker") to hold the short broker liable for the damages caused by failing to participate in part or all of the event. Standard industry practice is for the receiving party to issue the liability letter 24 hours prior to event expiration.

Although NYSE Rule 180 focuses on broker-dealers, it is common practice in the industry for custodians to issue liability letters when applicable. Notwithstanding that practice, however, some short brokers reject or ignore a custodian's liability letter – perhaps because they do not have the security in inventory or, on occasion, because they deem the custodian not to be a "receiving broker". When that happens, the broker will not confirm whether the securities will be returned prior to the protect guarantee deadline date and the custodian will then face uncertainty risk.

Given the foregoing, the Association is interested in assisting its members in analyzing the scale of market risks related to protect guarantees and liability letters and identifying potential systemic/process improvements; and to enable Association members to develop a robust data set relevant to that analysis, we are requesting key aggregated statistics from DTCC. The specific data set requested are reflected in the attached excel spreadsheet. To ensure completeness, the Association requests DTC to indicate in its responsive summary the portion of eligible positions for covered events that represent securities out on loan.

* * * *

We appreciate your assistance and that of DTCC. We hope that you can provide the data in the form sought by mid-April. In addition, we would very much appreciate a confirmation soon that DTC is willing and able to assist in this important exercise.

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If you have questions, please contact the undersigned at 312.861.2620 or Debbie Mercer-Miller (Citi, at 212.816.6861). We will be pleased to liaise with your relevant personnel on this matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Dan W. Schneider', with a long horizontal flourish extending to the right.

Dan W. Schneider
Baker & McKenzie LLP
Counsel to the Association

CC: Janet Wynn