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A. FOREWARD

This Manual of Examination Policies has been developed primarily for the benefit of the field examiner, although it will also be useful to Regional or Washington Office staff members. It explains the policies and examination objectives of the Corporation and the Division of Supervision pertaining to registered transfer agent activities in a concise, understandable, and usable format. The Manual is also available to bankers and the general public upon request.

The text of the Manual is separated into sections. Part I, Basic Transfer Agent Concepts and Guidelines, provides guidance on the rationale for registered transfer agent examinations, an overview of the statutory and regulatory framework governing registered transfer agent activity, the Registered Transfer Agent Rating System, examination priorities and frequency, pre-examination planning activities and other information with which the examiner must be familiar.

For examiners to properly fulfill their responsibilities, they must be knowledgeable of the principles, policies, and practices set forth in this manual and be reasonably familiar with applicable Federal and state laws and regulations.

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B. INTRODUCTION**Rationale For Examinations**

There are three primary purposes underlying the FDIC's examination program for banks engaging in registered transfer agent activities. First, regulatory examinations of registered transfer agents play a very large role in realizing the important public policy objectives of maintaining efficient and orderly securities markets and in safeguarding investor securities and the funds related thereto. In addition, the Corporation's registered transfer agent examination program is designed to fulfill the oversight responsibilities delegated to it as the primary federal regulator of state-chartered nonmember banks by the Securities and Exchange Act of 1934. Finally, to accomplish the FDIC's primary mission of protecting depositors, the Corporation must examine the transfer agent activities of the banks it supervises in order to detect and prevent situations which might threaten the viability of banks through diminution of their capital accounts.

Public Policy Concerns

In enacting the Securities and Exchange Act of 1934 (1934 Act), Congress recognized the role that fair, efficient, and orderly securities markets play in promoting trade and commerce and in maintaining a prosperous and efficient economy. Since FDIC-insured banks act as transfer agent for most of the corporate equity and debt securities issued in the U.S., as well as acting as bond registrar for most municipal debt securities, the FDIC carries out an important function for realizing the objectives of the 1934 Act. The Corporation's transfer agent examinations are designed to ensure that banks perform their securities transfer activities in a highly efficient manner and in full compliance with applicable laws and regulations.

The Statutory Framework

The statutory basis of the Corporation's registered transfer agent examination program is provided by the 1934 Act. Specifically, Section 17A(c)(1), added to the 1934 Act in 1975, requires all transfer agents to register with the appropriate regulatory agency (ARA) prior to conducting transfer agent activities for securities registered under Section 12 of the 1934 Act. As a result a multi-agency regulatory structure for transfer agents was created. Banks, bank holding companies, and their subsidiaries that transfer registered securities must first register with both ARA and with the Securities and Exchange Commission (SEC).

Section 3(a)(34) of the 1934 Act designates the FDIC as the ARA for FDIC insured state-chartered banks that are not members of the Federal Reserve System. The FDIC is also the ARA for subsidiaries of such banks.

The Federal Reserve is responsible for state member banks and trust companies and their subsidiaries, as well as bank holding companies and their subsidiaries. The Office of the Comptroller of the Currency is responsible for National banks and their subsidiaries.

All other registered transfer agents, including thrifts and thrift holding companies supervised by the Office of Thrift Supervision, register with the Securities and Exchange Commission.

Section 17A(d)(1) of the 1934 Act requires registered transfer agents to comply with all rules and regulations established by either the SEC or the ARA. Section 17A(d)(2) makes transfer agents for whom the SEC is not the ARA subject to the enforcement provisions of Section 8 of the FDI Act. All persons doing business with a transfer agent are deemed to be depositors as defined in Section 8(c) of the FDI Act.

Section 17A(d)(3)(A)(ii) assigns the ARA the primary responsibility of examining and enforcing compliance with applicable rules and regulations. The statute, however, preserves the SEC's right to make rules governing transfer agent activities or to enforce compliance with laws, rules and regulations governing registered transfer agent operations. In fact, Section 17A of the 1934 Act establishes a cooperative framework in which the SEC and the ARA will work together to ensure that the purposes of the 1934 Act are achieved. Under this framework the SEC must solicit the views of the ARA before proposed rules and regulations are released for public comments.

Section 17(c)(3) of the 1934 Act requires that the SEC and the ARA notify each other of any examination conducted by it, and to furnish the report, and any other data in connection with such examination, to the other. Currently, the SEC has a standing request for a copy of any FDIC registered transfer agent examination report meeting certain conditions.

In addition, the SEC has the right to conduct examinations of any registered transfer agent, and on occasion, has exercised this right. In such cases, however, the SEC is required to give notice of its intent to conduct such an examination, and to consult with the ARA concerning the feasibility and desirability of coordinating such an examination with examinations conducted by the ARA with a view to avoiding unnecessary regulatory duplication or undue regulatory burden for affected registered transfer agents.

Safety & Soundness Considerations

To the extent that a registered transfer agent fails to conduct transfer agent operations in a safe and efficient manner, or fails to comply with applicable laws and regulations, the transfer agent function could incur contingent liabilities or estimated losses which could adversely impact the bank's capital accounts. For example, a registered transfer agent might have to buy-in an over issuance of securities, or delays in completing transfers of securities might lead to monetary losses among security holders. The Corporation's registered transfer agent program is designed to ensure that bank transfer agents conduct securities transfer activities in a controlled, accurate, and prompt manner and in accordance with all applicable rules and regulations.

The role of the FDIC examiner in the examination of registered transfer agents of insured state-chartered nonmember banks, or their subsidiaries, is threefold:

- To evaluate the overall operations of securities transfer activities and to determine that such activity has been, and continues to be in compliance with applicable rules and regulations.
- To report conditions that have, or could have, adversely affected consumers or the bank.
- To recommend corrective action when weaknesses and deficiencies are noted.

When necessary, the FDIC's Board of Directors or a Regional Director will institute enforcement actions against a bank that is either unwilling or incapable of correcting serious deficiencies in its transfer agent operations.

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C. ROLE OF THE TRANSFER AGENT

Section 3(a)(25) of the 1934 Act defines a "transfer agent" as any person who, on behalf of an issuer of securities or on behalf of itself as an issuer of securities, performs one or more of the following activities:

- Countersigning securities upon issuance
- Monitoring the issuance of securities with a view to preventing unauthorized issuance, a function commonly performed by a person called a registrar

- Registering the transfer of such securities
- Exchanging or converting securities
- Transferring recorded ownership of securities by bookkeeping entry, without the physical issuance of securities certificates

Ownership of a security is expressed by the registration of a bond or stock certificate. A purchaser of a security is entitled to a certificate registered in his or her name. There is an exception to this requirement in regards to debt issued by the United States government, which is issued in book-entry form. Book-entry ownership means that the ownership of bonds and bills issued by the United States government is recorded in computer records maintained by the Treasury, with no paper certificate issued. In the case of stock, the purchaser always has the right to receive a certificate of ownership. Virtually all securities are issued in registered form, which means that the person entitled to the security and to the rights associated with a security, such as voting rights for common stock, is specified in the books maintained by or on behalf of the issuer of the security.

In the past, debt securities, both corporate and government, were issued in bearer form, which meant that anyone possessing the physical certificate or any of the attached interest coupons, was entitled to payment upon presentation of the bond upon maturity or call, or to interest when the bond coupon was presented to a paying agent. The issuer of a bearer bond did not know the identity of the persons who owned the issuer's bonds. Since bearer bonds are negotiable instruments, making them easily converted into cash without the ability to identify the parties receiving payment, concerns arose over the issue of taxpayers failing to declare interest income received on bearer bonds. In response, Congress passed the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). TEFRA prohibited the United States government from issuing bearer bonds and provided sanctions against corporations, municipalities, and other organizations issuing bearer obligations. The sanctions included disallowing the deduction of interest expense by issuers of bearer bonds and denying the holder of bear bonds the tax exemption for interest earned on the bonds. In addition, TEFRA imposed an excise tax equal to 1 percent of the principal amount of the debt multiplied by the number of years in the term of the bonds. These measures effectively ended the issuance of bearer debt instruments, and all debt securities are issued in registered form now.

Stock Transfer Agent

In view of the principal transfer agent functions described above, stock transfer agents occupy a central role in the issuance of securities and the subsequent transfer of such securities resulting from sales, purchases, reorganizations, tender offers, and other transfers of ownership. In particular, stock transfer agents issue stock certificates representing increases in the number of shares outstanding, e.g., initial issuance, stock dividends, stock splits and dividend reinvestment programs. As issued shares are traded on the open market, stock certificates are sent to the transfer agent who will cancel the shares registered in the name of the transferor (e.g. seller) and issue a stock certificate registered in the name of the transferee (e.g., buyer). Central to transactions involving the transfer of securities is the maintenance of accurate ownership records with respect to issued securities, since it is the registered owners of the securities who enjoy the associated ownership rights, e.g., the right to dividends and to vote shares owned. Transfer agents are responsible for maintaining current and accurate records with respect to issued securities.

In view of the large volume of stock market transactions, transfer agents must perform their duties with a high degree of speed and accuracy in order for securities markets to function efficiently. In issuing or transferring stock certificates, transfer agents must examine all accompanying documentation, assignments and endorsements to ensure the propriety of the transfer and guard against fraudulent transfers, change recorded ownership to reflect the transfer and, in most cases, perform the role of stock registrar, which involves verifying the number of shares represented by the certificate(s) being issued against the number of shares represented by the stock certificate(s) being cancelled. The stock registrar function operates to guard against the over issuance of securities. Finally, subsequent to cancellation, transfer agents must retain cancelled certificates in a secure location to ensure that they are not used in fraudulent transactions.

When an over issuance of securities occurs the number of shares overissued must be reduced, either by recovering the overissued shares from those to whom they were issued or by the person or entity responsible for the over issuance buying that number of shares on the open market and retiring the shares, which in effect represents a loss to that person or entity.

In order to perform these functions in a prompt and efficient manner, institutions acting as registered transfer agents need appropriate management oversight, experienced and knowledgeable staff, efficient operating procedures and effective internal controls. The failure by a registered transfer agent to promptly and accurately transfer and record ownership of securities can result in securityholders suffering monetary damages by hampering their ability to buy and sell shares, or otherwise prevent shareholders from exercising the rights associated with stock ownership, such as the right to receive dividends and vote proxies.

Stock Registrar

As described above, the stock registrar's duty is to prevent the over- or under issuance of securities, a condition referred to as an out-of-proof or out-of-balance condition. New York Stock Exchange rules allow an institution to serve as both a transfer agent and registrar for listed securities, other than its own. It is fairly common to find a transfer agent of an issue also serving the function of registrar. Although rarely encountered, there are instances where banks serve as registrar without being appointed the transfer agent. In such a case the registrar is referred to as an "outside registrar". When an "outside registrar" is used, the transfer agent, after canceling the surrendered certificates and drawing up the replacement certificates, sends both the cancelled and replacement certificates to the registrar, who verifies that the shares represented by the replacement certificate(s) equals the shares represented by the surrendered stock certificates.

Bond Registrar

The issuers of bonds, such as corporate and municipal bonds, and other debt instruments, also require securities transfer services. In the case of debt securities, however, the person or entity providing securities transfer and registrar services is referred to as the bond registrar. The function of the bond registrar should not be confused with that of the stock registrar. Often, the indenture trustee for the bond issue also serves as the bond registrar, although there can be a separate bond registrar for a bond issue.

In the past, debt securities, both corporate and government, were issued in bearer form. However, with the enactment of TEFRA in 1982, the Act effectively ended the issuance of bearer debt instruments, and all debt securities are issued in registered form. It is the bond registrar who maintains the records of registered owners and transfers ownership when bonds are subsequently acquired or sold. Interest and principal payments on registered bonds are made to the owners of record at the time when interest and/or principal are paid.

Mutual Fund Transfer Agent

A mutual fund transfer agent performs both the transfer agent and registrar functions. Mutual fund transfer agents maintain records of shareholder accounts; calculate and disburse dividends; and prepare and mail shareholder account statements, federal income tax information and other shareholder notices. Some mutual fund transfer agents may prepare and mail statements confirming shareholder transactions and account balances, and maintain customer service departments to respond to shareholder inquiries.

There are two types of mutual funds: closed-end mutual funds and open-end mutual funds. In the case of closed-end mutual funds, there is a fixed number of shares authorized and outstanding. Once issued, shares in closed-end mutual funds are traded in the market in the same manner as stocks. With respect to open-end mutual funds, there is no fixed number of shares authorized and outstanding. Open-end mutual funds will generally issue additional shares to investors wishing to invest in the fund. An open-end mutual fund may, however, close the fund to additional investors. In the case of an open-end mutual fund, the transfer agent faces a changing number of shares outstanding on a daily basis, increasing or decreasing depending upon the volume purchases and redemptions. Open-end mutual funds greatly outnumber closed-end mutual funds.

Another important difference between mutual fund transfer and stock transfer is the general absence of physical certificates for mutual fund shares. The owner of shares of stock have a right to a physical certificate. Mutual funds, on the other hand, rarely issue physical certificates. On infrequent occasions, a mutual fund may upon special request issue a certificate, for example in order for a shareholder to pledge shares as collateral for a loan. The absence of physical certificates means that mutual fund transfer is a book-entry operations, with recorded ownership maintained in the transfer agent's computerized recordkeeping system.

A mutual fund's transfer agent is identified in the mutual fund's prospectus. A mutual fund transfer agent must be a registered transfer agent. See following section. The operation of mutual funds is subject to the Investment Company Act of 1940 and regulation by the SEC.

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D. REGISTRATION OF TRANSFER AGENTS

Transfer agents can be registered or non-registered. A registered transfer agent is a transfer agent that has registered with the SEC or, in the case of banks serving as transfer agents, with an applicable Federal bank regulatory agency. Whether a transfer agent must register depends on whether the transfer agent transfers Section 12 Securities. Section 17A(c)(1) of the 1934 Act specifically states that "it shall be unlawful for any transfer agent, unless registered in accordance with this section, directly or indirectly, to make use of the mails or any means or instrumentality of interstate commerce to perform the function of a transfer agent with respect to any security registered under Section 12 of this title or which would be required to be registered except for the exemption from registration provided by subsections (g)(2) (B) or (g)(2)(G) of that section". Section 12 requires the registration of the following types of securities:

- Securities traded on national securities exchanges, e.g., the American Stock Exchange, the New York Stock Exchange, or NASDAQ. NASDAQ applied for registration and received recognition as a national securities exchange in 2006. To be traded on a national securities exchange, the security is registered with the national security exchange.
- Securities requiring registration under Section 12(g) of the 1934 Act, which requires registration when:
 - An issuer of a security has total assets exceeding \$10 million (originally the total asset size threshold for registration was \$1 million, but SEC Rule 12g-1 raised the total asset size threshold to \$10 million), and more than 500 shareholders of record. Note: An issuer may deregister securities when the number of shareholders of record falls below 300. Refer to the section on counting number of shareholders of record.
 - Once an issuer of securities has exceeded the thresholds for registration contained in Section 12(g)(1), the issuer must register its securities within 120 days following the end of the issuer's fiscal year in which the registration thresholds were exceeded. The transfer agent must register immediately upon performing transfer agent services for a registered security.

In most instances, FDIC-supervised transfer agents will act as transfer agent for securities registered pursuant to Section 12(g). Instances where a state nonmember bank serves as transfer agent for securities registered on a national securities exchange or for mutual funds are relatively infrequent.

Certain types of securities are exempt from registration under Section 12(g). Exempted categories of securities include:

- Any security listed and registered on a national securities exchange (e.g. American Stock Exchange, New York Stock Exchange, NASDAQ, etc.). These are registered under Section 12(a).
- Any security issued by an investment company registered pursuant to Section 8 of the Investment Company Act of 1940.
- Any security, other than permanent stock, guaranty stock, permanent reserve stock, or any similar certificate evidencing non withdrawable capital, issued by a savings and loan association, building and loan association, cooperative bank, homestead association, or similar institution, which is supervised and examined by state or Federal authority having supervision over any such institution.
- Any security of an issuer organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, or reformatory purposes.
- Any security of an issuer which is a "cooperative association" as defined in the Agricultural Marketing Act.
- Any security issued by a mutual or cooperative organization which supplies a commodity or service primarily for the benefit of its members and operates not for pecuniary profit, but only if the security is part of a class issuable only to persons who purchase commodities or services from the issuer, the security is transferable only to a successor in interest or occupancy of premises serviced or to be served by the issuer, and dividends are payable to the holder of the security.
- Any security issued by an insurance company, subject to meeting certain conditions.
- Any interest or participation in any collective trust funds maintained by a bank or in a separate account maintained by an insurance company.

In addition, Section 3(a)(12) defines certain categories of securities considered "exempted securities" for purposes of the 1934 Act. The registration requirements of Section 12(g) do not apply to "exempted securities". Particularly important for transfer agents is the designation of municipal securities as "exempted securities". As a result, a transfer agent that transfers only municipal securities (typically bonds issued by local political subdivisions, but can also include state issues and industrial development bonds) is not required to register as a transfer agent with the SEC or, as appropriate, with its primarily Federal banking regulator.

Transfer agents that are not registered pursuant to Section 17A(c)(1) of the 1934 Act are not subject to the operational regulations contained in 17 C.F.R. §240.17Ad of the SEC's General Rules and Regulations.

Summary Table of Transfer Agent Registration Requirements

The table below summarizes the registration requirements for transfer agents based on the type of securities transferred.

Security Type	When Transfer Agent Registration Applies
Stock	Registered transfer agent use required if the stock issue is: <ul style="list-style-type: none"> listed on a national securities exchange (New York Stock Exchange, American Stock Exchange, Chicago Stock Exchange, etc.) or listed on NASDAQ. registered with the SEC (or federal banking agency) under federal securities laws. Registration of stock is required when issued by any other corporate issuer with both 500+ shareholders of record and \$10 million or more in assets. Refer to section on counting the number of shareholders of record.
Corporate Debt (Bonds, Debentures, Capital Notes, etc.)	The registrar (transfer agent) must be registered if the bonds are listed on a national securities exchange (New York Stock Exchange, American Stock Exchange, Chicago Stock Exchange, NASDAQ, etc.).
Municipal Bonds	No registration requirement under any circumstances. Also included in this exemption are industrial revenue and industrial development bond issues, because they are issued by state or local agencies.
Mutual Funds	The transfer agent for a mutual fund must be a registered transfer agent. No exceptions are allowed.

It is important to recognize, however, that the Securities and Exchange Commission has opined (SEC Release 34-17111, 9-2-80) that once a transfer agent registers as a transfer agent that the transfer agent must comply with all of 17 C.F.R. §240.17Ad for every security for which it serves as transfer agent. This means that the same SEC operational requirements would pertain to the transfer of municipal securities, despite the fact that municipal securities are "exempted securities" under the 1934 Act. This requirement applies regardless of which department or section of the transfer agent organization effects securities transfers. For example, a bank could serve as transfer agent for its own or its parent holding company stock, as well as serve as registrar for municipal bonds. The fact that transfers of the bank's stock is effected in the bank's Treasury Department, while the transfer of municipal bonds takes place in the trust department would not relieve the trust department of its obligation to comply with SEC operational requirements just on account of municipal bond transfers taking place in another department of the institution. Once a transfer agent becomes subject to the requirements of 17 C.F.R. §240.17Ad for any issue transferred, all other issues, whether otherwise exempt or not under the 1934 Act, become subject to the same SEC requirements.

Voluntary Registration of Securities

Section 12(g)(1)(B) of the 1934 Act allows any issuer of equity securities, not otherwise required to be registered, to register such securities by filing a registration statement. According to the SEC's Office of Compliance Inspections and Examinations, it is common practice for issuers to register voluntarily (i.e. when not required by the 1934 Act).

Counting the Number of Shareholders of Record

Sometimes there is a question whether an institution has 500 or more shareholders of record, which would require its stock to be registered under federal securities laws. Determining the number of shareholders of record may be difficult particularly when stockholders own stock in varying names or under differing capacities (individually, joint, as a partner, etc.). The difficulty may be further compounded when stock is held by a bank trust department in nominee name or by a securities broker in street name.

In order to determine the number of shareholders of record, it is necessary to refer to the SEC's definition of Securities "Held of Record" which is addressed in SEC Rule 12g5-1. In principle, each "person" who has an ownership interest in a security is counted as a holder of record. In particular, Rule 12g5-1 identifies the following "persons" as owners of record:

- Securities identified as held of record by a corporation, a partnership, a trust whether or not the trustees are named, or other organization shall be included as so held by one person.
- Securities identified as held of record by one or more persons as trustees, executors, guardians, custodians or in other fiduciary capacities with respect to a single trust, estate or account shall be included as held of record by one person.
- Securities held by two or more persons as co-owners shall be included as held by one person.

Rule 12g5-1 includes an exception to the "persons" described above. In particular:

- Securities held, to the knowledge of the issuer, subject to a voting trust, deposit agreement or similar arrangement shall be included as held of record by the record holders of the voting trust certificates, certificates of deposit, receipts or similar evidences of interest in such securities: Provided, however, That the issuer may rely in good faith on such information as is received in response to its request from a non-affiliated issuer of the certificates or evidences of interest.

For trust departments this means that in most instances, each trust account holding shares counts as one shareholder of record, without regard to the number of beneficiaries. Trust accounts established with pass-through voting, such as in some 401(k) plans, the individual participant accounts holding the stock should be counted as shareholders of record.

When the bank has a single stockholder "master" record name (nominee name) covering multiple persons (as with a trust department or a securities broker), the bank is obligated to make reasonable efforts to determine how many stockholders of record are represented by the "master" record.

In the case of the bank's own trust department, the bank is expected to obtain the requisite information, since it has control over the trust department's records. In other trust institutions, the bank should request the information.

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E. REGISTERED TRANSFER AGENT EXAMINATIONS

FDIC Registered Transfer Agent Examination Ratings

The FDIC Registered Transfer Agent Examination Ratings (RTA ratings) became effective on May 4, 1989, and were transmitted to field examiners via Regional Director Memorandum 89-056, "Examination Ratings for Registered Transfer Agent Examinations". The RTA ratings are not interagency ratings, but were developed for FDIC supervised registered transfer agent examinations. The RTA ratings consist of a single composite rating, i.e., there are no individual component ratings assigned. The RTA ratings take into consideration certain managerial, operational and compliance factors that are common to all transfer agents. Under this rating system, the FDIC endeavors to ensure that all FDIC supervised registered transfer agents are evaluated in a uniform manner, and that supervisory attention is appropriately focused on registered transfer agents exhibiting operational and compliance weaknesses.

Each registered transfer agent is assigned an RTA rating based on an evaluation of the transfer agents operational performance and compliance with outstanding laws and regulations. Of particular importance is the registered transfer agent's compliance with the SEC regulations contained in 17 C.F.R. §240.17Ad, described in detail throughout this manual, which set forth most of the performance standards established for registered transfer agents.

The Composite rating is based on a 1 to 5 numerical scale. A 1 indicates the highest rating, the strongest performance and the least degree of supervisory concern, while a 5 indicates the lowest rating, weakest performance and, therefore, the highest degree of supervisory performance. The following section contains the composite rating definitions.

Composite Ratings

- **Composite Rating "1"**

This institution's registered transfer agent activity has been assigned an examination rating of 1. Transfer agent activities in this group are sound in all important respects. If deficiencies are noted, they are of a minor nature and can be handled in a routine manner without further supervisory involvement.

- **Composite Rating "2"**

This institution's registered transfer agent activity has been assigned an examination rating of 2. Transfer agent activities accorded this rating are fundamentally satisfactory, but may reflect modest weaknesses. Deficiencies are generally correctable in the normal course of business. The need for supervisory response is usually limited.

- **Composite Rating "3"**

This institution's registered transfer agent activity has been assigned an examination rating of 3. Transfer agents with this rating are experiencing a combination of factors which require prompt corrective action. Weaknesses of some significance exist in several areas, or serious deficiencies exist in one or two areas. Considering the volume and type of business, a significant adverse impact does not exist now; but if left unchecked, the bank's ability to properly carry out its responsibilities could be endangered. More than ordinary supervisory concern exists, and additional monitoring may be necessary.

- **Composite Rating "4"**

This institution's registered transfer agent activity has been assigned an examination rating of 4. Unsatisfactory and unacceptable conditions exist in transfer agents with this rating. Significant weaknesses exist in a number of areas, such as prolonged and repeated violations, deficient or missing controls and audits, or critically deficient policies and procedures. Service to clients and securityholders is, or is likely to become, inadequate, with clearly excessive delays or frequent errors. These problems are not being adequately resolved. Affirmative action and supervision by regulatory authorities is warranted.

- **Composite Rating "5"**

This institution's registered transfer agent activity has been an examination rating of 5. A combination of critical deficiencies and adverse trends exist in transfer agents with this rating. The likelihood of ultimate continuation of transfer agent services is in serious question. Major and prolonged operational problems and serious repeated violations exist. Numerous out of proof conditions are unresolved, turnaround standards are not being met, and unresolved securityholder complaints exist. Depending on the volume and nature of transfer services, losses may pose a threat to capital. Immediate corrective action and continuous supervision, as required by the regulator, are necessary.

Rating Guidelines

Although the FDIC Registered Transfer Agent Examination Rating System does not incorporate individual component ratings, there are four broad considerations that should be evaluated in determining the appropriate composite rating to assign. These considerations are: management's supervision of transfer agent activities, the transfer agent's compliance with applicable rules and regulations, the transfer agent's operations, and the adequacy of internal controls and audits. Detailed below are guidelines for each of these areas with respect to each composite rating.

- **Composite Rating "1"**

- Management and the Board's supervision and support of transfer agent activity is satisfactory. Transfer agent staff is knowledgeable and competent.
- Transfer agent staff are knowledgeable of all applicable laws and regulations; violations, if any, consist of a few, inadvertent technical violations that are easily correctable. There are no repeat violations from previous examinations.
- The transfer agent function is sufficiently staffed for the volume and complexity of securities transferred. Operational systems and records provide for the orderly and efficient flow of work, including the prompt and diligent completion of securities transfers and related transactions. Any operational deficiencies are strictly minor in nature, readily correctable and have no significant adverse impact on securityholders or other clients.
- Internal controls adequately minimize the risk of errors, losses, the manipulation of records, misappropriation of funds or securities, and the improper issuance of securities. An effective audit program covers transfer agent activities.

These transfer agents exhibit the strongest performance and give no cause for supervisory concern.

- **Composite Rating "2"**

- Senior management and the Board are not directly involved in the supervision of transfer agent activity, but are considered capable of intervening effectively if conditions warrant. Transfer agent staff is reasonably knowledgeable and capable given the size and complexity of transfer agent activities.
- Transfer agent staff has a satisfactory knowledge of the most important laws and regulations applicable to the transfer agent area. Isolated violations may be present, but they are inadvertent and minor in nature. Any repeat violations should be few in number and involve only minor, technical regulatory requirements. All violations are readily correctable.
- The transfer agent function is adequately staffed for the volume and complexity of securities transferred. Operational systems and records are adequate and allow for the performance of securities transfers and related transactions within regulatory requirements. Operational deficiencies are minor and technical in nature, readily correctable, and have no significant adverse impact on securityholders or other clients.
- Satisfactory internal controls are in place. Audit coverage is adequate in frequency and scope, with adequate follow up on audit exceptions. Some minor internal control and audit deficiencies may be present, but, given the size and complexity of transfer agent operations, pose no risk to the transfer agent function.

These transfer agents present no material supervisory concerns and, as a result, the supervisory response is informal and limited.

- **Composite Rating "3"**

- Senior management and the Board remain largely passive with respect to supervision and support of transfer agent activities. Although senior management and the Board's lack of active involvement has not resulted in serious deficiencies in transfer agent operations, the lack of active oversight may be evident. Day to day management of the transfer agent area is adequate, but is somewhat lacking in either knowledge and/or experience, and may have difficulty responding to problems or changing circumstances.
- While transfer agent staff's technical knowledge and awareness of applicable laws and regulations is adequate, compliance is characterized by an accumulation of inadvertent violations, caused by inattention to detail. Most violations are technical in nature, but substantive violations may also have occurred. The correction of substantive violations can be expected, but a continuation of technical violations is likely unless controls in the transfer agent area are strengthened.
- Transfer agent operations are only fair. Securities transfers and related transactions are completed, but timeliness and/or accuracy requires improvement. Deficiencies in areas of lesser overall importance remain, without prompt corrective action being taken. Overall operations, however, are not seriously deficient and service to securityholders has not been seriously impaired.
- Internal controls and/or audits are deficient, increasing the risk of errors, losses, misappropriations of funds and/or securities, the manipulation of records, and the improper issuance of securities. The deficiencies, however, are not of a magnitude to pose a serious threat to the transfer agent or securityholders.

These transfer agents present a moderate level of concern and may require more than a normal supervisory response, which may include follow-up visitations to evaluate corrective actions or, at the discretion of the appropriate Regional Director, an informal enforcement action.

- **Composite Rating "4"**

- Senior management and the Board have failed to take action to remedy operational deficiencies, caused by weak day-to-day management of the transfer agent area. The management of the transfer agent area is weak and the day-to-day management of transfer agent activities lack the knowledge and ability to supervise adequately the volume and type of transfer agent activity conducted. Management of the transfer agent area may display a lack of interest in transfer agent activities that has resulted in significant operational deficiencies. Operational deficiencies are not corrected as they occur, and thus become persistently more severe.
- Transfer agent staff lacks the necessary knowledge and awareness of the laws and regulations applicable to the transfer agent area. As a result, substantive violations occur regularly and may go uncorrected for prolonged periods.
- Transfer agent operations are deficient in one or more fundamental operational areas. Securities turnaround performance may not meet regulatory requirements and recordkeeping performance may be characterized by inaccuracy and/or a failure to post records promptly. Operational deficiencies may persist and the correction of operational deficiencies requires a serious commitment by senior management. Transfer agent operations do not provide for the adequate

monitoring of securities transfer performance and fails to provide clients and securityholders an acceptable level of service.

- Internal controls and/or audits are seriously deficient and result in a high degree of risk that errors, losses, misappropriation of funds and/or securities, the manipulation of records, and the improper issuance of securities may occur and remain undetected.

These transfer agents present a moderately high level of supervisory concern and require close supervisory attention, which means, in most cases, formal enforcement action is necessary to address the problems.

- **Composite Rating "5"**

- Supervision by senior management and the Board is either nonexistent or ineffective. Management of the transfer agent area is fundamentally weak. Day-to-day management and staff lack the capability to handle the volume and complexity of transfer agent business. Operational deficiencies are not being addressed.
- Substantive violations of applicable laws and regulations occur regularly and may go uncorrected for long a prolonged period. Little or no effort is made to ensure and monitor compliance with applicable laws and regulations.
- Transfer agent operations are critically deficient. Numerous or serious out-of-proof conditions have occurred and remain unresolved. Serious operating deficiencies have been allowed to remain uncorrected for extended periods. Sufficient and/or competent staff may be lacking. Client and securityholder complaints are numerous. The transfer agent is unable to properly service the security issues transferred or the securityholders of those issues.
- Internal controls and/or audits are either nonexistent or critically deficient. There is a heightened probability that errors, losses, misappropriation of funds and/or securities, manipulation of records, or the improper issuance of securities may occur and remain undetected.

These transfer agents present a high degree of supervisory concern. An immediate supervisory response is needed in order for the transfer agent to remain viable. Ongoing supervisory attention is necessary.

Disclosure of RTA Rating

Disclosure of the RTA rating to bank management is appropriate and is intended to encourage a more complete and open discussion of examination findings and recommendations. Therefore, management is provided with useful information to assist in improving and/or maintaining operational effectiveness and compliance with applicable laws and regulations.

Discussions With Management

The examiner-in-charge should discuss the recommended RTA rating with the management of the transfer agent area, and, when appropriate, the senior management and/or Board of Directors of the institution. Examiners should clearly explain that the RTA rating is tentative and subject to final approval by the Regional Director. Examiners should discuss the factors considered in assigning the RTA rating. In addition, management should be reminded that the RTA rating is subject to the confidentiality rules imposed by Part 309 of the FDIC's Rules and Regulations.

Registered Transfer Agent Examination Intervals

The statutory requirements of Section 10(d) of the FDI Act do not apply to registered transfer agent examinations. Thus, registered transfer agent examinations are governed by internal DSC policy, not statute. Registered transfer agent examinations generally should be conducted concurrently with safety and soundness examinations, except when the size or arrangement of the transfer agent's operations makes it impractical or inefficient to do so. Although there may be some differences, registered transfer agent examinations are generally subject to the same examination intervals, including appropriate extensions, as safety and soundness examinations.

Regional Directors can make reasonable adjustments to specialty examination intervals to accommodate concurrent examinations where rating differences or alternate state examinations result in examination intervals that are not conducive to scheduling concurrent examinations. Reasonable adjustments include extending the examination cycle for 1- and 2-rated registered transfer agents. Although not permitted by statute for safety and soundness examinations, internal policy allows Regional Directors also

to extend the examination cycle for 3-rated registered transfer agents. The examination interval for 4-, or 5-rated registered transfer agents should not be extended beyond one year.

When the state supervisory authority has examination responsibility for the safety and soundness examination of an institution, it is not the FDIC's responsibility to conduct a registered transfer agent examination to maintain compliance with the requirements of Section 10(d) of the FDI Act, should the state supervisory authority fail to conduct an examination.

Examinations by State Authorities

As of the moment when this manual was being written, only Louisiana, South Carolina, and Tennessee conducted examinations of registered transfer agents. In the past, however, other states have included examination of registered transfer agents in their supervisory programs, and at least one state is considering establishing such a program for registered transfer agents. In those cases where the state supervisory authority conducts examinations of registered transfer agents, every effort should be made to coordinate examination schedules with state authorities to take advantage of state resources, to minimize duplications of effort, and to lessen business disruptions to the institutions. In those cases where the size and complexity of transfer agent operations make it practical and efficient to do so, consideration should be given to conducting registered transfer agent examinations with state authorities.

Refer to Chapter 1.1, Section VI of the DSC Manual of Examination Policies, "Guidelines for Relying of State Examinations" for a discussion of the FDIC's program for cooperating with state bank regulatory agencies.

Limited Scope Examinations And Visitations

The terms "limited scope examination" and "visitation" may be defined as any examination that does not meet the minimum requirements of a full-scope examination pursuant to Section 10(d) of the FDI Act. Limited scope examinations and visitations have a flexible format and may be used to: (1) determine changes in a registered transfer agent's risk profile; (2) monitor compliance with a corrective program; (3) determine progress in correcting deficiencies noted at the previous examination; and (4) act as an investigative and supervisory tool.

Completion of the standard examination report form is not required although appropriate report pages may be included if considered necessary to clarify a finding or recommendation. Results should generally be conveyed in a memorandum from the examiner-in-charge to the Regional Director. If the examination or visitation results are to be sent to the institution, they can be in whatever form (letter or other suitable format) is considered appropriate.

Examination Planning

Pre-examination planning can enhance the efficiency of the examination process. As part of the pre-examination planning process, examiners should review the previous Registered Transfer Agent Report of Examination and the correspondence file. Examiners can also access additional information concerning registered transfer agent operations via the BITS Supervisory Analysis System (SAS). Via the SETS subsystem, examiners can access the Specialty Structure Information subsystem, where the following information about FDIC registered transfer agents is available:

- Filings of Form TA-1, including type of filing, e.g. registration, amendment of TA-1, or deregistration, with the date such filing was received
- Whether the transfer agent transfers own-bank or affiliate's securities
- Entities providing private label transfer agent services to the transfer agent
- Entities for which the transfer agent provides services
- Name and address of the transfer agent's data processing servicer
- Miscellaneous information, such as the TA#, FINS#, address of transfer agent's headquarters, location(s) where principal transfer agent activities are conducted, and the name and telephone number of a contact at the registered transfer agent

Another important source of information about transfer agent operation is the registered transfer agent's annual TA-2 filing. Each registered transfer agent is required to file annually Form TA-2 with the SEC. The TA-2 is a calendar yearend report and must be submitted to the SEC no later than March 31st. Included in the information provided on Form TA-2 is whether the transfer

agent has engaged the services of an outside service provider, including the name of such outside servicers; whether the transfer agent has contracted to provide services to outside transfer agents, including the name of such entities; whether the transfer agent has amended Form TA-1; the level of transfer agent activity, including the number and type of issues transferred and the number of accounts; information on record differences, buy-ins, turnaround performance, and searches for lost securityholders. Examiners should consider obtaining the institution's last Form TA-2 filing (e.g. via mail or fax) prior to starting the on-site examination.

As a general rule, bankers should be given at least two weeks notice of an upcoming registered transfer agent examination in order to provide them with enough time to complete pre-examination requests. A shorter period is permissible if the institution is not unduly burdened or if a shorter period is occasionally needed due to planning requirements. Examiners should also consider contacting the person who oversees transfer agent operations prior to commencing the on-site examination. Contact can be in person at the institution, or by telephone. This will allow the examiner-in-charge to discuss any significant changes that may have occurred in the transfer agent's operations, including changes in the number and type of securities transferred, outside service providers, or services provided to outside transfer agents; significant changes in the volume of items processed; the existence of out-of-balance conditions or buy-ins; changes in management or key personnel; and any issues related to the items included on the First Day Examination Request List.

Disclosure of Report of Examination

The report of examination is highly confidential. Although a copy is provided to the bank, that copy remains the property of the FDIC. Without the FDIC's prior authorization, directors, officers, employees and agents of a bank are not permitted to disclose the contents of a report. Under specified circumstances, FDIC regulations permit disclosures by a bank to its parent holding company or majority shareholder.

FDIC regulations do not prohibit employees or agents of a bank from reviewing the report of examination if it is necessary for purposes of their employment. Accountants and attorneys acting in their capacities as bank "employees" or agents may review an examination report without prior FDIC approval, but only insofar as it relates to their scope of employment. The Division believes the definition of "agent" includes an accountant or accounting firm which performs an audit of the bank.

Reports of examination are routinely provided to the bank's chartering authority. Therefore, state bank examiners may review the bank's copy of an FDIC examination during a state examination.

Workpapers

Workpapers should be a written trail of decisions and supporting logic that also indicate individual responsibility. They should provide written support for examination and verification procedures performed and the assertions of fact or opinion in the report of examination. All procedures performed during the examination should be sufficiently documented in the workpapers. All workpapers should be labeled with the institution's name and location, dated, and signed or initialed by the examiner or assistant examiner who prepared the document.

Retention of workpapers beyond one examination should be confined to those banks with existing or pending administrative actions, or special documents relating to past insider abuse, documents which are the subject of previous criminal referrals, or other such sensitive documents. While the retention of workpapers beyond one examination is discouraged, field office supervisors have the discretion of retaining major report or examination schedules and other pertinent workpapers for an additional examination.

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F. REGISTRATION AND REPORTING REQUIREMENTS

FDIC Registration Requirements

An FDIC supervised financial institution serving as transfer agent for securities that are registered under Section 12(g) of the 1934 Act or that are registered on a national securities exchange must register as a transfer agent. An institution is considered a transfer agent when it: 1) performs transfers of securities; 2) is named as transfer agent; or 3) will perform transfers of securities or will be named transfer agent for a securities issue requiring registration. For FDIC supervised financial institutions, the SEC

registration requirement is implement in FDIC Part 341, "Registration of Securities Transfer Agents". The provisions of Part 341 apply to all FDIC registered transfer agents, even those granted the "small transfer agent" exemption.

Part 341, FDIC Rules and Regulations - Registration of Securities Transfer Agents

FDIC Part 341 requires all insured nonmember banks, or subsidiaries of such banks, that act as transfer agents for qualifying securities, to register as a transfer agent with the FDIC. For the purposes of Part 341, qualifying securities are those registered on a national securities exchange or registered under Section 12(g)(1) of the 1934 Act. Refer to Registration of Transfer Agents and Chart which summarizes the registration requirements for various categories of securities. For the purposes of Part 341, a financial institution is a transfer agent if it:

- Countersigns qualifying securities upon issuance
- Monitor the issuance of qualifying securities upon issuance
- Registers the transfer of qualifying securities
- Exchanges or converts qualifying securities
- Transfers record ownership of qualifying securities by bookkeeping entry with physical issuance of a Securities certificate
- Acts as a Co-transfer agent for qualifying securities
- Acts as a Registrar or Co-Registrar for qualifying securities

Refer to Section 341.2(a)

Note: Examiners should be careful not to confuse mutual fund sub accounting with the function of mutual fund transfer agent. Mutual fund sub-accounting services involve a trust department establishing an omnibus account with a mutual fund. All the transactions with the mutual fund for the benefit of the trust accounts administered by the trust department are effected through the trust department's omnibus account. From the mutual fund's perspective, the owner of record of the mutual fund shares purchased for the benefit of the trust department's individual accounts is the trust department that established the omnibus account. In such cases, the trust department performs the sub accounting services, whereby purchases and sales of mutual fund shares are allocated to the individual trust accounts involved. Mutual fund sub accounting does not involve transferring ownership of record, since it is the trust department that is the owner of record of the shares purchased via the omnibus account.

FDIC supervised transfer agents register with the FDIC by submitting Form TA-1, "Transfer Agent Registration and Amendment Form". As discussed in further detail below, Part 341 requires the initial registration of FDIC supervised transfer agents, updating amendments to Form TA-1 when any of the information contained therein is no longer accurate, and deregistration of transfer agents that cease to perform the transfer agent services defined in the regulation.

Initial Registration

FDIC supervised institutions must register with the FDIC immediately upon acting as transfer agent for qualifying securities. See Section 341.3. Institutions register by filing Form TA-1 with the FDIC's Washington Office. Registration becomes effective 30 days after the date that Form TA-1 is filed with the Washington Office, unless the FDIC accelerates, denies, or postpones registration. Section 17A(c)(4)(A) of the 1934 Act provides for the postponement of registration for a period of not more than 15 days. The postponement can be extended beyond 15 days after the prospective registrant is given notice and opportunity for hearing, if the FDIC concludes that a postponement is necessary to protect the public interest and for the protection of investors.

The information provided in Form TA-1 must be accurate, and, as discussed in the next section, must be updated when changes occur. Among the information provided by the registrant in the Form TA-1 is the address of the registrant's Main Office and its mailing address, as well as the address of the principal location where transfer agent processing activities will be conducted and all other locations where transfer agent processing activities will be conducted. Registrants also indicate whether they will act as transfer agent for own institution securities or securities of affiliates. In addition, registrants indicate whether they have contracted an outside organization to perform transfer agent services or whether the registrant will perform such services for other registered transfer agents.

Form TA-1 is available upon request from the Special Activities Section of the Supervision and Applications Branch FDIC, Washington, D.C. 20429, as well as on the FFIEC website.

- **Examples - Initial Registration**

- Example #1 (*Section 12 Securities*)

An organization is currently acting as a transfer agent for a securities issue that is registered under federal securities law or listed on a national exchange.

No securities may be transferred until the organization registers as a transfer agent. To transfer such securities without registration is a violation of Section 17A of the Securities Exchange Act of 1934. The registration requirement is immediate.

- Example #2 (*Securities That Are Not Yet Registered*)

An institution is transfer agent for a stock issue which has more than 500 shareholders and meets the applicable asset threshold requiring registration of the stock. However, the stock has not yet become registered.

As soon as the stock itself has become registered, the stock must utilize a registered transfer agent. See When Transfer Agent Registration Must be Accomplished for further guidance.

- Example #3 (*Corporate Bonds*)

An institution acts as corporate trustee of five bonds issued by a church and two small local companies. Normally, the trustee's duties include acting as registrar and performing transfer agent-type work.

Since the bonds are not listed on a securities exchange, the transfer agent registration requirements do not apply.

- Example #4 (*Municipal Bonds*)

An institution acts solely as trustee of one or more municipal bond issues. No other securities are transferred. Normally, the trustee's duties include acting as registrar and performing transfer agent-type work.

Since municipal debt securities are exempted from Section 12 of the Securities Exchange Act of 1934, the transfer agent registration requirements do not apply. The institution should not register as a transfer agent. In this context, "municipal" includes industrial revenue or industrial development bonds and similar issues.

- Example #5 (*Holding Company Stock*)

A bank is a registered transfer agent because it transfers its own stock. The bank forms a holding company and exchanges bank stock for holding company stock. The holding company stock certificate does not declare who the transfer agent is; only the holding company's name appears on the stock certificate.

In such a case, the presumption must be that the issuer (the bank holding company) is the transfer agent of its own stock. The holding company should register with the Federal Reserve Board in Washington as a transfer agent. The bank should not be a registered transfer agent because the holding company is presumed to transfer its own stock.

Amendments to Registration

All information provided by the registrant on Form TA-1 must be kept current. Section 341.4 requires registrants to file an amending Form TA-1 within 60 days of the date on which any of the information reported on Form TA-1 becomes inaccurate, misleading, or incomplete. Registrants do so by filing Form TA-1 and indicating that the filing is an amendment of the registrants existing Form TA-1. Items on Form TA-1 that typically involve amending Form TA-1 include:

- The name of the financial institution
- The location of the financial institution's headquarters
- The locations where transfer agent activities are conducted

- The financial institution's mailing address
- The institution's telephone number, including area code changes
- The types of securities transferred

If the institution files an amendment to Form TA-1 before its initial registration becomes effective, the initial registration is postponed for 30 days following the date the amendment was filed, unless the FDIC accelerates, denies or postpones the registration.

- **Examples - Amendments to Registration**

- Note #1 - Headquarters Address (Item 5)

This is intended to provide the actual Main Office location of the registrant. In most cases, it will be the official Main Office as shown by bank regulators. The intention is to indicate where the Registrant's primary executive and administrative headquarters is located.

For example, many banks with headquarters in downtown areas are shown by bank regulators as having the official Main Office in a suburban location. The purpose was to enhance the bank's ability to establish branches. In such a situation, the downtown location would be reported on Form TA-1, not the suburban location.

- Note #2 - Affiliates Securities (Item 10) Question 10 is a Yes/No question. A "Yes" indicates that the bank transfers only its own securities (stock, notes, bonds), and/or the securities of an affiliate. A "No" answer indicates that some type of outside securities are transferred, such as municipal bonds. The answer to this item must be scrutinized in light of the institution's transfer agent activities to determine whether an amendment is needed.

- Note #3 - Affiliates Securities (Item 10)

All securities transferred by the bank, in all departments and locations, are covered by Question 10. If a bank registered because it transfers its own stock, but its trust department separately acts as transfer agent for some bonds, Question 10 should be answered "No". Outside securities are also being transferred.

- Note #4 - Affiliates Securities (Item 10)

Part 341 does not require a filing of a list of the securities that are transferred. Therefore, changes in the issues transferred do not require amendments. The only time an amendment would be required in such a situation is when the response to Question 10 on Form TA-1 changes. If the bank transfers only its own stock, the question is answered "Yes". If a holding company is formed, and the bank transfers only holding company stock, the question is still answered "Yes", so no updating amendment would be required.

- Note #5 - Signatures (Items 14 & 15) An updating amendment is not required merely because the person who signed the previous Form TA-1 filing is different from the person who would sign an amendment now.

Deregistration of Registered Transfer Agent

When an FDIC supervised registered transfer agent terminates all securities transfer activities, or ceases to transfer qualifying securities, Section 341.5 requires the institution to deregister as a transfer agent. The cessation of transfer agent services must be complete before deregistering. For example, if a registered transfer agent stops performing certain securities transfer functions, but still performs other transfer agent activities, deregistration would not be appropriate.

In addition, when the financial institution is no longer supervised by the FDIC it must deregister with the FDIC. For example, if the financial institution changes to a national charter or becomes a member of the Federal Reserve, the financial institution would be required to register with the appropriate regulatory agency, e.g. the OCC or the Federal Reserve, and deregister with the FDIC. In fact, registration as a transfer agent with another federal bank regulatory agency automatically cancels a financial institution's registration with the FDIC, See §341.5(d). Deregistration is also required when an FDIC supervised financial institution goes out

of existence. For example, when a financial institution merges with another financial institution which will be the surviving entity, or when a financial institution is closed due to failure. Even in the later case, the closed institution is required to deregister.

Occasionally, the FDIC will discover that a FDIC supervised registered transfer agent is no longer in existence or has ceased to do business as a transfer agent. In the case of a financial institution that is still in business, the FDIC will request that the institution deregister. Section 341.5(c), however, gives the FDIC the authority to deregister any FDIC supervised registered transfer agent that is no longer in existence or that has stopped doing business as a transfer agent.

To deregister, FDIC supervised registered transfer agents complete a "Request For Deregistration" Form, FDIC Form 6342/12, and send the signed original and three copies to the FDIC's Washington Office. The deregistration request is not sent to the SEC. The "Request For Deregistration" form can be obtained from the Special Activities Section of the Supervision and Applications Branch, Division of Supervision and Consumer Protection, FDIC, Washington, D.C. 20429. Examiners can access the form on the Special Activities Section website, via the Registered Transfer Agent link.

Voluntary Registration of Transfer Agents

Despite the deregistration requirements of §341.5, the FDIC has, on a selective basis, allowed FDIC supervised financial institutions to retain their registration while acting as transfer agents for non-registered securities. The FDIC has also allowed FDIC supervised financial institution's to register as a transfer agent while in the process of being named as a transfer agent of a pending issue. The reason for allowing such registration is the additional safeguards that registration offers securityholders, since registered transfer agents are held to the SEC's performance standards. Inactive transfer agents, however, are not allowed to retain their registration as a transfer agent and must deregister.

In contrast to the voluntary registration of securities, which is not uncommon, voluntary registration by transfer agents is uncommon. Registration as a transfer agent carries the burden of satisfying the SEC's operational requirements, which can be burdensome for a small transfer agent with only limited transfer activity, even allowing for the SEC's "small transfer agent" exemption. A transfer agent may, however, wish to maintain voluntarily its registered status, for instance if the transfer agent has given assurances, contractual or otherwise, to the issuers of the securities it transfers that the transfer agent will be registered.

SEC Reporting Requirements

Form TA-2

In 1986, the Securities and Exchange Commission adopted Rule 17Ac2-2 under the 1934 Act. In 2000, the SEC made important revisions regarding who must file Form TA-2 and when Form TA-2 must be submitted, as well as updating some of the data that must be reported on the TA-2.

Rule 17Ac2-2 requires all registered transfer agents to file an annual report of their business activities on Form TA-2. By filing Form TA-2, registered transfer agents provide the SEC and the appropriate Federal regulatory agency with important information about the scope and volume of transfer agent operations. For example, registered transfer agents report the number and types of transfer agent accounts administered, the number of items received, information on buy-ins and record differences, the identity of any service companies engaged by the registered transfer agent, the identity of any transfer agent for whom the registered transfer agent performs transfer agent function, information concerning turnaround performance, information on lost securityholder accounts, etc. Form TA-2 is an essential resource in assisting the FDIC in its oversight of registered transfer agents, as well as an important source of information for examiners for pre-examination planning. As a consequence, it is important that examiners review a registered transfer agent's TA-2 and ensure that the information reported therein is accurate.

Who Must File

As a result of the 2000 revisions to the TA-2, every transfer agent registered as of December 31 is required to file Form TA-2 for that year. The amount of detail that a registered transfer agent must report on the TA-2 varies depending upon the volume and nature of transfer agent activity. Reporting requirements vary as follows:

- A registered transfer agent that received fewer than 1,000 items for transfer during the reporting period and that did not maintain master securityholder files for more than 1,000 individual securityholder accounts as of December 31 of the reporting period is required to complete Questions 1 through 5, 11, and the signature section of Form TA-2.
- A named transfer agent that engaged a service company to perform **all** of its transfer agent functions during the reporting period is required to complete Questions 1 through 3 and the signature section of Form TA-2.
- A named transfer agent that engaged a service company to perform **some but not all** of its transfer agent functions during the reporting period must complete all of Form TA-2 but should enter zero (0) for those questions that relate to functions performed by the service company on behalf of the named transfer agent.

When to File

Form TA-2 is a calendar year report and must be received by March 31 of the following calendar year. The SEC no longer sends a reminder notice to each registrant, as the TA-2 form and related instructions are available on the Internet at: <https://www.sec.gov> under "Forms". Registrants file form TA-2 directly with the SEC at:

Securities and Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549-0013

Registrants file the original and two copies of Form TA-2. The original must be signed manually and the remaining TA-2's copies of the signed original. The registrant must keep an exact copy of its submission in its records. The SEC may reject a Form TA-2 that does not comply with applicable requirements.

Notice of Assumption or Termination of Transfer Agent Services

In 1992, the SEC adopted Rule 17Ad-16, which requires registered transfer agents to provide written notice, referred to as depository notifications, to registered securities depositories upon terminating or assuming transfer agent services on behalf of an issuer of securities. Additionally, registered transfer agents must notify registered securities when the registrant's name or address changes.

As noted earlier, timely securities transfer is necessary for the efficient functioning of the national system for the clearance and settlement of securities transactions. Delays in effecting the transfer of securities ownership causes problems for securities depositories, depository participants, and their customers. When a securities transfer request is sent to the wrong transfer agent or to an incorrect address, the request must then be returned to the requesting party and the correct transfer agent or address must be determined, thereby delaying the requested securities transfer. In some cases, securities certificates have been lost when not returned to the requesting party. As cited in the SEC's Final Rulemaking:

- Transfer delays cause acute problems for the three registered securities depositories - The Depository Trust Company ("DTC"), Philadelphia Depository Trust Company ("Philadep") and the Midwest Securities Trust Company ("MSTC") - that hold a large number of certificates for safekeeping and have a large daily volume of certificate transfers. These delays also affect depository participants (e.g., banks and broker dealers) and their customers (i.e., shareholders) in the form of increased delays, costs, and risks.
- The depositories hold securities certificates in their nominee name in safekeeping for the benefit of participants and their customers. When a participant deposits securities into a depository, the depository usually credits the participant's account for the deposit and sends the certificates to the issuer's transfer agent with instructions to transfer the certificate into the depository's nominee name. Whenever transfer delays occur, the depository faces an increased risk of lost certificates. The depository also has increased potential liability because it credits participants' accounts on the day certificates are presented for deposit. If deposited certificates presented for transfer are counterfeit or reported as stolen, the depository would be subject to credit and market risk because it could not take corrective action until after the certificates have been resubmitted to the new transfer agent or delivered to the transfer agent's new address. The costs of unannounced transfer agent changes can be significant for depositories and broker-dealers.

Depository Notifications Required

Depository notifications are required when a registered transfer agent:

- Changes its name
- Changes the location of, or the mailing address for its securities transfer activities
- Assumes the responsibility for transferring a securities issue, including municipal bonds
- Terminates transferring a securities issue, including municipal bond

Note: Depository notifications are **not** required when an outstanding issue of bonds mature or are called.

Depository notifications are required when the change in name, address or the assumption of securities transfer responsibilities results from a merger with or acquisition of another transfer agent. Similarly, depository notifications are required when the termination of securities transfer responsibility is the result of a merger with or acquisition of the registered transfer agent with another transfer agent, or if the register transfer agent ceases operations, e.g. in a closed bank scenario.

Notifications must be sent to the appropriate qualified registered securities depository. Under Section 17Ad-16, a qualified registered securities depository is a clearing agency, registered under Section 17A of the 1934 Act, that performs clearing agency functions and that has rules and procedures for maintaining, updating, and providing appropriate access to the information it receives pursuant to depository notifications. The appropriate qualified registered securities depository is the depository designated by the SEC. The SEC has designated the Depository Trust Company, "DTC", in New York as the appropriate qualified registered securities depository. So, essentially, all depository notifications must be sent to DTC in New York.

The DTC is the world's largest securities depository with more than \$20 trillion worth of securities in custody. In 1995, DTC processed \$41 trillion of securities through its book-entry settlement system. DTC is a national clearing house for the settlement of trade in corporate and municipal securities and performs securities custody-related services for its participating banks and broker-dealers. DTC is owned by members of the financial industry and by their representatives who are its users. DTC is 35.1 percent owned by the New York Stock Exchange on behalf of the Exchange's members. It is operated by a separate management and has an independent Board of Directors. It is a limited purpose trust company and is a member of the Federal Reserve.

Depository notifications must be provided ten calendar days prior to the effective date of the action giving rise to the depository notification, or, in the case of a termination of securities transfer services, the effective date of the termination if the transfer agent is notified less than ten calendar days before the effective date. Depository notifications must be delivered by means of secure communication, which includes telegraph, overnight mail, facsimile, or any other form of secure communications.

Contents of Depository Notifications

Depository notifications must contain the following information:

- If the notification was required because of a change in the registrant institution's name or address, the notice must contain:
 - The institution's full current name, address, telephone number, and Financial Industry Number Standard (FINS) Number; and
 - The location where certificates are received for transfer. [SEC Rule 17Ad-16(b)]
- If the notification was required because the registrant began to transfer any new issue(s) of securities, or merged with/acquired another transfer agent, the notice must contain:
 - The institution's full current name, address, telephone number, and FINS Number; and
 - The securities issuer's name; and
 - The issue(s) handled and their CUSIP number(s). [SEC Rule 17Ad-16(b)]
 - If the registrant organization stopped transferring any individual issue(s) of securities (including municipal bond issues), the notification must contain:
 - The institution's full current name, address, telephone number, and FINS Number; and
 - The securities issuer's name; and
 - The issue(s) previously handled along with the CUSIP number(s); and,

- If known, the successor transfer agent's name, address and telephone number. If it is not known who the successor transfer agent will be, the notification must include the name and address of a contact at the issuer. [SEC Rule 17Ad-16(a)]

The transfer agent must maintain depository notifications for a period of not less than two years, the first six months in an easily accessible place.

Note: The use of an outside transfer agent service provider to perform all securities transfer functions, i.e. a private label arrangement, does not change a named transfer agent's responsibility for delivering depository notifications when a change of name or address has occurred at the named transfer agent, or when a named transfer agent terminates or assumes the responsibility as a named transfer agent. Third-party transfer agent service providers in turn are responsible for delivering depository notifications for such changes affecting their operations, i.e. if the third-party transfer agent service provider changes its name or address, etc.

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G. MANAGEMENT

As is the case with every other area of a bank's operations, the quality of management is often the most important contributing factor in providing securities transfer services. Bank management should be aware of its responsibilities to the issuers and holders of securities for whom it provides securities transfer services, as well as to the investing public in general. This is equally true of banks who limit securities transfer activity to own-bank or parent holding company securities, since the institution's own securityholders also require prompt turnaround of securities transfers and accurate recordkeeping.

Supervision of the transfer agent area by the Board and senior management does not necessarily indicate a role in day-to-day operations. Rather, the Board of Directors, as the ultimate source of authority and responsibility in the bank, including securities transfer operations, must ensure that sound policies and comprehensive procedures governing securities transfer activities are adopted and enforced. Management must likewise provide for the effective supervision of transfer agent operations. Of particular importance is ensuring that the securities transfer function is adequately staffed with well trained personnel. It is the failure to discharge these supervisory responsibilities that often leads to inefficient operations, violations of laws and regulations and losses to shareholders that must be compensated out of bank capital.

The sophistication and complexity of senior management and Board oversight, however, depends on the volume and complexity of securities transfer activities. Many bank transfer agents supervised by the FDIC limit securities transfer activity to the transfer of own-bank or parent holding company stock; and the volume of items transferred tends to be relatively small. Management and Board oversight in these smaller transfer agents may be informal, whereas banks with larger, more complex securities transfer activities will have more formalized management reporting and tracking processes. Management oversight responsibilities may be delegated to subcommittees or lower levels of management, provided that the Board and senior management review the actions of those to whom it has delegated such responsibility.

Securities Transfer Policies

The sophistication and level of detail provided in the policies governing securities transfer activity will vary depending on the size and complexity of operations. Generally, policies governing the securities transfer function should include the following areas:

- Procedures for accepting accounts.
- Procedures for complying applicable regulations, especially compliance with SEC rules and regulations.
- Standards for the acceptance of signature guarantees.
- Procedures for maintaining securities transfer performance standards, including actions required when standards are not met.
- Standards for documentation, including retention requirements.
- Procedures for internal routine and control.
- Audits of transfer agent operations.
- Procedures governing any over-issuances of securities and buy-ins.
- Standards for fingerprinting of personnel.

- Standards for the cancellation, storage, transportation and destruction of securities certificates.
- Operational procedures for the transfer of securities. Such procedures, however, may be maintained in a separate procedural manual.

Earnings

Management and the Board should be aware of the earnings implications of offering securities transfer services. This does not mean that the securities transfer function must be profitable or that income and expense tracking systems must be sophisticated or elaborate. In fact, many small transfer agents' securities transfer services are not profitable. These are typically banks that limit securities transfer activity to own-bank, affiliate or parent holding company stock and view the transfer agent function as a service to the institution. Federal Reserve Act Section 23B applies to bank transfer agents and, therefore, a bank transfer agent performing securities transfer services for its parent holding company or an affiliate must be compensated for its services. Being aware of the costs of providing stock transfer services permits an institution to decide whether it should continue to provide stock transfer services or whether the bank, parent holding company or affiliates thereof should outsource the stock transfer function.

Transfer agents providing securities transfer services to non-affiliated entities normally do so to earn a profit. In such cases, management should monitor the profitability of the securities transfer function to determine whether earnings are being realized. For these transfer agents, the earnings analysis should include budgeting, allocating expenses, verifying the fees charged to outside accounts are collected, reviewing the appropriateness of any fee waivers, and assessing the overall profitability of securities transfer services against the risk of offering such services. Based on the results of the earnings analysis, management may decide to continue to transfer securities, outsource some or all of the transfer agent function, or cease transfer agent operations entirely.

Management of Transfer Agent Activities

In addition to the quality of Board and senior management oversight, the knowledge, experience and capabilities of the day-to-day management and staff of the transfer agent function is a crucial element, in the safe and sound provision of securities transfer services. Given the absolute imperatives contained in the SEC's operational requirements, at a minimum, those responsible for the day-to-day management of transfer agent activities, must be well versed in the rules and regulations governing securities transfer. In addition, operational managers in the transfer agent area should be familiar with common industry practices and standards. The evaluation of the adequacy of operational managers or employees should give necessary consideration to the volume and complexity of the individual institution's securities transfer business. Smaller transfer agents, for example those who qualify for the "small transfer agent" exemption, will have operation managers with less formal training and experience. For these transfer agents, the most important consideration is the capability to ensure satisfactory performance of securities transfer services and compliance with all applicable laws and regulations.

Organization and Staffing

Securities transfer activity may be conducted through an institution's trust department, if the institution offers other fiduciary services, or through a separate department, e.g., the corporate secretary's office. Furthermore, various areas of the securities transfer function may be outsourced to third party services providers, e.g. data processing services. In some instances the entire transfer agent function may be outsourced, an arrangement referred to as private label servicing. Regardless of the organizational structure of the securities transfer function, the transfer agent area should be adequately staffed with knowledgeable and trained employees. Although not essential for small transfer agents with limited securities transfer activity, an organizational chart and position descriptions should be established and kept current. Periodic training should be provided to ensure that securities transfer personnel remain conversant, as necessary, with existing laws, regulations, industry practices and standards, and are informed of changes and on-going developments impacting securities transfer services. Cross training and the availability of back-up personnel, including the fingerprinting of such employees, are other important considerations, especially in small transfer agent operations with limited personnel. Management needs to ensure that adequate staff is available so that satisfactory securities transfer services will continue to be provided in the event that regular staff members become unavailable through illness or other circumstances.

Parent Holding Company or Affiliate Support Services

An evaluation of securities transfer services management includes an assessment of any support or other services provided by the registered transfer agent's parent holding company or by other affiliated entities within the organization. Examples of services that might be provided by the parent holding company or affiliates include data processing services, audit services, staff support, training and technical support. Transfer agent management should, however, monitor the performance of such services and at all times ensure that securities transfer services are performed in a satisfactory manner and in conformance with applicable laws and regulations.

Acceptance of New Accounts

One of the most important responsibilities assumed by the Board and senior management is the decision to accept an appointment as the transfer agent or registrar, in the case of bonds. This is the case for those transfer agents whose activity includes serving as transfer agent or registrar for outside securities issues. However, even those transfer agents who limit securities transfer services to own-bank or parent holding company securities must consider whether, at a minimum, they have the necessary knowledge, expertise, and systems to perform securities transfer activities in conformance with applicable laws, regulations and industry standards. Those transfer agents who accept outside appointments to perform securities transfer services assume even higher levels of ~~reputational~~, operational, and strategic risks, and must, therefore, assess whether they can adequately manage these risks and earn an appropriate return for assuming a higher level of risk.

New accounts should be reviewed and approved by the Board of Directors, or a designated subcommittee thereof. Each new account should receive a due diligence review. Generally, the due diligence review should include:

- **An analysis of the issuer.** The analysis should consider the following:
 - The financial condition of the issuer at the time of acceptance;
 - The size and character of the issue, including the volume of securities transfers, the type of security, e.g. stock, bond or mutual fund, and any legal restrictions that may impact the issue, e.g., Section 144 stock;
 - The ~~reputation~~performance track record of the issuer;
 - The existence of, or potential for, conflicts of interest;
 - The capabilities of the securities transfer agent to perform all securities transfer services in a satisfactory manner and in full conformance with applicable laws, regulations and industry standards;
 - The prospects for earning a profit during the term of the appointment that adequately compensates the transfer agent for the level of risk assumed;
 - The adequacy of operational and informational systems.
- **Fees.** Except in the case where the institution serves as transfer agent for own-institution securities, a fee should be assessed for providing securities transfer services. When providing securities transfer services to the parent holding company or affiliated entities, Section 23B of the Federal Reserve Act requires that all terms governing the appointment be comparable as those with non-affiliated entities.
- **Account Documentation.** Accepting an appointment as securities transfer agent for the securities of outside organizations requires various documentation. Corporate and other resolutions, contracts, and similar documents setting forth the duties and responsibilities of each party are standard. Documentation will, however, differ according to the type of security, the issuer, and the registrant's duties and responsibilities. While not specifically required in the SEC regulation, the following types of documentation are normally required:
 - Official resolution of the issuer authorizing the transfer appointment;
 - Issuer's charter or articles of incorporation, with all amendments;
 - Issuer's bylaws, with all amendments;
 - Evidence that the securities have been registered with, or approved by, regulatory authorities such as the SEC or state securities departments, utilities commissions, banking agencies etc;
 - Opinion of the issuer's attorneys that the securities are validly issued and that all required actions have been completed;
 - Specimen securities certificates, certified by the issuer's secretary;
 - Certified specimen signatures of current officers of the issuer who are authorized to sign securities;
 - Printer's certificates or other documentation evidencing the number of unissued certificates received by the registrant;

- If appointed as successor transfer agent/registrar for an issue which is out-of-proof at acceptance, an indemnification agreement obtained from either the previous transfer agent/registrar or the issuer.

Closed Accounts

The Board, or a duly designated subcommittee, should review all closed accounts. The goal of the closing review is to ensure that the institution has fulfilled its responsibilities as transfer agent and that the administration of the account has been satisfactory. The institution can also verify that all required depository notifications have been made, and, if the institution has no remaining transfer agent responsibilities, that a deregistration form has been mailed to the appropriate regulatory authority.

A significant increase in closed accounts may indicate operational or managerial deficiencies. The Board should review the reason why the account was closed. Formal acknowledgement of all closed accounts should be noted in the Board or appointed subcommittee's minutes.

Account Administration

The Board and senior management are responsible for ensuring that securities transfer activities are performed in a satisfactory manner and in full compliance with applicable laws, regulations and industry standards. The development and implementation of appropriate policies and comprehensive operating procedures are important elements for ensuring proper administration of all transfer agent accounts.

Account Reviews

In addition to policies and procedures, an annual account review is essential for verifying the proper conduct of securities transfer services and compliance with laws and regulations. An annual review of the performance of each transfer agent appointment allows for the early identification of operational or compliance problems and allows management and the Board to intervene promptly to ensure correction of any deficiencies revealed by the account review.

Account reviews should be conducted annually. Those FDIC regulated institutions that conduct securities transfer activities in the Trust Department have adopted the Statement of Principles of Trust Department Management which requires an annual review of all accounts. However, even those institutions that do not conduct securities transfer activity via the Trust Department should implement an annual account review program. Account reviews should be conducted by individuals who are independent of the transfer agent function, i.e., not involved in the operational aspects of securities transfer operations. In small institutions with limited staff, transfer agent personnel can conduct the account review, but should not be involved in the administration of the specific account.

The scope of the annual account review will vary depending on the volume and complexity of securities transfer. In all cases, however, the scope should include compliance with all applicable SEC operational requirements, including fingerprinting requirements and internal policies and procedures. The annual account review may include, but is not limited to the following items:

- Account documentation
- Fingerprinting of Personnel
- Turnaround Performance, including SEC notifications and limitations on growth in those cases where SEC turnaround performance has not been satisfied
- Out-of-Proof Conditions and Buy-ins
- Signature Guarantee Policies and Procedures
- Master Securityholder file, including certificate detail and prompt posting thereto
- Inquiries, including turnaround performance and monthly logs thereof
- Control Book, including adequacy of documentation supporting changes to
- Daily and Monthly Logs
- Internal Controls, including controls of cancelled and unissued certificates
- Regulatory Reports, including amendments to TA-1, accuracy and timeliness of TA-2, and depository notifications
- Eligibility for small transfer agent exemption, including documentation supporting the continued eligibility for the exemption

- Reporting of Lost, Missing or Stolen Securities
- Fees, including the accuracy and prompt collection of
- Complaints, including the adequacy and timeliness of response thereto
- Criticisms by auditors and regulatory agencies

Examiners should be flexible in assessing the adequacy of an institution's annual review process. An evaluation of an institution's review process should focus on the effectiveness of the process, rather than the manner in which it is conducted. Flexibility is required when evaluating the review process for small transfer agents that limit securities transfer activity to own-bank or parent holding company stock and may have a relatively small volume of transfers. The objective of any account review program, regardless of the volume of activity and complexity of operations, is to promptly identify instances of operational deficiencies and noncompliance with laws and regulations, and to promote the timely correction thereof.

The results of the annual review should be periodically reported to the Board, or a designated committee thereof, and senior management. The Board and senior management should ensure that all deficiencies noted in the annual review are addressed and monitor the progress of corrective action taken.

Risk Management

For many small transfer agents that limit securities transfer activity to own-bank or parent holding company stock and process a relatively small volume of transfers, the risk management program will be informal in nature and consist principally of implementing sound policies and procedures and providing for annual account reviews and audits. For larger, more complex transfer agents, a formal risk management program should be established to identify and control the risks of providing securities transfer services. An effective risk management program guards against the legal liability that can result from poor operational practices and noncompliance with applicable laws and regulation by identifying areas where there is significant exposure. Strong internal controls, sound policies and practices, and appropriate management information systems provide the basis for an effective risk management program. The sophistication of the department's risk management program should be developed according to the complexity and size of securities transfer services offered. Risk tolerance levels should be clearly set and monitored by both senior management and the Board of directors. The program should be periodically reviewed and revised to address significant changes in the risk profile of securities transfer activity. Generally, an effective risk management program should:

- Identify the various risks associated with the institution's securities transfer activities. This includes an analysis of insurance coverage and the impact of fiduciary risk on capital adequacy. Litigation risks should also be analyzed.
- Establish the level of risk that management is willing to assume. Examiner emphasis should be placed on reviewing the planning process and new services.
- Supervise the management of current operations. Guidelines should address the structure of day-to-day management of transfer agent operations, the effectiveness of operating policies and procedures, and the effectiveness of compliance programs and internal controls.
- Implement adequate controls and monitoring systems. This includes establishing a system of checks and balances, reviewing audit coverage, the compliance management system, and the overall scope and reliability of existing management information systems.

Securities transfer activities expose the bank to many of the same risks encountered in the commercial business. Operating or transaction, strategic, legal, and compliance risks, ~~and reputational risk~~ are found in varying degrees within many departments.

Emergency Preparedness

In addition to managing the risks inherent in offering securities transfer services, including compliance with applicable laws and regulations, management must manage the risks of securities transfer activities being interrupted, hindered, delayed or rendered impracticable due to natural disasters or, given the indispensability of automated systems in conducting securities transfer activities, computer system failures.

Storms, floods, earthquakes and other natural disasters may render a transfer agent's facilities unserviceable for extended periods of time. Computer systems may crash, communication lines may fail or vital electronic data may be lost or damaged. Management should anticipate such contingencies by developing emergency preparedness and business resumption plans. Among the areas that such plans should address are:

- Business resumption in the event of natural disaster or civil disturbances. Areas that should be addressed include: the availability of back-up facilities; the evacuation of affected personnel; management succession; the availability of required supplies, for example blank securities certificates; back-up records, both computer and manual; and communications with clients.
- Recovery of data processing functions in the event of a computer system failure, communications failure, or the loss or corruption of vital electronic records. Such plans generally address the back-up and offsite storage of critical data files; arrangements for back-up data processing facilities; the availability of back-up communication lines; as well as on-site data security and protection procedures.

Institutions with large, complex transfer agent operations may have disaster recovery/business resumption plans specifically designed for the securities transfer area. Institutions with small, non-complex transfer agent operations, may, instead, develop institution-wide disaster recovery/business resumption plans. In such cases, examiners should determine that the institution's plans adequately address the business resumption requirements of the transfer agent area. Examiners, as part of their pre-examination planning, can review previous Safety and Soundness and Information Technology (IT) Reports of Examination to obtain information about the institution's disaster recovery/business resumption plans and data security/data back-up policies. When the Registered Transfer Agent examination is conducted concurrent with Safety and Soundness or IT, the EIC is encouraged to coordinate the review of emergency preparedness with the other EIC's in order to avoid duplication of effort.

Disaster recovery/business resumption plans should be review and tested periodically to ensure that the plans continue to adequately address current conditions. For example, where the institution has contracted or otherwise arranged back-up facilities from third parties, the institution should ensure that third parties continue to be able to provide the services promised. The results of periodic tests should be documented in writing and reviewed by the Board, or a designated committee thereof, which should monitor the progress of any remedial action resulting from the test.

The disaster recovery/business resumption requirements for a small, non-complex transfer agent that limits securities transfer activity to own-bank stock and employs a manual or simple PC-based operation will be much less extensive and complex than institutions that transfer securities for third party issuers and maintain more sophisticated automated systems.

Fingerprinting of Personnel

The Board of Directors and senior management are responsible for protecting the financial institution from fraud and other acts of dishonesty. 12 U.S.C. 1829 requires financial institutions to take steps to avoid hiring an individual convicted of dishonest acts. An important step in protecting the financial institution from potential fraud is the pre-screening of employees. Some prospective employees, however, provide false information or references which cannot be substantiated. The repercussions of employing such individuals may be serious. In addition, current employees may have committed acts of dishonesty or breaches of trust during their tenure at the bank. An effective way of identifying current and prospective employees with criminal records is by fingerprinting employees and submitting the fingerprints to the FBI for analysis. It's been estimated that 10 percent of the fingerprint cards submitted uncover a criminal record. As discussed below, the fingerprinting of employees who are directly or indirectly involved in handing securities certificates is an important requirement for registered transfer agents.

Securities and Exchange Commission rules require that every partner, director, officer and employee of a registered transfer agent be fingerprinted. The fingerprinting requirement is implemented by SEC Regulation 240.17f-2. As discussed in more detail below, certain individuals may be exempted from being fingerprinted. Once fingerprinted, the registered transfer agent must submit the fingerprints to the Attorney General of the United States or its designee for processing and identification. In practice, fingerprint cards are submitted to the FBI which does a search in order to determine if the individual whose fingerprints have been submitted has a criminal record. The FBI, however, will not accept fingerprint cards submitted directly by banks. Instead, an authorized intermediary must be used. The only intermediary authorized by both the FBI and the SEC is the American Bankers Association (ABA). The ABA has a program in place to handle the submission of fingerprint cards to the FBI. Bank transfer agents needing more information about administering a fingerprinting program can contact the ABA.

If there is a criminal record, termed a "hit", both the fingerprint card and the criminal identification card, i.e., "rap sheet", are returned. Sometimes fingerprint cards received by the FBI cannot be classified and thus cannot be searched by characteristics of the fingerprint. In such cases, a name check (based on the information on the fingerprint card) is performed. If the name check is positive, the fingerprints will be verified against the subject's fingerprints already on file, and a copy of that record will be returned directly to the bank. If the name check is negative, the bank will be notified.

Sometimes, an individual cannot be successfully fingerprinted, i.e., a legible set of fingerprints cannot be obtained. In such cases, a minimum of three attempts must be made to obtain legible fingerprints. All three attempts to obtain legible fingerprints, however, must be performed by an individual competent to roll fingerprints (this might be someone in the institution's security department, the local police or sheriff's department or the state police). If all three attempts are unsuccessful, no further fingerprinting of the individual is necessary. The transfer agent must, however, retain all three fingerprint cards that the FBI returned as illegible in order to document that the three required attempts to fingerprint were performed.

The fingerprinting requirement can be satisfied if the officer or employee has already been fingerprinted pursuant to another law, provided that the fingerprints were submitted to and processed by the FBI and the fingerprint cards and related documents are retained as required by Rule 17f-2.

Exemptions from Fingerprinting

While Rule 17f-2 states that all directors, officers and employees must be fingerprinted, the regulation permits registered transfer agents to exempt personnel not directly or indirectly involved in transfer agent operations. Essentially, only those directors, officers and employees who handle securities certificates, related funds (e.g. dividend or interest checks) or are involved in maintaining transfer agent books and records, or who supervise those that do, must be fingerprinted. Examples of personnel that must be fingerprinted include:

- Transfer agent personnel, clerks and secretaries;
- Supervisors of transfer agent personnel;
- Persons countersigning securities certificates, e.g. directors or senior management;
- Employees with access to the locations where transfer agent activity is performed.

In addition to personnel who are directly involved in securities transfer activities, other bank personnel may be involved in handling securities certificates and or records. These personnel should be fingerprinted and include:

- Internal auditors;
- Mail room personnel, who initially receive certificates mailed to the transfer agent;
- Internal messengers delivering and picking up certificates;
- Data processing personnel who process transfer agent records or print dividend and interest checks.

Registered transfer agents that claim an exemption under 17f-2, must maintain a Notice Pursuant to Rule 17f-2, discussed below. Transfer agents that perform securities transfer services only for its own securities **and** process fewer than 500 items during any six consecutive month period, i.e., transfer agents eligible for the "small transfer agent" exemption, are exempted from maintaining the Notice Pursuant to Rule 17f-2.

Note: "Own securities" normally means just the bank's own stock. Parent holding company stock *may* be considered to qualify as "own securities". The SEC has indicated that parent holding company stock will be considered "own securities" if the parent holding company is a one-bank holding company, and:

- owns 100 percent of the bank's stock; or
- owns all of the bank's stock except directors' qualifying shares required under state law or regulation.

Notice Pursuant to Rule 17f-2

A registered transfer agent that claims an exemption for its personnel from the fingerprinting requirements of 17f-2 must prepare a Notice Pursuant to Rule 17f-2. The Notice must be kept current at all times. The Notice Pursuant to Rule 17f-2 must contain the following:

- The name of the organization and a statement that the organization is a registered transfer agent.
- A list of all persons who have been fingerprinted pursuant to Regulation 17f-2. Persons fingerprinted can be listed by division, department, class or individual name. Note: Since the Notice must be kept current at all times, it is not advisable to list persons fingerprinted by individual name, which would required updating the Notice every time there is a change in

personnel. Listing persons fingerprinted by broad categories, such as department or division, facilitates the maintenance of the Notice. For example, if all transfer activity is conducted in Department X, the notice could list "Persons in Department" in the Notice.

- A list of all persons, by individual name, who could not be fingerprinted, i.e. for whom legible fingerprints could not be obtained. Note: broad categories are not permitted for these persons, who must be designated by name.
- A list of all persons whom the registered transfer agent claims to be exempt from the fingerprinting requirement of Regulation 17f-2. Persons for whom exemption is claimed can be listed by division, department, class or individual name. As detailed in the note in the second bullet, broad designations rather than individual designations facilitate keeping the Notice current and accurate.

The persons so identified in the Notice are exempted from the fingerprinting requirements of Rule 17f-2 unless the institution is notified to the contrary by the Securities and Exchange Commission.

- A generic description of the duties of the persons and/or the nature of the functions and operations of the divisions and departments identified as exempt.
- A description of the security measures utilized to ensure that only those persons who have been fingerprinted pursuant to Rule 17f-2, or who could not be fingerprinted due to the inability to obtain a set legible fingerprints, have access to the keeping, handling or processing of securities and the monies or the original books and records related thereto.

Retention of Fingerprint Cards and Related Information

Fingerprint cards must be retained for a period of three years following the date that the individual fingerprinted terminates his/her employment or relationship with the registered transfer agent. When a fingerprint card is not returned to the bank by the FBI, any substitute record sent to the bank by the FBI must be retained for a period of three years following termination of employment or relationship with the transfer agent. Every substitute record must include the name of the person fingerprinted, the name of the registered transfer agent that submitted the fingerprint card, the name of the person or organization that rolled the fingerprints, and the date that the fingerprint card was submitted.

Fingerprint cards and substitute records must be kept in an easily accessible place at the registered transfer agent's principal office, and must be made available upon request to the Securities and Exchange Commission or the registered transfer agent's primary Federal regulator.

Records relating to the fingerprinting of personnel may be maintained on microfilm. If the microfilmed records replace hardcopy records the institution must provide for the following:

- Facilities for easily reading projection of the microfilm and the production of easily readable and legible facsimile enlargements;
- Filing and indexation so that individual records can be quickly located and retrieved;
- Provision, upon request, to the SEC or applicable regulatory agency of facsimile enlargements of such records; and
- Storage of a copy of microfilmed records in a separate location from the original microfilmed records, i.e. offsite storage of a backup copy.

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H. INTERNAL CONTROLS

FDIC supervised financial institutions that conduct securities transfer activities in the trust department have adopted the Statement of Principles of Trust Department Management, which requires the Trust Department to implement adequate internal controls. Even for those institution's that do not conduct transfer agent activities in a Trust Department, the implementation of an effective system of internal controls is an essential element in ensuring the satisfactory and efficient performance of securities transfer activities. While not specifically required by SEC rules and regulations, except for required controls protecting funds related to securities transferred, it is difficult to envisage effective compliance with SEC operational requirements without effective internal controls. Therefore, part of the Board's responsibility to ensure compliance with applicable rules and regulations includes the maintenance of an effective internal control environment. In effect, the adoption and implementation of a system of internal controls appropriate for the volume and complexity of securities transfer activities represents a standard industry practice.

In the context of securities transfer activities, a system of internal controls comprises methods and techniques designed to prevent and detect errors, omissions and irregularities in the processing of securities transfers, to ensure the accuracy and integrity of the

books and records relating to securities transfer activity, to protect funds related to securities transfer (e.g. funds for dividend and interest payments) and to provide for the physical protection of both blank and cancelled securities certificates. In addition, effective internal controls promote operational efficiency and facilitate compliance with applicable laws and regulations.

Controls Governing the Processing of Securities Transfers

The issuance, transfer and cancellation of securities involves complex legal considerations. Transferring recorded ownership of a security from one person to another is effected by the delivery of the security accompanied with a proper assignment by the appropriate person. In the case of book-entry only issues, the transfer is initiated by an instruction by the appropriate person. An instruction is an order to the issuer of a book-entry security requesting the transfer, pledge or release from pledge of a book-entry security. For example, a Stock Power or a Bond Power is a form used to instruct the transfer of ownership of a security from the registered owner to a third party. Stock and Bond Powers are frequently used to instruct the transfer of book-entry securities, or in those cases where the back of the securities certificate is not used for endorsement. It is important to note that for the purposes of the Uniform Commercial Code (UCC) an **"issuer"** means a person on whose behalf transfer books are maintained, i.e., the registered transfer agent.

The transfer agent acts on behalf of the security issuer and verifies that all the legal requirements for the transfer are satisfied. For the most part, the legal requirements governing securities transfers are contained in Article 8 of the UCC. Section 8-208 of the Code states:

- a person placing his signature upon a security as authenticating trustee, registrar, transfer agent or the like warrants to a purchaser for value without notice of the particular defect that:
 - the security is genuine; and
 - his own participation in the issue of the security is within his capacity and within the scope of the authorization received by him from the issuer; and
 - he has reasonable grounds to believe that the security is in the form and within the amount the issuer is authorized to issue.

A transfer of ownership which does not satisfy all the legal requirements, or a transfer based on an improper endorsement, results in liability for the transfer agent for any damages caused by the improper transfer. Similarly, processing errors that result in the over issuance of securities potentially make the transfer agent liable for purchasing and retiring shares in the amount that the shares were overissued. Therefore, controls designed to ensure that presentors of securities for transfer are authorized to request the transfer of ownership, that the endorsements provided are genuine and accompanied by appropriate documentation and that the details of the transfer agree with the transfer agent's existing records are essential for controlling the risk of improper transfer.

Appropriate Person

An endorsement of a certified security in registered form is made when the appropriate person signs on it, or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or his signature is written without more on the back of the security. Section 8-308 of the UCC defines appropriate persons as:

- For certificated securities, i.e., securities represented by a printed certificate, the appropriate person is the person specified on the certificate or by a special endorsement to be entitled to the security. A special endorsement specifies to whom the security is to be transferred, or who has the power to transfer it. A special endorsement contrasts with an endorsement in blank, which is an endorsement to bearer. An endorsement in blank may be converted into a special endorsement.
- For uncertificated securities, essentially securities in book-entry form, the appropriate person is the registered owner, if the security is not subject to a registered pledge. If subject to a registered pledge, the appropriate person is the registered pledgee.

In addition, the following are defined as appropriate persons:

- if the person designated is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor;
- if the persons designated are described as more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified;

- if the person designated is an individual and is without capacity to act by virtue of death, incompetence, infancy, or otherwise, his executor, administrator, guardian, or like fiduciary;
- if the persons designated are described as more than one person as tenants by the entirety or with right of survivorship and by reason of death all cannot sign, the survivor or survivors;
- a person having power to sign under applicable law or controlling instrument; and
- to the extent that the person designated or any of the foregoing persons may act through an agent, his authorized agent.

The UCC clarifies that "whether the person signing is appropriate is determined as of the date of signing and an endorsement made by or an instruction originated by him does not become unauthorized for the purposes of this Article by virtue of any subsequent change of circumstances.

When the appropriate person is a fiduciary the Code states that the "failure of a fiduciary to comply with a controlling instrument or with the law of the state having jurisdiction of the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer, pledge, or release, does not render his endorsement or an instruction originated by him unauthorized for the purposes of this Article."

Consequences of Unauthorized Endorsements or Instructions

A transfer agent that registers the transfer of a certificated security upon an unauthorized endorsement or registers the transfer, pledge, or release of a book-entry security upon an unauthorized instruction must, upon demand, issue a like security to the true owner, or for a book-entry security restore the true owner's recorded ownership, unless doing so would result in an over issuance of the security. If an over issuance would result, then the true owner of the security may:

- If an identical security which does not constitute an over issuance is reasonably available for purchase, compel the transfer agent to purchase the security for him; or
- If an identical security is not available for purchase, recover from the transfer agent the price that the true owner or the last purchaser paid for the security, along with interest from the date that the true owner makes the request.

An important point to note is that neither the true owner of a security nor the transfer agent can recover the improperly transferred security from a person who purchased the security for value and without notice of adverse claims. An "adverse claim" includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security. The true owner, and the transfer agent as subrogee, may recover a security from any person who was not entitled to receive it, i.e., a person who did not acquire it for value or who acquired it with knowledge of adverse claims.

Signature Guarantees

In view of the potential liability that a transfer agent assumes when securities are transferred on the basis of improper endorsements, i.e., endorsements or instructions provided by persons other than the appropriate person(s), institutions need controls designed to prevent the unauthorized transfer of securities for which the institution serves as transfer agent. One control that is almost universal among transfer agents is the requirement that a signature guarantee accompany all endorsements. Article 8-312 of the UCC governs signature, endorsement and instruction guarantees.

The guarantor of a signature of an endorser of a securities certificate warrants that at the time the security certificate or documents related thereto were signed:

- the signature was genuine;
- the signer was an appropriate person to endorse; and
- the signer had the legal capacity to sign.

The guarantor of a signature of the originator of an instruction warrants that at the time of signing:

- the signature was genuine;

- the signer was an appropriate person to originate the instruction if the person specified in the instruction as the registered owner or registered pledgee of a book-entry security was, in fact, the registered owner or registered pledgee. The guarantor of the signature provides no guarantee that the signer is in fact the registered owner or registered pledgee;
- the signer had the legal capacity to sign; and
- the taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the owner was acting.

Specially guaranteeing the signature of the originator of an instruction to transfer provides the warranty, in addition to the signature warranties provided, that:

- the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security will be the registered owner or registered pledgee; and
- the transfer, pledge, or release of the uncertificated security requested in the instruction will be registered by the issuer free from all liens, security interests, restrictions, and claims other than those specified in the instruction.

The guarantor of a signature does not otherwise warrant the rightfulness of a particular securities transfer, pledge, or release. Guaranteeing the endorsement of a securities certificate, rather than just the signature on the certificate, warrants the rightfulness of a particular transfer in all respects. Guaranteeing an instructions similarly warrants the rightfulness of a particular transfer, pledge or release in all respects. Note: notarization of a signature by a Notary Public does not qualify a signature guarantee.

Transfer agents may require a signature guarantee as a condition for processing a securities transfer. Transfer agents, however, may not require a special signature guarantee or a guarantee of endorsement or instruction as a condition for processing the transfer, pledge or release of a security.

The guarantor is liable to any person dealing with the security in reliance on the warranties provided by the guarantor. The transfer agent can seek to recover any losses resulting from a breach of the warranties given from the guarantor.

Medallion Guarantees

A person or organization providing a signature guarantee promises to reimburse the transfer agent for losses that result if the endorser's signature is not genuine, if the endorser is not an appropriate person to endorse, or lacks the legal capacity to endorse a certificate or make a transfer instruction. As a result, transfer agents were often reluctant to accept signature guarantees from persons or organizations whose financial ability to honor its guarantees was not well established or otherwise in doubt. In response, Medallion signature guarantee programs (so called due to the medallion stamp that is placed next to the signatures being guaranteed) were established. The organization sponsoring a medallion signature program guarantees the financial performance of the individual guarantors participating in the program. Transfer agents accepting signature guarantees issued under a medallion program greatly reduce the risk of loss from signature guarantors failing to honor signature guarantees.

Although a transfer agent may accept a signature guarantee from any person or organization, it has become an industry practice to accept signature guarantees only from participants in a medallion signature guarantee program. The SEC, which has established rules governing transfer agents' acceptance of signature guarantees, discussed below, permits registered transfer agents to reject signature guarantees from guarantors that are not participants in an SEC approved medallion program. As described below, the Securities Transfer Association, a trade organization for transfer agents, runs two medallion signature guarantee programs, the STAMP and SEMP programs. The New York Stock Exchange runs another program, MSP.

- STAMP - Securities Transfer Agents Medallion Program. This program is open to all eligible guarantors which includes commercial banks, credit unions, savings associations, trust companies and broker dealers.
- SEMP - Stock Exchanges Medallion Program. This program is open to members of the American, Boston, Midwest, Pacific and Philadelphia stock exchanges and clearing and trust companies.
- MSP - New York Stock Exchange Inc. Medallion Signature Program. This program is open to all members of the New York Stock Exchange.

SEC Requirements for Signature Guarantees

The SEC does **not** require registered transfer agents to require signature guarantees as a condition for processing securities transfer requests. Rather, the SEC permits registered transfer agents to require a signature guarantee as a condition of effecting a securities transfer, as does the UCC, and allows transfer agents to limit signature guarantees to guarantors that participate in an approved signature guarantee program, i.e. one of the Medallion programs described above. A registered transfer agent may process securities without a signature guarantee; may require a signature guarantee for every transfer; or may process some transfers without a signature guarantee for some transfers and require a signature guarantee for others.

SEC Regulation 17 C.F.R. §240.17Ad-15, Signature Guarantees, basically requires that, in deciding to accept or reject a signature guarantee, registered transfer agents must treat eligible guarantor institutions or class of institutions equitably. The SEC implemented Rule 17Ad-15 in response to the discriminatory treatment that many registered transfer agents practiced with respect to the signature guarantees of savings associations and credit unions. In the past, transfer agents routinely accepted signature guarantees from broker-dealers and commercial banks, but normally rejected the signature guarantees of savings banks, savings and loan associations and credit unions. Under Rule 17Ad-15 an Eligible Guarantor Institution means:

- Banks;
- Brokers, dealers, municipal securities dealers, municipal securities brokers, government securities dealers and government securities brokers;
- Credit Unions;
- National securities exchanges, registered securities associations, clearing agencies; and
- Savings associations.

It should be noted that all of the eligible guarantor institutions may participate in one of the medallion signature guarantee programs.

- Standards and Procedures for Signature Guarantees

All registered transfer agents are required to have the following:

- Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and
- Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions

The transfer agent's standards and procedures may not treat eligible guarantor institution's inequitably, or result in the rejection of a guarantee from an eligible institution because it falls into one of the categories of eligible guarantor institution listed in Rule 17Ad-15.

Written policies and standards are required of all registered transfer agents, even those that do not require signature guarantees.

Rule 17Ad-15 provides, however, that a transfer agent is in compliance with the standards and procedures requirements if the transfer agent:

- Rejects signature guarantees from guarantor institutions that do not participate in a signature guarantee program; or
- Accepts signature guarantees from eligible guarantor institutions that, at the time the guarantee is issued, is a participant in a signature guarantee program.

Since all eligible guarantor institutions may participate in a medallion guarantee program, accepting signature guarantees only from program participants does not result in inequitable treatment. As a result, it has become an industry practice to accept signature guarantees only from medallion program participants.

The term "signature guarantee program" is defined in Rule 17Ad-15 as a program which the transfer agent determines accomplishes the following:

- Facilitates the equitable treatment of eligible guarantor institutions; and
- Promotes the prompt, accurate and safe transfer of securities by:
 - Adequately protecting the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and
 - Adequately protects the transfer agent against the issuance of unauthorized guarantees.

Rule 17Ad-15 provides for a transition period for transfer agents who change their written Signature Guarantee policies to include a signature guarantee program requirement. For six months following such a change in policy, a transfer agent may not reject a requested transfer because the signature guarantee was from a guarantor institution that does not participate in a signature guarantee program unless the transfer agent provides 90 days written notice of its intent not to accept signature guarantees from non-participating guarantor institutions.

It is important to note that Rule 17Ad-15 prohibits the inequitable rejection of signature guarantees based solely on the basis of type or class of eligible guarantor institution. A transfer agent may reject a signature guarantee from an eligible guarantor institution for reasons not solely related to the type or class of eligible guarantor institution that issued the guarantee. A transfer agent may reject a signature guarantee for the following reasons:

- For reasons unrelated to acceptance of the guarantor institution, such as:
 - the transfer of the security would be wrongful;
 - a signature is believed to have been forged;
 - the transfer would violate laws requiring the collection of transfer taxes;
 - the transfer agent has knowledge that the security to be transferred is subject to adverse claims;
- The person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution;
- The eligible guarantor institution is neither a member of a clearing corporation or maintains net capital of at least \$100,000.

Therefore, a transfer agent's signature guarantee policy may address individual considerations not related to the type of eligible guarantor institution, such as those listed above. While not required, written signature guarantee policies may provide for some non-medallion guarantees, such as those from Federal Reserve Banks and the Depository Trust Company. Also, while the signature guarantee requirement is accepted industry practice, transfer agents may decide to waive signature guarantee requirements limited circumstances, such as:

- Small transfers;
- The securityholder requesting the transfer is well-known to the transfer agent or has a well-established business relationship (e.g. loans or deposits) with the transfer agent;
- For military personnel stationed overseas and unable to utilize an eligible U.S. guarantor.

Upon request, a registered transfer agent must, within three business days, provide the requesting party a copy of its signature guarantee policies and procedures. The transfer agent must keep a copy of its signature policies and procedures in an easily accessible place.

- Rejection of Signature Guarantees

A transfer agent may reject a signature guarantee from an eligible guarantor institution only if the signature guarantee fails to satisfy the transfer agent's written signature guarantee policies and procedures, e.g. if the guarantee is from a non-medallion program participant and the transfer agent's policy allows only for medallion program participant guarantees.

When a registered transfer agent rejects a signature because it does not satisfy the transfer agent's written standards and procedures, the transfer agent must notify both the presenter of the security to be transferred and the guarantor of the presenter's signature of the reasons for the rejection. Notification must be made within two business days. The transfer agent

may notify the guarantor by telephone, fax, or ordinary mail. The transfer agent may notify the presenter by returning the rejected item to the presenter.

Registered transfer agents are required to maintain and retain records relating to rejected signature guarantees. The transfer agent's records must include:

- the date the item was rejected;
- the reason for the rejection;
- the identity of the guarantor; and
- whether the guarantor failed to meet the transfer agent's standards and procedures.

The records must be retained for three years following the date the signature was rejected.

Liability for Unreasonable Rejection of Signature Guarantees

Section 8-401 of the UCC requires transfer agents to register the transfer, pledge or release of a security presented to the transfer agent if:

- the security is endorsed or the instruction was originated by the appropriate person or persons;
- reasonable assurance is given that those endorsements or instructions are genuine and effective;
- the transfer agent has no duty as to adverse claims or has discharged the duty;
- applicable laws relating to the collection of taxes have been satisfied; and
- the transfer, pledge, or release is in fact rightful or is to a bona fide purchaser.

The transfer agent is liable to persons presenting certificates or transfer instructions for losses resulting from any unreasonable delays in registration or from a failure or refusal to register the transfer, pledge, or release. In view of this liability, registered transfer agent should implement sufficient internal controls to ensure that securities transfers are not delayed by the rejection of acceptable signature guarantees. One example of an appropriate internal control is to have an appropriate level of transfer agent management review all rejected signature guarantees and any related follow-up thereto.

Controls Over the Over issuance of Securities

A transfer agent that transfers a security to a purchaser for value warrants that the number of shares or, in the case of bonds, par value of bonds is within the amount of securities the issuer is authorized to issue. When an issue of securities exceeds the amount that the issuer has the corporate power to issue, an over issuance has occurred. Recall that it is the express duty of the stock registrar to verify that the transfer of a security or securities does not result in an over issuance. See Stock Registrar or Bond Registrar. A transfer agent that effects a transfer of securities that causes an over issuance risks having to buy-in the amount of securities overissued if the over issuance cannot otherwise be eliminated.

Internal controls designed to prevent the over issuance of securities include procedures as elementary as verifying that the number of shares, or the par value of bonds, issued in a transfer match the number of shares, or par value of bonds, presented for transfer. Any differences should be adequately explained and reconciled before completing the transfer. Simply put, before making an item available, the transfer agent (registrar) should confirm that an over issuance of securities will not result, i.e. that the number of shares, or par value of bonds, agree with the amount authorized to be issued. For such procedures to be effective, transfer agents need to post securities transfers to its related records in a prompt and accurate manner. Adequate reconciliation practices are needed to ensure that securities transfer records, such as control books and master securityholder lists, continue to be accurate and promptly updated. As described in greater detail below, the SEC has implemented regulations governing the prompt posting of transfer agent records, the resolution of out-of-proof conditions and the duty to buy-in the amount of overissued securities, as well as required reporting when such events occur.

Prompt Posting of Securities Transfer Related Records

Failure to promptly post changes in certificate detail increases the risk that out-of-proof conditions will occur and remain outstanding, with the related risk that an over issuance of securities may occur due to inaccurate recordkeeping. SEC Rule 17Ad-10 requires recordkeeping transfer agents to promptly post securities related transactions to transfer agent related records. A

"recordkeeping transfer agent" is the registered transfer agent that maintains and updates the master securityholder file (See below). A recordkeeping transfer agent contrasts with a "named transfer agent", which is a registered transfer agent engaged by a securities issuer to act as transfer agent, but that engages a service company to perform some or all of the named transfer agent's duties. A "service company" is defined as a registered transfer agent engaged by a named transfer agent to perform transfer agent functions for the named transfer agent.

Securities related records that must be posted promptly are:

Master securityholder file - The master securityholder file is the official list of individual securityholder accounts. For mutual funds, the master securityholder file may consist of multiple, but linked, automated files. Transfer agents must promptly post certificate detail to the master securityholder file. Certificate detail consists of:

- The certificate number, except for uncertificated securities;
- The number of shares for equity securities or the principal dollar amount for debt securities;
- The securityholder's registration;
- The address of the registered securityholder;
- The issue date of the security;
- The cancellation date of the security;
- In the case of redeemable securities of investment companies (i.e. mutual funds), an appropriate description of each debit and credit (e.g. purchase or sale); and
- Any other identifying information about securities and securityholders the transfer agent reasonably deems essential to its recordkeeping system for the efficient and effective research of record differences.

Note: A "file" includes both automated and manual records.

If the security to be transferred or redeemed contains certificate detail that is different from the certificate detail on the master securityholder file, then a "record difference" has occurred, see below. In such a case, the recordkeeping transfer agent must post a credit to the master securityholder file, i.e. record the new certificate detail in the master securityholder file. The corresponding debit, i.e. cancellation of certificate detail from the master securityholder file, however, shall be recorded in a subsidiary file, e.g. suspense account, until the record difference is resolved. Once posted to a suspense account, the transfer agent must be diligent in its effort to resolve the record difference, and, once resolved, must promptly debit the master securityholder file. Recordkeeping transfer agents must maintain a record of all certificate detail deleted, i.e. debited, from the master securityholder file for six years following the date the certificate detail was debited.

Certificate detail must remain posted on the master securityholder file until a debit to a securityholder's account is appropriate. Transfer agents must maintain accurate master securityholder files for the securities for which it is the recordkeeping transfer agent. Transfer agents that assume the maintenance and updating of master securityholder files from predecessor transfer agents, establish a new master securityholder file for an issue or convert from a manual to an automated system must carry over the existing certificate detail.

- Control book - The control book is the record or any other document that shows the total number of shares (in the case of equity securities) or the principal dollar amount (in the case of debt securities) authorized and issued by the issuer. A recordkeeping transfer agent must maintain a current and accurate control book for each issue of securities. Changes to the control book require written authorization from a duly authorized agent of the issuer.
- Subsidiary files - A subsidiary file is any list or record of accounts, securityholders or certificates detailing debits and credits that have not been posted to the master securityholder file. Subsidiary files must be current and accurate.

Prompt Posting Criteria

SEC Rule 17Ad-10 requires the posting of applicable records within the following timeframes:

- Recordkeeping transfer agents that have qualified as exempt transfer agents must post applicable records within 30 calendar days;
- Recordkeeping transfer agents that transfer only own-bank, parent holding company or affiliated company securities and that use a batch posting method must post applicable records within ten business days;

The SEC considers a batch posting system to be one in which posting is done daily to a front-end subsidiary file, with less frequent batch updating to master securityholder files.

- All other recordkeeping transfer agents must post applicable records within five business days. Securities transferred or issued prior to record date, but posted after the record date, must be posted as of the record date.

The timeframes detailed above do not apply to recordkeeping transfer agents' posting of mutual fund transfers. The timeframes refer to the number of days following the issuance, purchase, transfer or redemption of a security. In those cases where the recordkeeping transfer agent receives certificate detail for posting from a "co-transfer agent", the timeframes commence on the date when the recordkeeping transfer agent receives the records from the co-transfer agent. A "co-transfer agent" is registered transfer agent that transfer securities, but does not maintain and update the master securityholder file. Co-transfer agents are required to dispatch or mail a record of debits and credits for each security transferred or issued within two business days of transfer or issue, except when the transfer or issue occurs with five business days of record date, which must be dispatched or mailed to the recordkeeping transfer agent daily. When a recordkeeping transfer agent inquires of a co-transfer agent concerning records that the co-transfer agent was required to dispatch or mail to the recordkeeping transfer agent, the co-transfer agent must respond to the recordkeeping transfer agent within five business days of receipt of such inquiries.

Failure to Promptly Post

Recordkeeping transfer agents that fail to meet prompt posting requirements must immediately report such failure to its appropriate regulatory agency, along with a report stating the measures that are, have been, or will be taken to correct the recordkeeping transfer agent's failure to promptly post required records. SEC Rule 17Ad-11 requires such reports when a recordkeeping transfer agent has any debits or credits for securities transferred, purchased, redeemed or issued that remain unposted for more than five business days after the date when the debits and credits were required to be posted to the master securityholder file or to a subsidiary file. A copy of such reports must be retained for at least three years, the first year in an easily accessible place.

Aged Record Differences

A "record difference" occurs when either:

- The total number of shares or total principal dollar amount of securities in the master securityholder file does not equal the number of shares or principal dollar amount in the control book; or
- The security transferred or redeemed contains certificate detail different from the certificate detail currently on the master securityholder file and where the difference cannot be resolved immediately.

An "aged record difference" is a record difference that has existed for more than thirty calendar days. Subject to certain criteria, SEC Rule 17Ad-11 requires recordkeeping transfer agents to report aged record differences to issuers and to the appropriate regulatory agency. Whether aged record differences must be reported depends on the aggregate market value of the aged record differences and the issuer capitalization. Different reporting thresholds apply to required reports to interested parties than to required reports to the appropriate regulatory agency.

Reports to Issuers

Recordkeeping transfer agents must report to issuers aged record differences that, as of the end of each month, exceed the thresholds detailed in the table below.

	Aggregate Market Value of Aged Record Differences Exceeds	Aggregate Market Value of Aged Record Differences Exceeds
Issuer Capitalization	For Equity Securities	For Debt Securities

\$5 Million or Less	\$50,000	\$100,000
Greater than \$5 Million but less than \$50 Million	\$250,000	\$500,000
Greater than \$50 Million but less than \$150 Million	\$500,000	\$1,000,000
Greater than \$150 Million	\$1,000,000	\$2,000,000

Issuer capital is the market value of the issuer's authorized and outstanding equity securities. For an issuer of municipal securities issuer capital is the market value of all debt issues for which the transfer agent performs recordkeeping functions. The market value of debt securities is determined by reference to the control book and current market prices.

Aged record differences are aggregated for all securities of **a particular issuer**, and not across all issuers. Thus, to determine if an aged record difference must be reported, the aggregate of aged record differences for a particular issuer is compared to the capitalization of that issuer.

Recordkeeping transfer agents must report aged record differences to the following parties:

- The official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists;
- For municipal securities, the chief financial officer of the issuer of the securities for which the aged record difference exists;
- The named transfer agent, if the recordkeeping transfer agent acts as a service company.

Note: A recordkeeping transfer agent that transfers only its own securities does not have to report aged record differences to issuers, but does have to make the required reports to regulatory agencies.

A named transfer agent engaged by an issuer to maintain and update the master securityholder file must report aged record differences to the following:

- The official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists;
- For municipal securities, the chief financial officer of the issuer of the securities for which the aged record difference exists;

The reports must be made within 10 days of the end of the month in which the aged record difference exists. A report must be sent for **each month** in which a record difference exists. The required reports must contain the following information:

- The reasons for the aged record difference; and
- The steps being taken or to be taken to resolve the aged record difference.

Reports to Appropriate Regulatory Agencies

Recordkeeping transfer agents must report to the appropriate regulatory agency. Whether aged record differences that, as of the end of each calendar quarter, exceed the thresholds detailed in the table below.

Aggregate Market Value of Aged Record Differences	Number of Issues Acting as Recordkeeping Transfer Agent
\$300,000	5 or fewer
\$500,000	6-24

\$800,000	25-49
\$1,000,000	50-74
\$1,200,000	75-99
\$1,400,000	100-499
\$1,600,000	500-999
\$2,600,000	1,000-1,999

An additional \$1 million for each additional 1,000 issues

The reports must be made within 10 days of the end of the calendar quarter in which the aged record difference exists. A report must be sent for **each calendar quarter** in which a record difference exists. The required reports must contain the following information:

- The reasons for the aged record difference; and
- The steps being taken or to be taken to resolve the aged record difference.

Reports must be retained for at least three years, the first year in an easily accessible place.

Buy-Ins

When a registered transfer agent causes a physical over issuance of securities and can not recover the physical certificates that created the over issuance, the transfer agent must purchase securities in an amount equal to the over issuance. Essentially, the transfer agent "buys-in" the amount of securities overissued in order to return the number of shares, or par value of bonds, to the authorized amount, as documented in the control book. Buy-ins are only required when: 1) there has been a physical over issuance of securities, as opposed to an out-of-proof condition with respect to book-entry securities; and 2) the registered transfer agent's acts, of omission or commission, caused the physical over issuance. A transfer agent is not required to buy in a physical over issuance caused by a predecessor transfer agent.

For example, a physical over issuance of securities might result from:

- the transfer of securities subject to an existing stop-transfer order. See Lost, Stolen or Missing Securities;
- errors in which the number of shares, or par value of bonds, represented by a newly issued certificate exceeds the number of shares, or par value of bonds, represented by the corresponding certificate that was cancelled. Note that the stock registrar or bond registrar has the duty to guard against such occurrences.
- errors in which the wrong class or series of security, e.g. the conversion of debentures into preferred stock instead of common stock.

Note: A difference in the amount of securities, representing either shares of stock or the face value of bonds, actually issued and the amount of securities indicated by the control book as being authorized gives rise to an "out-of-proof" condition. An out-of-proof condition constitutes a record difference, but not all record differences represent an out of proof conditions. In addition, an out-of-proof condition can represent an under issuance of securities. Although an under issuance is not subject to buy-in requirements, it represents a potential liability to the transfer agent. For example, as a result of a transfer agent's failure to issue or record the proper number of shares, or par value of bonds, a securityholder may not receive dividends, interest, corporate distributions, redemptions or stock splits to which the securityholder is entitled, with the transfer agent potentially liable for the losses it has caused.

SEC Buy-In Requirements

SEC Rule 17Ad-10(g) requires registered transfer agents that have both caused a physical over issuance of securities and know that an over issuance has occurred to buy-in securities equal to the number of shares in the case of securities or the principal dollar amount in the case of debt securities. The transfer agent must buy-in the securities within 60 days of the date it discovers the physical over issuance. The transfer agent "discovers" an over issuance when the transfer agent identifies the erroneously issued certificate(s) and the registered securityholder(s).

Within the 60-day timeframe, the transfer agent must work diligently to resolve the over issuance and recover the certificates involved. In the following cases, however, the transfer agent does not have to buy-in physically overissued securities:

- The transfer agent has obtained a letter from the holder of the overissued certificates in which the holder confirms that the overissued certificates will be returned to the transfer agent within 30 days. If the overissued certificates are not returned within this 30 days period the transfer agent must immediately buy in the overissued securities.
- The overissued certificates are covered by a surety bond indemnifying the transfer agent for all expenses resulting from the over issuance. The transfer agent is required, however, to act diligently in resolving the over issuance and recovering the overissued certificates.

Required Reports - Reports to Issuers

A transfer agent must report to issuers buy-ins executed pursuant to SEC Rule 17Ad-10(g). Recordkeeping transfer agents must report as follows:

- The official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists;
- For municipal securities, the chief financial officer of the issuer of the securities for which the aged record difference exists;
- The named transfer agent, if the recordkeeping transfer agent acts as a service company.

Note: A recordkeeping transfer agent that transfers only its own securities does not have to report aged record differences to issuers, but does have to make the required reports to regulatory agencies.

A named transfer agent engaged by an issuer to maintain and update the master securityholder file must report buy-ins to the following:

- The official performing corporate secretary functions for the issuer of the securities for which the aged record difference exists;
- For municipal securities, the chief financial officer of the issuer of the securities for which the aged record difference exists;

Required reports must be sent within ten business days following the end of the month in which the buy-in occurred. Named transfer agents that have engaged a service company must send the report within ten days following the date on which the named transfer agent receives a report from the service company that the service company has bought in securities. SEC Rule 17Ad-10(c) requires co-transfer agents to report buy-ins to the named fiduciary within three business days following the month in which the buy-in occurred. The reports must contain the following information:

- The principal dollar amount of debt securities and the related market value or the number of shares and related market value of securities that were bought in. Note: Co-transfer agents are required to include this information in the report they are required to make to named transfer agents;
- The party that executed the buy-in; and
- The reason for the buy-in. Note: Co-transfer agents are required to include this information in the report they are required to make to named transfer agents.

Reports to Appropriate Regulatory Agencies

Buy-ins must be reported to the appropriate regulatory agency when the aggregate market value of all buy-ins executed in a calendar quarter exceeds \$100,000. The information reported is the same as that reported to issuers. Reports to the appropriate

regulatory agency must be made within 10 business days following the end of the calendar quarter in which aggregate buy-ins exceeded \$100,000.

Note: The market value of an issue is determined as of the last business day on which market value information is available during the reporting period.

Reports must be retained for at least three years, the first year in an easily accessible place.

Safeguarding of Funds and Securities

SEC Rule 17Ad-12 requires registered transfer agents having custody or possession of funds or securities related to transfer agent activities to assure that:

- Securities are kept and handled in a manner to reasonably safeguard them from destruction, theft or other loss; and
- Funds are protected from misuse.

The regulations does not detail any specific internal controls required for the protection of securities and funds held as a result of transfer agent activities, but simply requires that the protection afforded to securities and funds must be adequate in light of all facts and circumstances. Rule 17Ad-12 states, however, that the cost of various safeguards and procedures and the degree of potential financial exposure are two relevant factors in evaluating internal controls and procedures governing the protection of securities and funds held as transfer agent.

Small transfer agents will normally require fewer and less elaborate internal controls and procedures than larger, more complex transfer agent operations. For example, a transfer agent that qualifies for the small transfer agent exemption generally will have less sophisticated internal controls and procedures than a transfer agent processing a large volume of items for various outside securities issuers. Discussed in greater detail below are various internal control concepts that are applicable to both large and small transfer agents.

Physical Security Controls

An effective control for preventing the misappropriation of securities certificates and transfer agent related funds is the establishment of controlled access to those areas of the institution where securities transfer activities are conducted, including access to personal computers and other computer systems used to process securities transfer activities. Controlled access can be via coded access, special keys and badges or other means of preventing entry by and identifying individuals not authorized to enter areas where securities transfer activity is conducted. In addition, fireproof filing cabinets and safes protect transfer agent records, certificates and supplies from loss due to fire damage or other nature disasters, as well as preventing misappropriation. To be effective, keys, combinations and codes to file cabinets and safes must be effectively controlled at all times. Access to vaults and safes should be subject to joint custody, i.e. two or more people are accountable for access and thus required to be present when vaults and safes are accessed. Access logs should be maintained and should identify the persons gaining access, the reasons for accessing, and the assets or records accessed. Access codes and combinations should be promptly cancelled or changed when individuals are no longer employed with the institution or are no longer involved in securities transfer activities.

Many small financial institutions with registered transfer agent operations, however, lack the space for establishing a separate secure area for securities transfer activity. For these institutions, the use of secure storage areas, such as vaults, safes and fireproof file cabinets, along with appropriate controls thereto, will assume an even greater importance.

Segregation of Duties

One of the most fundamental methods of internal control is the segregation of duties. The participation of two or more persons effecting the transfer of a security causes the work of one to serve as proof for the accuracy of another. Additionally, when two or more persons are involved in a process, the possibility of fraud diminishes considerably. Ideally, duties should be arranged so that no one person dominates any transaction from inception to termination. A single individual should not be responsible for receiving and logging items presented for transfer; canceling certificates presented and issuing new certificates (or entering debits and credits in the case of book-entry securities); and updating or reconciling related records. EDP service center personnel should not initiate transactions or correct data except when such activity may be required to complete processing in a reasonable period

of time (if this unusual situation arises, transactions should be approved by appropriate levels of management at the data center and at the serviced institution). EDP systems should be protected by password or other systems access controls and individual system operators should be individually identified.

Often, small transfer agent operations lack the staff necessary to implement a satisfactory segregation of duties. In such cases, compensating controls should be implemented that will permit transfer agent management and personnel to identify and correct errors and irregularities promptly. For example, when a single employee dominates a transaction, the transaction can be made subject to review by an independent employee.

When practicable, the planned and unannounced rotation of duties can compensate for a lack of segregation of duties, in addition to being an effective internal control in its own right. The rotation should be of sufficient duration to be effective. Rotation of personnel, besides being an effective internal check, can be a valuable aid in the bank's overall training program.

Vacation Policy

It is the FDIC's goal that all banks have a vacation policy which provides that active officers and employees be absent from their duties for an uninterrupted period of not less than two consecutive weeks. Such a policy is considered an important internal safeguard largely because of the fact that the perpetration of fraud of any substantial size usually requires the constant presence of the employee perpetrating the fraud in order to manipulate records, respond to inquiries from customers or other employees, and otherwise prevent detection. The benefits of such a vacation policy may be substantially, if not totally, lost if the duties performed by an absent individual are not assumed by someone else. In those cases where the bank does not require a continuous absence, compensating controls, such as the rotation of personnel among different duties or increased management review procedures, can constitute an acceptable alternative to a vacation policy requiring a continuous two-week absence.

Reconciliation Procedures

As previously discussed, one of the major functions of a transfer agent is to transfer securities from a seller to a buyer after a purchase transaction. Typically this takes place through the issuance of a new certificate to the purchaser and the cancellation of the old certificate. With the growth of uncertificated (i.e. book-entry) recordkeeping functions by transfer agents, an increasing number of transactions are book-entry transfers. Moreover, the current securities industry trend is towards a reduction in paper-based transaction flow, with greater utilization of direct registration systems that rely on account statements instead of negotiable certificates and automated links between securities depositories, broker-dealers and banks. In the absence of physical securities certificates, the integrity of a transfer agent's records, automated as well as paper based, is crucial.

Appropriate reconciliation procedures are an essential internal control element in ensuring the integrity of transfer agent records and the reliability of transfer agent recordkeeping systems. In addition, sound reconciliation procedures promote compliance with SEC prompt posting requirements and the identification and timely resolution of record differences. To be effective, reconciliations must be performed at appropriate intervals by individuals independent of the maintenance of the records being reconciled. Differences, errors and irregularities should be promptly investigated and resolved. Reconciliations should be reviewed by an appropriate level of transfer agent management, which should monitor the resolution of significant record differences.

Transfer agent related records and accounts that should be reconciled periodically include control books, which should be reconciled to the corresponding master securityholder file; ledgers, subsidiary ledgers and records related to interest and dividend payment accounts; accounts related to dormant funds and unclaimed property; inventories of blank securities certificates and interest/dividend checks.

Controls Over Securities Certificates

Unissued Securities Certificates

Transfer agents must protect and control the supply of bank securities certificates that they hold in conjunction with the securities issues transferred. The failure to control blank certificates could result in their being used for fraudulent purposes such as fraudulently serving as collateral. With the exception of a reasonable working supply of blank certificates, certificates should be kept in a secure location, such as a safe, vault or locked file cabinet. Joint Custody of blank certificates further strengthens the

effectiveness of controls over blank certificates, and is strongly recommended. Working supplies of blank certificates should also be adequately controlled. The use of blank certificates should be verified, and when pre-numbered or numerically sequenced certificates are used, with all breaks in numerical sequence adequately documented. Blank securities certificates voided or spoiled should be adequately documented and disposed of or controlled. The supply of blank securities certificates should be inventoried periodically, with any discrepancies promptly investigated and resolved.

SEC Rule 17f-1 was revised in 2004 to clarify that all certificates from the time printed (and unissued) until destroyed are covered by the rule. An unissued, but printed certificate, includes the issuer's name, CUSIP number, certificate number, and authenticating signatures. It does not have to include the registrant's name, the number of units, or the counter-signature of the transfer agent.

Cancelled Securities Certificates

When a bond is redeemed or the ownership of a stock or debt security transferred, the corresponding security certificate is cancelled by the transfer agent. For certificated securities, cancellation involves both a recordkeeping entry on the transfer agents books and the physical alteration of the certificate itself. Cancelled certificates must then be stored for not less than six years following the date of cancellation. After six years cancelled certificates can be destroyed. See SEC Rule 17Ad-6(c) and 17Ad-7(d). Refer also to Rule 17Ad-19.

The fraudulent use of cancelled securities certificates presents significant problems and potential costs, not only to transfer agents, but also to investors, creditors and broker-dealers. Securities certificates that have not been properly cancelled can be used to defraud the public and financial institutions. Stolen certificates that were not properly cancelled have been subsequently sold to investors and used as collateral for loans. Examples of frauds involving the use of cancelled securities certificates include:

- In a 1992 case, approximately \$111 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's warehouse to a certificate destruction vendor. The certificates, representing many well-known public companies, later began to resurface worldwide. A number of banks and brokers as well as individuals were defrauded through sales of the cancelled certificates for cash or through use of the cancelled certificates as loan collateral. The bulk of these cancelled certificates still remain unaccounted for and continue to resurface in the marketplace.

In this case the SEC brought an action against a transfer agent for its failure to report stolen certificates pursuant to Rule 17f-1, 17 CFR 240.17f-1, and for its failure to safeguard securities in its possession pursuant to Rule 17Ad-12, 17 CFR 240.17Ad-12. The transfer agent agreed to pay a civil penalty of \$750,000 and to cease and desist from future violations of Sections 17(f)(1) and 17A of the Exchange Act and Rules 17f-1 and 17Ad-12 thereunder. *See SEC v. Citibank, N.A.*, Civil Action No. 92-2833 (USDC, DC, 1992).

- In a similar 1994 case, approximately \$6 billion face amount of cancelled bond certificates disappeared after being delivered from a transfer agent's record center to two certificate destruction vendors. The cancelled certificates, which represented well-known companies, later began to circulate worldwide. Again, the bulk of these cancelled certificates remain unaccounted for and continue to resurface in the marketplace.

In 1994, the SEC and the OCC brought a joint action against a transfer agent for its failure to report stolen cancelled certificates pursuant to Rule 17f-1 and its failure to safeguard securities in its possession pursuant to Rule 17Ad-12. The transfer agent agreed to pay a civil penalty of \$100,000 and to cease and desist from future violation of Sections 17(f)(1) and 17A of the Exchange Act and Rules 17f-1 and 17Ad-12 thereunder. As remedial measures, the transfer agent also agreed to mark cancelled certificates with the word "cancelled" and to adopt other safeguards. *See The Chase Manhattan Bank*, Administrative Proceeding No. 3-8518. Securities Exchange Act Release No. 34784 (October 4, 1994), 57 SEC Docket 2195.

- In another instance, cancelled certificates were stolen from a transfer agent's shipping bags while in transit. The transfer agent regularly shipped cancelled certificates from the West Coast to a New York bank for processing. The transfer agent, however, did not record the contents of its shipments and, in effect, relied on its processing agent to do its bookkeeping. When the shipping bags were stolen, neither the transfer agent nor its processing agent realized that the certificates were missing. A number of the certificates resurfaced more than a month after the theft in off-market sales.

In 1994, the SEC and the OCC brought a joint enforcement action against a transfer agent and found that the transfer agent had violated Section 17(f)(1) of the Exchange Act and Rule 17f-1 thereunder for failing to report the missing securities to

the Commission's Lost and Stolen Securities Program. The transfer agent agreed to cease and desist from any further violations of Section 17(f) (1) and Rule 17f-1 thereunder and agreed to pay a \$75,000 civil penalty. *See Seattle-First National Bank, Securities.*

The manner in which some transfer agents cancel securities certificates has contributed to the problem. Some transfer agents cancel certificates by making pin-hole sized perforations which mark the cancellation date on the certificate, along with the transfer agents initials. These perforations, however, were often so small as to be barely noticeable. In some instances, the perforations have been interpreted by some as authenticating the certificate, rather than as evidence of the certificate's cancellation. In some cases, transfer agents have failed to place any marking on the certificate to indicate that it had been cancelled. The potential for such fraud has grown in recent years, as many corporate bond issues have been redeemed many years prior to maturity, thereby increasing the volume of cancelled certificates that could potentially be used in fraudulent schemes if they are not properly cancelled. The processing of cancelled securities certificates can involve significant warehousing costs, as they must be shipped, stored, safeguarded and tracked.

In view of the potential liability that securities transfer agents confront when they cancel, transport and store securities certificates that have been retired from circulation registered transfer agents should develop adequate policies and procedures governing cancelled certificates. Canceling and retiring securities certificates from circulation has been largely governed by industry practices. However, in 2004, the SEC issued Rule 17Ad-19, which outlines the proper procedures for cancellation.

In 1994 the Securities Transfer Association (STA), the largest transfer agent trade association, adopted guidelines for dealing with cancelled securities which calls for marking cancelled certificates with the word "cancelled" and for security measures over the storage and destruction of certificates. Examples of procedures governing the cancellation of securities certificates include the following:

- Physically marking cancelled certificates in a manner that clearly indicates that the certificate no longer represents a claim against the issuer. The STA guidelines call for marking the certificates with the word "Cancelled";
- Maintaining certificate information in a reasonably retrievable manner, preferably electronically retrievable. Certificate information that should be maintained includes:
 - CUSIP number;
 - Certificate number, with any prefix or suffix;
 - Denomination;
 - Registration;
 - Issue date; and
 - Cancellation date.

Note: In some instances where cancelled certificates were stolen, the certificate information was of limited value in identifying the stolen certificates because they were manual, rather than electronic, and the certificate information was organized electronically by cancellation dates rather than by certificate numbers. Thus, the necessary information could not be easily retrieved from the transfer agents records.

- Maintaining controlled access to areas where cancelled securities are stored. Controlled access generally means the practice of permitting only authorized personnel to areas where cancelled certificates are stored;
- Requiring that the physical transportation of cancelled certificates be conducted in a secure manner and that a record of the CUSIP and certificate numbers of the certificates transported be maintained. When cancelled certificates are transported, the transfer agent dispatching the certificates should receive notice that the certificates were delivered. In the case of non-delivery, the transfer agent should investigate the circumstances regarding the non-delivery. If the nondelivered is not resolved, the certificates transported should be reported to the Securities Information Center as lost or missing securities. See SEC Rule 17f-1(c)(2).

When a third-party servicer is used to physically destroy certificates, a transfer agent may decide to have an authorized person witness the physical destruction, or designate an outside party to do so. In any event, the transfer agent should retain copies of all records relating to securities certificates that have been destroyed.

With respect to small transfer agent operations, especially those that limit securities transfer activity to own-institution or parent holding company securities and with a relatively small volume of transfers processed, the number and sophistication of procedures and controls over the cancellation, shipment and storage of certificates will be less than what is normally found in large, complex transfer agent operations. Notwithstanding the size and complexity of transfer agent activity, the policies, procedures and internal controls over cancelled securities must provide adequate protection against the misappropriation and fraudulent use of securities certificates.

Controls Over Funds and Disbursements

SEC Rule 17Ad-12 requires adequate safeguards for the protection of all funds held in connection with transfer agent activities. Transfer agents may hold considerable funds related to its securities transfer activities; for example, funds for the payment of dividends or interest to be paid to registered securities owners. In addition, it is not unusual for transfer agents to hold considerable funds in conjunction with dividend reinvestment programs, stock purchase programs and employee stock purchase programs.

Appropriate internal controls and procedures for the protection of funds include the following:

- Controls over unissued dividend and interest checks. Common procedures for controlling unissued checks include:
 - Joint custody or dual control over blank dividend and interest checks;
 - Maintenance of blank checks in a secure location, such as vault or safe;
 - Use of prenumbered documents. Supplies of blank checks should be inventoried periodically, with any breaks in the numerical sequence investigated and explained;
 - Working supplies of blank checks should be reasonable and appropriately controlled;
 - Controls over checks spoiled or voided during processing;
 - Returned mail procedures, see below.
- Maintenance of appropriate ledgers, subsidiary ledgers, suspense accounts and other records relating to dividend and interest payments, as well as funds held in conjunction with dividend reinvestment, stock purchase and employee stock purchase plans. Ledgers, accounts and records should be:
 - Reconciled periodically, see discussion on reconciliation procedures elsewhere in this section;
 - Audited periodically, see discussion on audits;
 - Retained as required by applicable laws and regulations.
- Controls over dormant funds and unclaimed property. Dividend and interest checks that remain uncashed or undelivered, as well as other funds and property that remain unclaimed, are subject to state unclaimed property laws, generally referred to as escheat laws. As a result, the holders of unclaimed, i.e. dormant, funds are required to report such property to appropriate state authorities, and, after the passage of a statutory timeframe to turn (escheat) unclaimed funds and property over to state authorities. Internal controls and procedures over dormant funds and unclaimed property should, at a minimum:
 - Identify dormant funds and unclaimed property;
 - Segregate dormant funds and unclaimed property from the funds and property of the institution;
 - Provide for the reporting of dormant funds and unclaimed property in accordance with applicable laws; and
 - Provide for the transfer of dormant funds and unclaimed property (escheatment) to the appropriate authorities within established statutory timeframes.

Rule 17Ad-12 does not mandate any particular internal control or procedure. Rather, every transfer agent must implement internal controls and procedures, that, "in the light of all facts and circumstances" protect investor funds against misuse, e.g. embezzlement, misappropriation or misapplication. In assessing the adequacy of internal controls, the cost of implementing various internal controls and procedures should be evaluated in light of the volume of investor funds held and the administrative complexity of handling such funds.

Mail Handling Procedures

Transfer agents both receive securities certificates for transfer via the mails and dispatch securities certificates upon effecting transfer of ownership. In addition, transfer agents receive and dispatch funds via the mails, for example dividend checks mailed to owners of record and interest and dividend checks mailed and later returned as undelivered. Therefore, the protection of securities certificates and funds should include internal controls and procedures governing the handling of securities certificates and funds received and transmitted via the mails. Personnel who handle mail containing certificates or funds should be fingerprinted as required by SEC Rule 17f-2. As previously noted, 12 U.S.C. 1829 requires financial institutions to take steps to avoid hiring an individual convicted of dishonest acts. So, transfer agents have a duty to ensure that those who handle securities certificates and funds do not have a criminal history.

Ideally, two persons should be present when mail containing certificates and funds is opened, much in the same manner that a bank controls the opening of the bank's night deposit. Such a procedure lessens the risk of misappropriation of certificates and funds before their receipt can be recorded. This is an important consideration in view of the amount of time that may elapse before the nonreceipt of such items is discovered. Moreover, adequate separation of duties should be implemented: no single person should be responsible for receiving items via the mail, logging the receipt of items received via the mail, processing the items and subsequently mailing or otherwise disposition of them. Mail returned as undeliverable should not be returned to and handled by those persons who dispatch certificates and funds via the mails, but should be received by and investigated by persons independent of mailing certificates and checks. Small transfer agent operations that lack the staff necessary to implement adequate separation of duties governing the handing of mail should implement compensating controls that are adequate for protecting securities certificates and funds received or sent by mail from misappropriation or loss.

Lost Securityholders

A recordkeeping transfer agent's mail handling procedures should include procedures for identifying and searching for lost securityholders. SEC Rule 17Ad-17 requires recordkeeping transfer agents to search for a lost securityholder's correct address and to maintain written procedures describing its methodology for searching for lost securityholders. For the purposes of Rule 17Ad-17, a lost securityholder is:

- A securityholder to whom correspondence has been mailed to the address contained in the master securityholder file and which correspondence has been returned to the transfer agent as undeliverable; and
- The transfer agent has not received information concerning the securityholder's new address.

A recordkeeping transfer agent, however, is allowed to re-send undelivered correspondence to the lost securityholder within one month, in which case the securityholder will be considered a lost securityholder, if the re-sent correspondence is again returned as undeliverable. Recordkeeping transfer agents often use the second mailing to test the possibility that the first return resulted from an error by the postal service. Also, the transfer agent can attempt to obtain a current address by requesting an address correction from the postal service. In the past, it has been estimated that between 10 percent and 50 percent of second mailings were successful.

Recordkeeping transfer agents are required to conduct two database searches to find a lost securityholder's correct address. The two required database searches must be conducted without charge to the securityholder. The database search must include one information database service. To qualify as an information database service the following database service attributes are required:

- The database service contains addresses from the entire United States;
- The database service contains the names of at least 50 percent of the United States geographic areas;
- The database service contains the names of at least 50 percent of the adult population of the United States;
- The database is indexed by taxpayer identification number or name; and
- The database is updated at least four times a year.

However, any service or combination of services producing results in locating lost securityholders comparable to the results produced by database services satisfying the above criteria, qualify as an information database service.

Consumer credit reporting agencies, credit bureaus, maintain databases that satisfy the information database service requirements and are the most likely information database service providers to be utilized by transfer agents. Professional search firms may

also satisfy the database requirements, and may employ more extensive search techniques that can locate some securityholders that a credit bureau will not locate. Professional search firms, however, usually charge the securityholder a fee. A recordkeeping transfer agent may use a professional search firm that satisfies the database requirements if the transfer agent pays the professional search firm's fee, rather than passing the fee onto the securityholder. The cost of database searches performed after the first two required searches can be passed onto the securityholder. So a recordkeeping transfer agent could use a professional search firm for a third or subsequent search. A recordkeeping transfer agent is not required to make a third search, only two are required.

The two required database searches must be conducted within the following timeframes:

- Between three and twelve months of the securityholder becoming a lost securityholder
- Between six and twelve months after the transfer agent's first search

In the following cases, however, a recordkeeping transfer agent is not required to search for lost securityholders:

- The transfer agent has received documentation of the securityholder's death;
- The aggregate value of assets held in the securityholder's account, including funds and securities held of record by the securityholder, is less than \$25; and
- The securityholder is not a natural person, for example, when the lost securityholder is an estate. Securityholders which are not natural persons are not easy to locate through the use of information databases services.

Note: The requirement to search for lost securityholders is **not** limited to securityholders who receive dividend and interest payments. It also applies, for example, to securityholders receiving only annual meeting materials, who in the case that such materials are returned by the post office as undeliverable, become lost securityholders under Rule 17Ad-17.

The funds and securities of lost securityholders may, after the applicable statutory period, be subject to state unclaimed property and escheat laws, and should be properly accounted for and controlled in order to ensure compliance with applicable state laws.

Annual Meeting and Proxy Processing Services

Since recordkeeping transfer agents maintain complete and accurate lists of the owner of record for each securities issue, the transfer agent may be involved in distributing corporate communications, such as the issuer's annual report and proxy statements, as well as processing proxy votes. Annual meeting and proxy processing services offered by transfer agents include:

- Compilation of record date listings of shareholders eligible to vote;
- Broker search to determine the street name holders of the issuer's stock;

SEC Regulation 240.14a-13, implementing provisions of the Shareholders Communication Act, requires issuers to contact brokers, dealers, banks, and other entities that may hold shares that are beneficially owned by other persons (i.e. street name holders) and, if shares are beneficially owned by other persons, to determine the number of copies of proxy materials, proxy statements, annual reports etc. needed for distribution to beneficial owners. The issuer is required to reimburse the brokers, dealers, banks and other entities holding securities in street name for the cost of mailing or delivering the materials to the beneficial owners of the issuer's stock. The issuer may opt to mail annual meeting materials, proxies etc. to beneficial owners who agree, or do not object, to disclosing their identities. Refer to the Shareholder Communications Act and related SEC regulations which are presented in greater detail in the Trust Examination Manual.

- Fulfillment services for annual meeting materials, proxies etc. As discussed above, once street name holding entities have been identified, the issuer has the obligation to provide these materials for distribution via street name holding entities to beneficial owners.
- Mailing services to registered holders. Registered holders are listed directly on the master securityholder file of the issue, as opposed to beneficial owners whose shares are registered in the street name of a broker, dealer, bank or other entity.
- Tabulation services. The transfer agent receives votes cast by shareholders, both from direct registrants and votes sent in by brokers, dealers etc. for beneficial owners, and tabulates the results.

Some larger transfer agents offer proxy solicitation services in which the transfer agent assists the issuer in planning and organizing a proxy solicitation campaign. Such services might include devising proxy vote solicitation strategies; conducting a

telephone campaign among registered holders and non-objecting beneficial owners; soliciting banks, brokers, agents, institutions and large shareholding individuals for votes; monitoring votes received to detect voting patterns among large shareholders and institutions. A conflict of interest may be present when the transfer agent both assists the issuer in a proxy solicitation and tabulates the proxies voted.

Transfer agents that provide annual meeting and proxy processing services should implement appropriate policies, internal controls and procedures to ensure the accurate and timely distribution of shareholder communications. As noted previously, corporate communications returned as undeliverable by the post office are subject to the SEC's lost securityholders rule, 17Ad-17. When providing vote tabulation services, the transfer agent's internal controls and procedures should provide for the adequate control and processing of proxies votes received from direct registrants and street name holders returning votes cast by beneficial owners of the issuer's stock. The tabulation of proxies should be independent of all parties that have an interest in the outcome of the vote, and procedures and internal controls should ensure an accurate tabulation of votes. Tabulation of proxy votes should be independent of personnel providing proxy solicitation services.

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I. AUDITS

Every registered transfer agent should develop an audit program that, in view of the volume and complexity of securities transfer activity, provides adequate assurance that securities transfer operations are performed in a satisfactory manner and in compliance with applicable laws and regulations. A strong audit program establishes a proper internal control environment and promotes the accurate and efficient processing of securities transfers, as well as compliance with applicable laws and regulations. In addition, a well-functioning audit program promotes the early identification and correction of operational deficiencies and violations of applicable laws and regulations before they become systemic.

Ideally, the audit program would consist of a full time, continuous internal audit program coordinated with a well-planned external audit. In small transfer agent operations, however, limited resources may make the implementation of a full time internal and external audit impractical. Notwithstanding, transfer agent management should ensure that audit coverage is adequate for the size and scope of transfer agent activity.

Internal Audits

To be effective, internal audits should be performed by individuals having adequate training and knowledge of transfer agent operations and applicable laws and regulations. Internal auditors should be independent of transfer agent function management and free of duties or responsibilities that could adversely affect audit findings and recommendations. Audit findings should be reported to an appropriate level of bank management, preferably the Board of Directors, Audit Committee, or other appropriate committee of the Board. The management of the transfer agent function should be required to respond to the findings of internal audit reports. Management's response should be made within an acceptable timeframe and include corrective measures as appropriate. Corrective measures promised by transfer agent management should receive follow-up review.

Frequency and Scope

Audits should normally be performed at least annually. More frequent audits, however, should be conducted when conditions require it. For example, when operations evidence continued unsatisfactory operations, or if the size and complexity of securities transfers indicates that more frequent audit coverage is warranted. Some larger transfer agents may implement a continuous audit process in which specific areas of the transfer agent's operations are audited at various intervals that depend on the perceived degree of risk. Such an approach is acceptable. Examiners should, however, ensure that audit coverage is provided at appropriate intervals and that no significant aspect of the transfer agent's operations goes without audit coverage.

While the scope of a registered transfer agent will vary depending upon the type, complexity and volume of activity, the activities listed below should, to the extent applicable to the transfer agent's operations, be included in the scope of the audit:

- Compliance with SEC operational rules and regulations, e.g. Section 240.17Ad of the SEC's Rules and Regulations, as well as SEC rules 17f-1 and 17f2.
- Review of documents evidencing the institution's appointment as transfer agent by the issuers of the securities transferred.
- Review of internal controls governing securities transfer activities.

- Proof of securityholder records, including Master Securityholder files, Control books, and other subsidiary records.
- Review of any record differences that have occurred since the last audit, the reasons why they occurred, and, if there were any record differences that became aged record difference.
- Review of unissued securities and checks and the internal controls in place to protect and safeguard customer securities and funds.
- Review of dividend and interest payment activities, including the adequacy of reconciliation procedures over all payment-related accounts.
- Review of management's response to any prior internal audit findings.

Generally, at a minimum, the internal audit program should be designed to provide reasonable, but not necessarily absolute certainty, that securities transfers are effected in an accurate (i.e. without excessive record differences) and prompt (i.e. within the SEC's designated turnaround standards) manner, and that customers' funds and securities are safeguarded from loss, theft or misuse.

External Audits

SEC Requirements

SEC Regulation 17Ad-13, "Annual Study and Evaluation of Internal Accounting Control," requires every registered transfer agent, except as discussed below, to file annually a study (the Accountant's Report, or report), conducted by an independent accountant, reporting on the effectiveness of the system of internal control and related procedures for effecting securities transfers and safeguarding the securities transferred and the funds related therewith. Registered transfer agents, unless exempted, must file the accountant's report with the SEC, and, for those registered transfer agents for whom the SEC is not the ARA, the transfer agent's ARA. The report must be filed within 90 calendar days of the date of the study. The accountant's report must:

- State whether the report was made in accordance with generally accepted auditing standards. See discussion below concerning the objectives of a registered transfer agent's internal controls.
- Describe any material inadequacies found to exist as of the date of the study and evaluation and any corrective action taken. If no material inadequacy existed, the report should so state.
- Comment on the current status of any material inadequacy described in the immediately preceding report.

The study and evaluation of the transfer agent's system of internal controls should cover the following areas:

- Processes for transferring ownership of securities (i.e. the cancellation of certificates or other instruments evidencing prior ownership and the issuance of new certificates).
- Processes for maintaining books and records reflecting ownership and changes in ownership.
- Processes for registering changes in ownership related to corporate actions (e.g. issuance, retirement, redemptions, liquidations, conversions, exchanges, tender offers, etc.).
- Processes for paying dividends and interest.
- Administration of dividend reinvestment programs.
- Processes for distributing initial statements related to initial offers of securities.

The transfer agents' system of internal controls should be designed to provide reasonable, but not absolute, assurance that securities transfer activities are performed promptly and accurately and that securities and funds are protected against unauthorized use or disposition.

If material inadequacies are revealed by the study and evaluation of the transfer agent's system of internal control, the transfer agent must file a report with the SEC and the ARA in writing. The report must be filed by the transfer agent no later than 60 calendar days after the receipt of the report. The report must state the actions being taken by the transfer agent to correct the material inadequacies discovered.

For the purposes of 17Ad-13, a material inadequacy is a condition where the established procedures or the compliance with established procedures do not reduce to a relatively low level the risk of errors or irregularities that would adversely affect to a significant degree the transfer agent's ability to promptly and accurately effect securities transfers and to protect the securities and

funds of investors, or that errors or irregularities would not be detected in a timely manner in the course of personnel performing their assigned functions.

A significant adverse effect could result from any condition or conditions that individually, or taken as a whole, would reasonably:

- Inhibit the transfer agent from promptly and accurately discharging its contractual responsibilities to the issuer.
- Result in a material financial loss to the transfer agent.
- Result in violations of SEC Rules 17Ad-2 (Turnaround Standards), 17Ad-10 (Prompt Posting and Buy-Ins) and 17Ad-12 (Safeguarding of Funds and Securities).

The accountant's report and any documents required under Rule 17Ad-13 must be retained for at least three years, the first year in an easily accessible place.

Exceptions

Banks and financial institutions regulated by the FDIC, the Federal Reserve or the OCC are exempt from the audit requirements of 17Ad-13, provided that the bank or financial institution's Federal bank regulatory authority has not notified it to the contrary and the bank or financial institution prepares for its Board of Directors or audit committee a report that is similar in scope to that described in the preceding section.

Small transfer agents, i.e. transfer agents that qualify for exempt status under 17Ad-4, are exempted totally from the requirements of 17Ad-13, as are transfer agents that perform mutual fund transfers for mutual funds for which there are fewer than 1,000 accountholders. In addition, a transfer agent that performs transfer agent functions solely for 1) its own securities; 2) the securities of a subsidiary in which it owns 51 percent or more of the subsidiary's capital stock; or 3) securities issued by another corporation that owns 51 percent or more of the capital stock of the transfer agent.

SAS 70 Reports

Institutions sometimes enter into servicing arrangements whereby a third party or affiliated entity will perform SEC Rule 17Ad-9(k) defines the term "service company" as a registered transfer agent engage by a named transfer agent to perform transfer agent functions for a named transfer agent. A "named transfer agent" is the transfer agent engaged by the issuer to perform transfer agent functions for an issue of securities, but has engaged a service company to perform some or all of those functions. In addition, the SEC defines a "recordkeeping transfer agent," which is a transfer agent that maintains and updates the master securityholder file, and "co-transfer agent," which is a registered transfer agent that transfers securities, but does not maintain and update the master securityholder file.

Registered transfer agents that engage a service company should obtain and review the SAS 70 Report of the service company in order to evaluate the adequacy of the internal controls and internal control environment of the service company.

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J. TRANSFER AGENT OPERATIONS

Introduction

Transfer agent operations consist of the fundamental services provided by transfer agents to issuers of securities and those that hold those securities. Registered transfer agents transfer recorded ownership of securities (e.g. when securities are originally issued and when an investor sells a security to another investor); maintain books and records evidencing ownership of securities; report to the Security Information Center securities that have been reported as lost, missing, stolen, or the finding or recovery of securities previously reported as lost, missing or stolen; and answer inquiries concerning the status of securities presented to the transfer agent for transfer.

As transfer agent for registered securities, a registered transfer agent's performance of these and other duties is governed by Section 240.17Ad of the SEC's General Rules and Regulations, as well as other SEC rules governing the reporting of lost, missing or stolen securities and the fingerprinting of transfer agent personnel. Compliance with SEC rules and regulations is an absolute

requirement for every registered transfer agent. A registered transfer agent that fails to operate in compliance with SEC rules and regulations risks the revocation or suspension of its registration, as well as fines and penalties imposed as a result of such non-compliance. Sanctions can be imposed upon a registered transfer agent by the SEC and by the transfer agent's Federal bank regulator.

In this section, the specific SEC operational requirements governing a registered transfer agent's performance are discussed in detail. In particular, the SEC operational guidelines governing the maintenance and retention of certain records relating to transfer agent operations, turnaround performance standards for both transferring certificates or replying to inquiries concerning pending transfers are discussed in detail.

Certain definitions are key in understanding the SEC's operational requirements. These definitions are discussed below in detail, prior to proceeding to the materials regarding recordkeeping and turnaround performance.

Definitions

Registered transfer agents are required to maintain various records with respect to the "items" that they receive for transfer. In addition, transfer agents must distinguish "items" according to whether they are "routine" or "non-routine". Transfer agent records must indicate when "items" were "made available" to the "presenter" of an "item". Therefore, the following key definitions are given and discussed in detail before proceeding to the recordkeeping and record retention requirements. These, along with other key terms are defined in Section 17Ad-1, "Definitions."

Item

Each of the following is defined as an item:

- A certificate or certificates of the same issue of securities that are presented for transfer and covered by one ticket;
- An instruction to a transfer agent holding securities registered in the name of the presenter to make available (see definition below) all or a portion of securities covered by a single ticket is an item;
- If no ticket is presented, then the certificate or certificates of the same issue of securities presented by one presenter is considered an item;
- Each line on a "deposit shipment control list" (see definition below) or a "withdrawal shipment control list" (see definition below) submitted by a registered clearing agency;
- Each certificate to be countersigned, in the case of an outside registrar.

The term "item," and the use of the word "securities" in defining the term "item," refers to all securities for which a transfer agent performs transfer agent functions, regardless of whether the securities are qualifying securities as defined in Section 17A(c)(1) of the Securities Exchange Act.

The definition of "item" defines two general categories of "items".

- An "item" exists if the certificates are:
 - of the same issue of securities;
 - covered by one ticket or, if there is no ticket, presented by one presenter; and
 - presented for transfer (see discussion below concerning when an "item" is presented for transfer).

It is important to note that when a certificate is involved, that the certificate must be presented in order for an "item" to have been received. Hence, the request to replace a lost certificate is not an "item" since no certificate was presented for transfer. Also, since shares of open-end mutual funds do not involve certificates, transfers of open-end mutual funds do not constitute an "item," with the exception of those cases when a certificate is involved in the transfer of the mutual fund shares.

- An "item" exists if an instruction requests a transfer agent:
 - that holds securities registered in the name of the presenter;

- to transfer or make available (see definition below);
- all or a portion of the securities held in its possession or custody.

An instruction to issue a stock dividend out of previously authorized but unissued shares would not constitute an "item" since the securities would not be registered in the name of the presenter, in this case the issuer. Similarly, shares issued pursuant to a stock purchase plan are not "items" if the shares are original issue securities. If treasury shares are used, however, the instruction would then involve securities held by the transfer agent and held in the name of the presenter. In this case, such an instruction would constitute an "item".

For example, a shipment control list containing instructions from a depository to a transfer agent holding, under a transfer agent custodian or other arrangement, a balance certificate registered in the name of the depository's nominee to withdraw by transfer under the Fast Automated Securities Transfer ("FAST") program some of those securities and to make them available to the depository would constitute an "item".

There is no maximum number of certificates of the same issuer which may be presented for transfer at a single time and still be considered a single "item". Regardless of the number of certificates, as long as all of the certificates are of the same issue and covered by either 1 ticket, or if there is no ticket, presented by 1 presenter, the certificates constitute a single "item". For example, if a transfer agent receives 5 certificates from 1 broker under 1 transmittal letter requesting that the total amount of shares be transferred to 10 shareholders in 20 separate certificates, there would be only 1 "item" as long as the certificates are all of the same issue, since there is only 1 presenter. On the other hand, if a presenter includes securities of 9 different issues under a single ticket there would be 9 "items" presented.

When there is no ticket, each time a certificate, or certificates, of the same issue of securities are presented for transfer at the same time by the same presenter, one "item" has been presented for transfer. However, if certificates of the same issue of securities are presented at different times, each time a certificate or certificates is presented an "item" has been received. Certificates presented at different times of the day must not be aggregated as one "item," even though all certificates are of the same issue of securities and even though the same person was the presenter.

Routine/Non-routine

An "item" is routine if it does not:

- require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; [Note: If the transfer agent is required to maintain a supply of certificates, but exhausts its supply, it may not designate the "item" as non-routine as a result of exhausting its supply of certificates.]
- include a certificate as to which the transfer agent has received notice of a stop order, adverse claim or any other restriction on transfer;
- require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected;
- require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature or other common and ordinary guarantees or appropriate tax or tax waivers; [Note: "Items" referred to counsel for review are not automatically considered non-routine. Only if counsel is required to review documentation other common and ordinary assignments, endorsements, etc. would the "item" be non-routine.]
- involve a transfer in connection with a reorganization, tender offer, exchange, redemption or liquidation;
- include a warrant, right or convertible security presented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change;
- include a warrant, right or convertible security presented for exercise or conversion; or
- include a security of an issue which within the previous 15 business days was offered to the public pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature. [Note: The 15-day business period begins from the closing date of the public offering, i.e. the date on which the securities are delivered to the underwriter for the issue.]

Any "item" that is not routine, i.e. meets one of the conditions enumerated above, is a non-routine "item". The decision to designate an "item" as routine or non-routine must be made as soon as the "item" has been reviewed upon receipt at the transfer agent's premises. Once an "item" has been designated as routine, the "item" generally retains that classification throughout the

completion of turnaround. An otherwise routine "item" does not become non-routine by virtue of internal delays in the turnaround of the "item". Similarly, the designation of an "item" as non-routine remains throughout the turnaround of an "item".

Examples of "items" that would qualify as non-routine:

- The transfer agent, as trustee and authenticating agent for the bond, must forward the bond, pursuant to the Indenture Agreement, to the issuer for signature by an officer before the certificate can be made available to the presentor
- The transfer agent receives an instruction from the issuer to use treasury shares, registered in the name of the issuer and being held by the transfer agent, under the issuer's stock purchase plan and an authorization letter from the issuer is required before the transfer can be effected
- The transfer agent retains "items" received for transfer pending receipt of payment of transfer fees rather than returning them to the presentor for nonpayment

Deposit Shipment Control List

A deposit shipment control list is a list of transfer instructions that accompanies certificates to be cancelled and reissued in the nominee name of a registered clearing agency.

Withdrawal Shipment Control List

A withdrawal shipment control list is a list of instructions, either in paper or electronic form, that:

- Directs the issuance of certificates in the names of persons or entities other than the registered transfer agent; and
- accompanies certificates to be cancelled which are registered in the nominee name of a registered clearing agency, or directs the transfer agent to reduce certificate or position balances maintained by the transfer agent on behalf of a registered clearing agency under that clearing agency's transfer agent custody program.

Note: If a Deposit or Withdrawal Shipment Control List contains both routine and non-routine transfer instructions, the transfer agent has the option of:

- Retaining all the transfer instructions listed on the shipment control list and treating each line on the list as a routine item; or
- Promptly returning to the registered clearing agency the control list line or lines containing non-routine transfer instructions and treating the retained transfer instructions as routine "items". A copy of the shipment control list, an explanation for the returned instructions and all routine transfer instructions reflected on the same line or lines should be returned to the registered clearing agency.

Made available

An "item" is made available when:

- In the case of an "item" for which there is not an outside registrar, or when the "item" has been received from the outside registrar after processing, the transfer agent dispatches or mails the "item" to, or the "item" is awaiting pickup by the presentor, or a person designated by the presentor; or
- When there is an outside registrar, the transfer agent dispatches or mails the "item" to, or the "item" is awaiting pick-up by the outside registrar; or
- In the case when the outside registrar has completed processing, the outside registrar dispatches or mails the "item" to, or the "item" is awaiting pick-up by, the presenting transfer agent.

An "item" is considered dispatched when it leaves the premises where the transfer agent functions are performed and is sent to the receiving party or to a location from which it is picked up by the receiving party. An "item" is considered mailed either when it is delivered to a location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service. For example, if the "item" is delivered to the transfer agent's mail room and the U.S. Postal Service makes daily pickups, the "item" would be considered mailed when it is delivered to the transfer agent's mail room.

Transfer

Per Rule 17Ad-1(d) there are essentially two methods of effecting a "transfer". (1) "The "transfer" of an "item" is accomplished when, in accordance with the presenter's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and issue a new certificate or certificates, including the performance of the registrar function, are completed and the "item" is made available to the presenter by the transfer agent, or (2) when, in accordance with the presenter's instructions, a transfer agent which holds securities registered in the name of the presenter completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the certificate or certificates to the presenter or, with respect to those of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities."

Process

The term "process" pertains to an outside registrar. An outside registrar has processed an "item" when all the acts necessary to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed.

Federal securities laws do not prohibit a single transfer agent from performing the functions of both transfer agent and registrar, nor do Federal securities laws require an issuer to engage two separate entities to perform the transfer agent and registrar functions. This matter is largely governed by state law. However, various national securities exchanges may require separate entities.

Receipt

The receipt of an "item" or a written inquiry occurs when the "item" or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions. For the purposes of determining receipt of an "item" for transfer agent turnaround performance, "items" received on or before noon of a business day are deemed to have been received at noon on that day. "Items" received after noon on a business day or on a day that is not a business day are deemed to have been received at noon on the next business day.

An "item" or written inquiry is considered received when it arrives in the mail room at or connected to the premises where transfer agent functions are performed. However, if an "item" or written inquiry arrives in the mail room that is not located at, or connected to the premises where transfer agent functions are performed, it is not deemed to have been received. Rule 17Ad-2(f), however, requires that a transfer agent that receives "items" at locations other than the premises where transfer agent functions are performed have procedures to assure, and does assure, that "items" are promptly forwarded to the premises where transfer agent functions are performed.

Where a "named transfer agent" for an issuer contracts with a service bureau, which is also a registered transfer agent, to transfer certificates and maintain securityholder records, receipt of an "item" occurs when the "item" arrives at the service bureau's premises. In such a case, however, the named transfer agent must comply with the requirement to promptly forward "items" to the service bureau.

Business Day

A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays and legal holidays or other holidays normally observed by the transfer agent. Days when, because of severe inclement weather, city government and other businesses are forced to close down, virtually all forms of transportation are unavailable and ordinary commerce is suspended, but a transfer agent opens its transfer department with a skeleton staff would not be considered a business day. Similarly, days when businesses are requested or required to close by order of a city, municipal or state government would not be considered business days.

Exempt Transfer Agents

Certain transfer agents that transfer a relatively low volume of "items" benefit from having to satisfy a reduced number of SEC operational rules. These transfer agents are referred to as "exempt transfer agents," although they are also often referred to as

"small transfer agents". Eligibility requirements for "exempt transfer agent status" are defined in Rule 17Ad-4(b). An exempt transfer agent is a transfer agent than:

- During any consecutive six months receives fewer than 500 "items" for transfer or fewer than 500 "items" for processing; and
- If its appropriate regulatory agency is the SEC or the OCC, prepares and maintains in its possession a document certifying that the transfer agent qualifies as an "exempt transfer agent"; or
- If its appropriate regulatory agency is the Federal Reserve or the FDIC, file with its appropriate regulatory agency a notice certifying that it qualifies as an "exempt transfer agent."

The certification that the transfer agent qualifies as an "exempt" transfer agent must be made within the first ten business days following the close of the sixth month of the consecutive six-month period in question.

The consecutive six-month period is a floating period for which at the beginning of each month the number of "items" transferred or processed during the previous six months must be calculated to ensure that the transfer agent remains eligible for "exempt transfer agent" status. Rule 17Ad-4(c) requires that the calculation be performed within five business days following the close of each month. Although the SEC regulations do not state that the calculation of "items" transferred or processed must be documented and retained for a specified period of time, an "exempt transfer agent" must be able to demonstrate that it meets the eligibility requirements for "exempt" status. Thus, a registered transfer agent should document the results of each month's calculation of "items" transferred or processed in the prior six months and retain the documentation on file for a sufficient period of time in order to demonstrate eligibility.

If an "exempt transfer agent" transfers or processes more than 500 "items" in any consecutive six-month period, it must prepare a document stating that it no longer qualifies for "exempt" status. If the transfer agent's appropriate regulatory agency is the SEC or the OCC, the transfer agent must maintain the document in its possession. If the transfer agent's appropriate regulatory agency is the Federal Reserve or the FDIC, the transfer agent must send a written notice of the loss of "exempt" status to its appropriate regulatory agency. As of the first day of the month following the month in which the transfer agent determined that it had transferred or processed greater than 500 "items" the transfer agent is no longer an "exempt transfer agent" and must satisfy all applicable SEC operating requirements. The transfer agent can not again qualify for "exempt" status until it has transferred or processed fewer than 500 "items" during a consecutive six-month period beginning in the month when it stopped being an "exempt transfer agent". A transfer agent that loses "exempt" status must make a new certification when it again becomes eligible for "exempt" status.

A transfer agent can qualify as an "exempt transfer agent" when it performs transfer agent activities for some issues and processes "items" as an outside registrar for other issues. In such cases, the transfer agent must transfer less than 500 "items" and process fewer than 500 "items". A transfer agent for an issue or issues could qualify for "exempt" status even though the outside registrar for such issue or issues does not qualify for "exempt" status. An "item" with respect to an outside registrar is defined as each certificate to be countersigned, whereas an item with respect to a transfer agent is a certificate or certificates of the same issue of securities covered by one ticket, or if there is no ticket, presented by one presenter. So, the outside registrar could receive 500 or more "items" for processing while the presenting transfer agent receives fewer than 500 "items" for transfer.

The SEC has opined that a new transfer agent may qualify as an "exempt transfer agent" even though it has not performed transfer agent functions for the requisite six-month period. A new transfer agent can qualify as an "exempt transfer agent" provided it can demonstrate, through appropriate records and documentation, that the previous transfer agent received fewer than 500 "items" for transfer and fewer than 500 "items" for processing during the immediately preceding consecutive six-month period.

For the purposes of determining if a transfer agent qualifies for "exempt" status, all "items" transferred within all areas of the institution must be counted, including non-qualifying securities. Securities transferred in satellite or branch offices must be aggregated with "items" transferred at the main premises where transfer agent functions are performed. A transfer agent may not combine several "items" of the same issue received from several presentors in order to keep the number of "items" transferred under 500. Certificates of the same issue presented by different presentors must be treated as separate "items" as defined by Section 17Ad-1(a)(1).

Transfer agents are not required to elect "exempt" status. For those institutions that are eligible for "exempt" status, but have not elected to declare themselves "exempt transfer agents", examiners should bring to management's attention the availability of

"exempt transfer agent" status. Examiners should not, either in written comments in the report of examination or in comments to management state or imply that the institution should or is obligated to elect to become an "exempt transfer agent".

"Exempt transfer agents" benefit from reduced recordkeeping and securities transfer turnaround requirements. "Exempt transfer agents" do not have to comply with the following SEC Rules:

- **17Ad-2, "Turnaround, Processing and Forwarding of Items."** "Exempt transfer agents" transfer agents do not have to comply with paragraphs (a), (b), (c), (d), and (h) which define turnaround standards for transfer agents and outside registrars, and the filing of required reports when those standards are not satisfied. Instead, "exempt transfer agent" turnaround performance is defined in 18Ad-2(e)(2), which requires a transfer agent exempt under Rule 17Ad-4(b) that has received 30 day notice of depository eligibility of an issue for which it performs transfer agent functions to turnaround 90 percent of all routine items received during a month within five business days of receipt. The "exempt transfer agent" must devote diligent and continuous attention to the remaining ten percent of routine "items" and must turnaround those "items" as soon as possible. Note that Rule 17Ad-2(e)(1) requires that all non-routine "items" receive diligent and continuous attention and must be turned around as soon as possible.
- **17Ad-3, "Limitations on Expansion"**. "Exempt transfer agents" that do not satisfy the 5-business day turnaround standard for routine "items" are not subject to the limitations on business expansion detailed in Rule 17Ad-3.
- **17Ad-6, "Recordkeeping,"** "Exempt transfer agents" are not required to maintain the records required under the following paragraphs of Rule 17Ad-6(a):
 - 17Ad-6(a)(2) - Monthly Log
 - 17Ad-6(a)(3) - Daily and Monthly Log for Outside Registrars
 - 17Ad-6(a)(4) - A record of the calculations demonstrating the monitoring of transfer agent turnaround performance
 - 17Ad-6(a)(5) - A copy of written notices of failure to satisfy transfer or outside registrar turnaround performance. Refer to first bulleted item above.
 - 17Ad-6(a)(6) - Written copies of inquiries or requests concerning the status of "items" presented for transfer
 - 17Ad-6(a)(7) - Written log of inquiries and requests concerning the status of "items" presented for transfer
 - 17Ad-6(a)(11) - Documents upon which the transfer agent bases its determination that an "item" received for transfer was received in connection with a reorganization, tender offer, liquidation or conversion etc.

In addition to the exemptions provided for in Rule 17Ad-(4)(b), "exempt transfer agents," with the exception of "exempt transfer agents that transfer registered mutual funds having 1,000 or more shareholders, are exempted from the annual study and evaluation of internal accounting controls (i.e. audit) required by Rule 17Ad-13. Moreover, a transfer agent that receives fewer than 500 "items" for transfer or fewer than 500 "items" for processing during any consecutive six-month period and that performs transfer agent functions only for its own securities is not required to maintain the Notice Pursuant to SEC Rule 17f-2, "Fingerprinting of Securities Industry Personnel". An "exempt transfer agent" that only transfers its own securities would qualify for the exemption in Rule 17f-2.

Turnaround performance

A registered transfer agent must carry out its securities transfer and processing activity in a timely and accurate manner. Fundamental to the efficient processing of securities certificates is prompt turnaround of certificates presented for transfer and of instructions to make available securities registered in the name of the presenter but held by the transfer agent. In order to protect the investing public from losses and other damages caused by unwarranted or prolonged delays in effecting the transfer of securities certificates or instructions to make registered securities available, the SEC promulgated rules establishing the timeframes in which registered transfer agents must turnaround "items" received. SEC Rule 17Ad-2, effective October 3, 1977, set forth the timeframes in which transfer agents must turnaround "items" received for transfer and "items" received for processing by outside registrar.

In addition to SEC turnaround standards, securities industry self-regulatory organizations (SRO) may impose turnaround standards. Most notably, both the New York Stock Exchange and the American Stock Exchange require transfer agents that effect transfers of securities listed on those exchanges to meet exchange established turnaround performance standards. When a SRO imposes a more stringent standard, the SEC turnaround rules do not supersede the rules imposed by the SRO.

Failure to satisfy SEC turnaround standards is a serious matter. As described in greater detail below, registered transfer agents that fail to meet the SEC turnaround standards are required to file reports with the SEC and with their appropriate regulatory

agency; report the failure to the issuers of the securities for which they act as transfer agent, and under certain circumstances have limitations imposed on the expansion of transfer agent business.

Turnaround, Processing and Forwarding of "Items"

SEC Turnaround Requirements

Section 17Ad-2 of the SEC Rules and Regulations, "Turnaround, Processing and Forwarding of Items," establishes specific timeframes in which registered transfer agents must turnaround "items" presented for transfer. The turnaround standards for transferring or processing "items" are as follows:

- With the exception of "exempt" transfer agents, every registered transfer agent, except when acting as an outside registrar, must turnaround within three business days at least 90 percent of all routine "items" received for transfer during the month. All routine "items" not turned around within three business days of receipt, i.e. the 10 percent not turned around within three business days, must be turned around promptly. Note: The SEC has opined that, under usual circumstances, promptly means within one additional business day;
- "Exempt transfer agents must turnaround within five business days at least 90 percent of all routine "items" received for transfer during the month. All routine "items" not turned around within five business days of receipt, i.e. the 10 percent of "items" not turned around within five business days must receive diligent and continuous attention by the transfer agent;
- An outside registrar must process at least 90 percent of all "items" received during the month:
 - By the opening of business on the next business day, in the case of "items" received at or before noon on a business day; and
 - By noon of the next business day, in the case of "items" received after noon on a business day.
 - All routine "items" not turned around as required, i.e. the 10 percent not turned around by the beginning or noon of the next business day, must be turned around promptly. Note: The SEC has opined that, under usual circumstances, promptly means within one additional business day.

Note: For the purposes of turnaround performance, "items received" do not include "items" related to reorganizations, tender offers, exchanges, etc; warrants, rights or convertible securities presented for exercise or conversion; a security of an issue which within the previous 15 business days was offered to the public; or any "item" that is not accompanied by a debit or cancelled certificate.

- All transfer agents are required to devote diligent and continuous attention to non-routine "items" and must turn around non-routine "items" as soon as possible. This is a flexible standard dependent on the facts and circumstances of each "item".

In addition to the established timeframes for turning around "items," transfer agents must maintain appropriate procedures in the following cases:

- Registered transfer agents which receive "items" at locations other than the premises where transfer agent functions are performed must have procedures to assure that "items" are promptly forwarded to such premises; and
- Registered transfer agents which received "items" processed by an outside registrar must have procedures to assure that "items" received from the outside registrar are promptly made available to the presenter.

When a named transfer agent contracts with a service bureau to perform transfer agent functions, an "item" is considered received when it arrives at the premises of the service bureau, even if the "item" is forwarded by the named transfer agent. Both the named transfer agent and the service bureau must have appropriate procedures to assure that "items" are forwarded promptly.

Note: SEC Rule 17Ad-6(a)(4) requires registered transfer agents, with the exception of "exempt transfer agents," to keep a written record of calculations demonstrating the transfer agent's monitoring of its turnaround performance. When turning around "items" and calculating its turnaround performance, the transfer agent must include "items" processed in all areas of the bank. In the case where a transfer agent has one or more branch or satellite locations, or where "items" are transferred or processed in other divisions and departments of the bank, the transfer agent must aggregate "items" received and turned around on an institution-wide basis. Rule 17Ad-6(a)(5) required the transfer agent to keep a copy of any written notices filed for failure to meet turnaround performance standards.

The SEC has opined that a registered transfer agent must continue to meet SEC turnaround requirements when converting from a batch to an on-line recordkeeping system. The SEC noted that Rule 17Ad-6 requires recordkeeping to be current and noted that Rule 17Ad-2 provides transfer agents a 10 percent margin for turning around and processing "items."

Once a registered transfer agent's appointment has become effective, the transfer agent is obligated to meet the SEC turnaround standards. Therefore, a transfer agent should not make its appointment effective until it has all shareholder records, stop files, unissued certificates, and other materials required to effect the transfer of or processing of an "item".

The SEC has opined that a transfer agent that uses an outside registrar can choose to calculate its turnaround performance as if it performed the registrar function. In such a case, the transfer agent would record the date on which it receives an "item" and the date on which the "item" is made available to the presentor, rather than recording the date on which the "item" is made available to the outside registrar. If the transfer agent makes such an election, the "item" must be turned around within three business days. Normally, when an outside registrar is used, the transfer agent has three business days to turn the "item" around, i.e. make it available to the outside registrar, and the outside registrar has one business day to process the "item," a process that would in total take four business days. Under such an election, the transfer agent would maintain the records required under Rule 17Ad-6(a) showing the business day on which an "item" is received and the when the "item" was made available to the presentor, rather than when the "item" was made available to the outside registrar. The SEC has stated that a transfer agent that elects to comply and calculate its turnaround performance as if the registrar function was performed in-house, must do so in a written undertaking that must be sent to the SEC, and, for those transfer agents for whom the SEC is not the appropriate regulatory agency, the transfer agent's appropriate regulatory agency. The written undertaking must state that a failure to meet SEC turnaround standards will be charged to the transfer agent, regardless of whether the delays are caused by the transfer agent or by the outside registrar.

The SEC has also opined that 17Ad-2 does not provide for automatic exemptions for inclement weather or other acts of God. For example, in the event an airport is closed due to inclement weather, thereby preventing the delivery of "items" and resulting in a large quantity of "items" being received when the airport reopens. In such a case, the transfer agent must meet the turnaround requirements even if an unusually large quantity of "items" is presented on a given day.

Exceptions from SEC Turnaround Performance

Turnaround requirements, as well as the required reports of failure to meet turnaround requirements and limitations on expansion discussed below, do not apply to:

- Interests in limited partnerships;
- Interests in dividend reinvestment programs; and
- Redeemable securities of investment companies registered under Section 8 of the Investment Company Act, i.e. mutual funds

Failure to Meet Turnaround Standards

Required Reports

With the exception of an "exempt transfer agent," any registered transfer agent that fails to meet the SEC turnaround requirements in any month is required to file a written notice with the SEC, and, if the SEC is not the transfer agent's appropriate regulatory agency, with its appropriate regulatory authority. The notice must be filed within ten business days following the end of the month in which the turnaround standards were not met. In the case of a registered transfer agent that is not an outside registrar, the written notice must contain the following information:

- The number of routine "items" and the number of non-routine "items" received for transfer during the month;
- The number of routine "items" which the transfer agent failed to turnaround within the requirements established by the SEC in Rule 17Ad-2. Note: This applies only to routine "items" received during the month in question;
- The percentage of routine "items" that were not turned around as required by Rule 17Ad-2;
- The number of routine "items," aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around. Note: this applies to all routine "items" in the transfer agent's possession, regardless of the month in which they were received;
- The reasons for the transfer agent's failure to meet SEC turnaround standards; and
- The steps that have been, are being or will be taken to prevent a future failure to meet turnaround requirements.

In the case of a registered transfer agent that is an outside registrar, the written notice must contain the following information:

- The number of "items" received for processing during the month;
- The number of "items" which the transfer agent failed to process within the requirements established by the SEC in Rule 17Ad-2;
- The percentage of "items" that were not turned around as required by Rule 17Ad-2;
- The number of "items," aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than the time allowed for processing and have not been turned around;
- The reasons for the transfer agent's failure to meet SEC turnaround standards; and
- The steps that have been, are being or will be taken to prevent a future failure to meet turnaround requirements.

Paragraph (h) of Rule 17Ad-2, lists the address of the SEC and of the respective appropriate regulatory agencies to which the required written notice should be mailed.

Limitations on Expansion and Other Required Reports

A registered transfer agent that has been required to file, pursuant to Rule 17Ad-2(c), a written notice of failure to meet turnaround performance standards for three consecutive months **may not**, for a period of three months, provided that the transfer agent is not required to file any further notices, beginning on the fifth business day following the third month in which the transfer agent failed to meet turnaround requirements:

- Initiate the performance of any transfer agent function or activity for an issue for which the transfer agent does not perform, or is not under agreement to perform; and
- For issues for which the transfer agent functions are currently being performed, initiate for such issue the performance of additional transfer agent functions or activities that are not currently being performed or for which the transfer agent is not currently under contract to perform.

A registered transfer agent which for two consecutive months fails to turnaround or process 75 percent of all routine "items" within the timeframes established by Rule 17Ad-2(a) and (b) is also subject to the above limitations and must send the chief executive officer of each issuer for which it acts as registered transfer agent a copy of the written notice filed with the SEC and, if applicable, its appropriate regulatory agency. The copy of the written notice must be sent within 20 days following the end of the second consecutive month in which fewer than 75 percent of routine "items" were processed within the required timeframes.

In addition to SEC turnaround requirements, both the New York Stock Exchange (NYSE) and the American Stock Exchange (AMEX) require transfer agents for securities listed on their respective stock exchange to turnaround, under normal conditions, routine transfers within 48 hours. See NYSE Rule 496 and AMEX Rule 891, discussed below.

Stock Exchange Turnaround and Operational Standards: New York Stock Exchange (NYSE) Rule 496

The NYSE established performance requirements for transfer agents of NYSE listed securities. The NYSE adopted Rule 496, "Requirements for Independent Agents Acting As or In Lieu of New York Transfer Agents of Securities Listed on the New York Stock Exchange, Inc." on June 24, 1971. Thus the NYSE Rules predate the SEC transfer agent rules contained in Section 240.17Ad. NYSE Rule 496 requires the following:

- Office satisfactory to the Exchange and the issuer to receive and redeliver securities must be located south of Chambers Street in the Borough of Manhattan, City of New York.
- Routine transfers are to be processed and available for pick-up at the office under normal conditions within 48 hours, i.e. if received before Noon on Monday must be available for pick-up not later than immediately after 1:00 P.M. on Wednesday.
- The Transfer Agent must assume total responsibility and liability for securities from the time of deposit at the office until redelivered at the window and the Transfer Agent must have capital, surplus (both capital and earned), undivided profits, and capital reserves aggregating at least \$10,000,000.
- Out-of-town agents having a drop in New York must make appropriate arrangements to pick up from and deliver to the Central Certificate Service normally within the 48-hour period and framework mentioned above.
- Personnel at the office must have sufficient experience to respond promptly to inquiries regarding transfers, including legal items.

- Securities received before the close of business at the office on a record date or any other date involving the rights of a securityholder must be recorded as of that date so as to establish the transferee's rights.
- Facilities should be available for expediting transfer service when needed. No objection will be made if a reasonable charge is made for such special service.
- Transfer Agents maintaining a New York office or drop must maintain insurance coverage of at least \$25,000,000 to protect securities while in transit or in process.
- The Exchange reserves the right to request termination of the office in the event of the failure of a transfer agent to conform to all of the foregoing requirements.

NYSE Rule 496 imposes a more stringent turnaround standard on transfer agents of NYSE listed securities, 2 days instead of the 3 days mandated for non-exempt transfer agents. Rule 496 imposes specific requirements on transfer agents for NYSE listed securities located outside New York City.

American Stock Exchange (AMEX) Rule 891

Like the NYSE, AMEX established performance requirements for transfer agents of AMEX listed securities before the adoption of the SEC's rules. The AMEX adopted Rule 891 became effective on October 8, 1971. AMEX Rule 891 is fairly similar to NYSE Rule 491. AMEX Rule 891 requires the following:

- Office facilities satisfactory to the Exchange and the issuer to receive and redeliver securities must be located south of Chambers Street in the Borough of Manhattan, City of New York.
- Routine transfers are to be processed and available for pick-up at the office under normal conditions within 48 hours, e.g., if received before Noon on Monday must be available for pick-up not later than immediately after 1:00 P.M. on Wednesday.
- The Transfer Agent must assume total responsibility and liability for securities from the time of deposit at the office until redelivery at the window. The Transfer Agent must maintain insurance coverage of at least \$10,000,000 to protect securities while in transit or in process of transfer, and it must be in a position to demonstrate that it has a substantial net worth. If the Transfer Agent does not have capital, surplus (both capital and earned), undivided profits and/or capital reserves aggregating at least \$3,000,000, it will be required to furnish additional evidence of its ability to meet financial obligations and it may be required to maintain insurance coverage in excess of \$10,000,000. In this regard, all relevant factors will be considered such as its past record of operations as a transfer agent, the experience of its management and supervisory personnel, its security and recordkeeping procedures, the nature and scope of any other activities in which it is engaged and the amount of its capital in relation to its overall business activities.
- Out-of-town agents having a drop in New York must make appropriate arrangements to pick up from and deliver to the Central Certificate Service normally within the 48-hour period and framework mentioned above.
- Personnel at the office must have sufficient experience to respond promptly to inquiries regarding transfers, including legal items.
- Securities received before the close of business at the office on a record date or any other date involving the rights of a securityholder must be recorded as of that date so as to establish the transferee's rights.
- Facilities should be available for expediting transfer service when needed. No objection will be made if a reasonable charge is made for such special service.
- The Exchange reserves the right to request a company with securities listed on the Exchange to terminate the appointment of its transfer agent in the event of the failure of such transfer agent to conform to all of the foregoing requirements.

As is the case with NYSE Rule 496, AMEX Rule 891 imposes a 48-hour turnaround requirement, as well as requirements governing transfer agents located outside New York City.

Written Inquiries and Requests

Given the central role that they play in effecting the transfer of ownership of securities, maintaining records related to the ownership of securities, and the processing and distribution of dividend and interest payments, transfer agents often receive inquiries and other requests from the public and from broker-dealers concerning items presented for transfer, such as the status of an "item" presented, confirmation of transfer instructions, account transcripts or information concerning dividend or interest payments. SEC Rule 17Ad-5, "Written Inquiries and Requests," addresses the performance requirements that govern how transfer agents respond to inquiries and requests.

Turnaround Standards for Written Inquiries and Requests

Inquiries and Requests from Persons

When a registered transfer agent receives a written request regarding the status of an "item" presented for transfer in the last six months, the registered transfer agent must respond to the inquiry within five business days. The response includes the following information:

- If the "item" has been received, but not transferred, the response must include the reason for the delay in transferring the "item" and what additional matters, if any, must be resolved before the "item" can be transferred;
- If the "item" has been both received and transferred, the response must state the date and manner in which the "item" was made available, the address where the "item" was sent, and the number of any new certificate and the name in which the new certificate was registered.

The written inquiry must identify the issue, the number of shares (or the principal amount of debt securities or number of units for other types of securities) presented for transfer, the approximate date that the "items" were presented, and the name in which the security was registered.

When a person makes a written request that would otherwise qualify under Rule 17Ad-5 except that it does not contain all the information required or requests information for an earlier time period, the transfer agent must promptly confirm receipt of the inquiry or request and respond to it as soon as possible.

If a new certificate is dispatched or mailed to the presenter within five business days following the receipt of an inquiry, the transfer agent is not required to send any response.

When any person, including anyone acting under his or her authority, requests that the registered transfer agent confirm that, during the thirty days before the date of the inquiry, it had possession of a security, the transfer agent must respond within ten business days of receiving such request. If, however, the transfer agent requires the payment of a reasonable fee, the transfer agent is not required to respond before payment of the fee is assured. The transfer agent's response must confirm or deny possession of the securities in question as of date of the inquiry.

The written inquiry must identify the issue, the number of shares (or the principal amount of debt securities or number of units for other types of securities) presented for transfer, the approximate date that the "items" were presented, the certificate number, and the name in which the security was registered.

When any person makes a written request for a transcript of his or her account regarding a particular issue, either as the account appears currently or as of a specific date within the prior six months, a registered transfer agent must, within twenty business days of receiving the request, provide a transcript, ledger or statement of the account that is sufficiently detailed as to permit reconstruction of the account as of the date of the transcript. If, however, the transfer agent requires the payment of a reasonable fee, the transfer agent is not required to respond before payment of the fee is assured.

Inquiries and Requests from Broker-Dealers

Upon receipt of written requests from broker dealers requesting that the registered transfer agent acknowledge its possession of the securities presented for transfer and the broker dealer's transfer instructions, or revalidation of a window ticket for the securities presented for transfer, a registered transfer agent must, within five business days:

- Confirm or deny, in writing, possession of the securities in question; and
- If the transfer agent has possession of the securities
 - Acknowledge the transfer instructions, or
 - Revalidate the window ticket

The written inquiry must identify the issue, the number of shares (or the principal amount of debt securities or number of units for other types of securities) presented for transfer, the approximate date that the "items" were presented, and the name in which

the security was registered. If a new certificate is dispatched or mailed to the presenter within five business days following the receipt of an inquiry, the transfer agent is not required to send any response.

Written Inquiries Concerning Dividend and Interest Payments

Rule 17Ad-5(e) requires registered transfer agents to respond within ten business days of receipt to "current claims" containing "sufficient detail". Registered transfer agents must respond within twenty business days to "aged claims". The written response must:

- Acknowledge that the inquiry has been received;
- Indicate whether further research is needed;
 - If further research is needed, a reasonable estimate of how long the research will take must be included;
 - If no further research is needed, the transfer agent's response must indicate if the claim will be paid, and, if not, the reason for not paying the claim.

Registered transfer agents must devote diligent attention to unresolved inquiries and resolve all inquiries as soon as possible.

17Ad-5(e)(3) defines "current claim" as a written inquiry concerning non-payment or incorrect payment of dividends or interest with a payment date within the preceding six months. An "age claim" is a written inquiry concerning nonpayment or incorrect payment of dividends or interest with a payment date that occurred more than six months from the date of the inquiry.

A current claim contains sufficient detail when the written inquiry or request identifies the following information:

- Issuer;
- Name(s) in which the securities are registered;
- Number of shares (or the principal amount of debt securities or number of units for other types of securities) involved;
- Approximate record date(s) or payment date(s) relating to the claim;
- Certificate numbers, (for inquiries from broker-dealers, registered clearing agencies, or banks.)

When a person makes a written request that would otherwise qualify under Rule 17Ad-5(e) except that it does not contain sufficient detail, Rule 17Ad-5(f), "Telephone Response," permits the transfer agent to telephone the inquirer to obtain the necessary information within the ten business day response period. If, however, the transfer agent does not receive the necessary information within ten business days, the transfer agent must immediately send that person a written request for the additional information needed. When a person, however, makes a written request that qualifies under Rule 17Ad-5(e), except that the request does not contain sufficient detail, the transfer agent must, nonetheless respond to the inquiry with the required timeframes, ten or twenty days. The transfer agent may respond to the inquiry as if it contained sufficient detail or may return it to the inquirer with a request for the necessary information.

Registered transfer agents are required to "misdirected" inquiries. Misdirected inquiries comprise the following situations:

- The transfer agent is not the dividend disbursing or interest paying agent for the issue that is the subject of the claim, but did perform those services, or any transfer agent services, for the issue within the preceding three years. In this case the transfer agent must provide a written response within ten business days of receiving the inquiry. The response must include the name and address of the current dividend disbursing or interest paying agent; and
- The transfer agent did not perform those or any other transfer agent services for the issue in question within the preceding three years. In this case, the transfer agent must respond to the inquiry. The transfer agent can respond by returning the inquiry with a statement that the transfer agent is not the current dividend disbursing or interest paying agent and that it does not know the name and address of the current dividend disbursing or interest paying agent.

17Ad-5(f) permits registered transfer agents to satisfy the rule's written response requirements by telephone if;

- The telephone response resolves the problem; and
- The inquirer does not request a written response.

The table below summarizes turnaround requirements for the various types of inquiries and requests.

Summary of Response Timeframes for Written Inquiries and Requests

Type of Inquiry/Request	Business Days Allowed to Respond to Inquiry/Request
Status of Items Presented for Transfer	5
Broker-Dealer Inquires/Requests	5
Confirmation of Possession of Certificate	10
Dividends/Interest - Current Claims	10
Account Transcripts	20
Dividends/Interest - Aged Claims	20

Recordkeeping

The timely and accurate maintenance of books and records is a fundamental duty of a transfer agent. The failure to maintain accurate records or to promptly post transactions can result in harm to investors. For example, the transfer of certificates may be adversely affected by delays and errors resulting from inaccurate records. In addition, recordkeeping deficiencies can result in investors not receiving interest and dividend payments or proxy materials. In addition, the accurate maintenance of books and records permits transfer agents to respond to written inquiries within the required timeframe and to monitor compliance with turnaround standards for the transfer of securities. SEC Rule 17Ad-6, "Recordkeeping," requires transfer agents to maintain certain records. SEC Rule 17Ad-7, "Record Retention," established minimum timeframes for the retention of required records.

Rule 17Ad-6 does not require any specific type of recordkeeping system or forms. A transfer agent may, therefore, establish a recordkeeping and retention system appropriate for the size and complexity of its securities transfer operations, provided that the records required by Rule 17Ad-6 contain all the necessary information and are retrievable as required by Rule 17Ad-7, "Record Retention". In addition, the records required by Rule 17Ad-6 must be kept on an aggregate basis. For example, records documenting compliance with turnaround performance must be on an institution wide basis. A transfer agent that provides services both for itself as a named transfer agent and for other transfer agents under a "private label" arrangement, can not maintain separate performance records for its "private label" operations. Discussed below are the various records required and the requirements for keeping such records.

Daily Transactions

Transfer agents must keep daily records detailing "items" presented for transfer. Rule 17Ad-6(a)(1) requires transfer agent to make and keep current a receipt, ticket, schedule, log or other record that shows:

- The business day that each routine "item" and non-routine "item" is received from a presenter or, if applicable, outside registrar; and
- The business day that each "item" was made available to the presenter, or, if applicable, outside registrar.

No particular form of receipt or ticket is required, provided the ticket identifies the "item" involved and the business day it was received and made available. The SEC, however, has opined that the records can not be maintained in a fragmentary manner, for example, partially maintained in a log and partially on tickets. The required information should be compiled in one record or separate tickets should be attached together. Even though a transfer agent has the flexibility to adopt a recordkeeping system suitable to its operations, the recordkeeping system must integrate and centrally locate all the required information. The dates received and made available must be specific dates and the entries in the daily log must be traceable to the specific "item". When an outside registrar is involved there will be four dates associated with an "item" - the date received from the presenter, the date

made available to the outside registrar, the date received by the outside registrar, and the date made available to the presenter. With respect to "items" tendered in connection with a record date, the record should include the date and time the "item" was actually received.

Note that the daily records, often referred to as the daily log, must identify each "item" as routine or non-routine. Daily records must be maintained by all transfer agents, including "small transfer agents", i.e. exempt transfer agents. A transfer agent must maintain any document upon which the transfer bases its determination that an "items" was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities, registered under the Securities Act of 1933, offered to the public within the previous 15 days, and thus is not a routine "item". The documents must be traceable to the particular "item" received for transfer. The SEC has suggested two methods for providing tractability, 1) attach the ticket to the documentation, or 2) refer directly on the ticket to the document that is the basis for the determination that the "item" is non-routine.

Monthly Transactions

Transfer agents, with the exception of exempt transfer agents, are required to maintain records documenting the transfer agent's securities transfer turnaround performance for each month. The monthly log (or journal, tally, schedule or other record) must, for each month, show:

- The number of routine "items" received;
- The number of routine "items" received that were turned around within three business days of receipt;
- The number of routine "items" received that were not turned around within three business days of receipt;
- The number of non-routine "items" received;
- The number of non-routine "items" received that were turned around;
- The number of routine "items" that, as of the close of business on the last business of each month, are in the transfer agents possession for more than four business days. Routine "items" held by the transfer agent for more than four business days must be aged in one business day increments, beginning with the fifth business day.

Entries in the monthly log are cumulative. "Items" still outstanding from the previous month's log must be carried over to the following month or months. Note that only routine "items" must be aged.

Records of Outside Registrars

The following requirements apply to records pertaining to "items" for which the transfer agent serves as an outside registrar:

- A daily log (or receipt, ticket, schedule or other record) showing the date and time:
 - Each item is received from the presenting transfer agent and made available to the presenting transfer agent;
 - Each written or oral notice of refusal to perform the registrar function was made available to the presenting transfer agent, along with the substance of the notice; and
- A monthly log (or tally, journal, schedule or other record) showing:
 - The number of "items" received;
 - The number of "items" processed by:
 - the opening of business on the next business day, in the case of "items" received at or before noon on a business day; or
 - by noon of the next business day, in the case of "items" received after noon on a business day (See Rule 17Ad-2(b)); and
 - The number of "items" not processed as required by Rule 17Ad-2(b). (See previous bullet)

Note that "items" referred to above do not include certificates presented in conjunction with corporate reorganizations, tender offers, exchanges, redemptions or liquidations; the exercise of warrants, rights or convertible securities; or a security which was

offered to the public within the previous 15 days pursuant to a registration statement under the Securities Act of 1933, if the offering is not of a continuing nature. It also does not apply to any "item" that is not accompanied by a debit or cancelled certificate.

Even though an "item" is processed within a time period shorter than that mandated by 17Ad-2(b) must still be included in the registrar's records (the same is true for transfer agents). Those "items" must be included in calculating turnaround performance. See below.

Turnaround Performance for Securities Transfers

With the exception of exempt transfer agents, registered transfer agents must keep records demonstrating compliance with SEC turnaround requirements. The record must contain calculations that demonstrate that the transfer agent has turned around "items" in accordance with Rule 17Ad-2.

In addition, if applicable, a registered transfer agent, with the exception of an exempt transfer agent, must keep a copy of any written notice filed as a result of failing to meet the turnaround requirements of Rule 17Ad-2.

No specific form of record is required, provided the calculations of turnaround performance are actually shown. For example, a record document showing the total number of routine "items" received in a month and turned around within three business days of receipt divided by the total number of routine "items" received in that month would be sufficient.

Records Pertaining to Written Inquiries

With the exception of exempt transfer agents, registered transfer agents are required to keep the following records for written requests and inquiries:

- Any written request or inquiry, including those not subject to the requirements of Rule 17Ad-5. The records must include:
 - The date received;
 - A copy of any written response, including the date the response was sent to the presenter;
 - If no response was sent, the date the certificate involved was made available to the presenter; and
 - If, in response to an inquiry concerning the status of an "item" presented for transfer, the presenter was contacted by telephone, a telephone log or memorandum showing the date and substance of the telephone response.
- A monthly log (journal, schedule or other record) showing:
 - The number of inquiries received, other than inquiries concerning dividend and interest payments, that were not responded to within the required timeframes of Rule 17Ad-5; and
 - The number of such inquiries pending as of the close of business of the last business day of the month.

A "named transfer agent" must keep a copy of all inquiries and requests it receives even if it forwards them to a service bureau for response. As noted above, this applies to inquiries and requests that are not covered by the requirement of 17Ad-5.

Appointment Documentation

Rule 17Ad-6(a)(8) requires transfer agents to all documents, including resolutions, contracts, appointments and other writings connected with the appointment or termination of the transfer agent's appointment to perform any transfer agent services for a particular issue of securities. The maintenance of appointment documentation is required regardless of whether the transfer agent provides transfer agent services only for its own securities, the securities of affiliated entities, or the securities issued by outside entities. For example, an issuer that only maintains the official securityholder records must comply with this rule.

Other Records

Registered transfer agents are required to maintain the following records:

- *Transfer Restrictions* - Records of active (i.e. unreleased) stop orders, notice of adverse claim or other restrictions on the transfer of a security. A stop or other restriction on transfer remains active until the transfer agent receives instructions from an authorized person to release it. Rule 17Ad-6(a) (9);
- *Journals* - A copy of any transfer journal or registrar journal prepared by the transfer agent. The SEC notes, however, that a registered transfer agent is not required to prepare or maintain a transfer or registrar journal. But if the transfer agent does maintain a journal, then it must be kept current. Rule 17Ad-6(a)(10);
- *Control Book* - A transfer agent that maintains securityholder records for an issue or acts as a registrar for an issue must maintain an up to date copy of the control book for each issue, Rule 17Ad-6(b);
- *Cancelled Certificates* - A transfer agent that maintains securityholder records for an issue must maintain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to a presentor. Rule 17Ad-6(c). Also see Rule 17Ad-19 for requirements governing the cancellation of certificates.

When an issuer acts as transfer agent for its own securities solely for the maintenance of securityholder records and a service bureau cancels and issues certificates, the issuer transfer agent must, nonetheless, maintain a copy of the control book, as well as copies of each cancelled certificate.

Record Retention

SEC Rule 17Ad-7, "Record Retention," sets forth how long the various records required under Section 17Ad must be maintained. In many cases, Rule 17Ad-7 requires records to be maintained in an easily accessible place for a designated period of time.

Detailed below are the various record retention requirements.

- Two years, first six months in easily accessible place
 - Daily Log - Both for transfer agents and outside registrars. 17Ad-6(a)(1) and 17Ad-6(a)(3)(i)
 - Copies of written inquiries and requests. 17Ad-6(a)(6)
 - Documents relied upon to determine that an "item" was received in conjunction with a reorganization, tender offer, redemption, etc. 17Ad-6(a)(11)

Note: "Exempt Transfer Agents" are only required to maintain a daily log. See SEC Rule 17Ad-4(b).

- Two years, first year in easily accessible place
 - Monthly Log - Both for transfer agents and outside registrars. 17Ad-6(a)(2) and 17Ad-6(a)(3)(ii)
 - Record of calculation demonstrating monitoring of compliance with transfer turnaround requirements. 17Ad-6(a)(4)
 - Copies of written notices of failure to meet turnaround requirements. 17Ad-6(a)(5)
 - Written inquiries and request logs. 17Ad-6(a)(7)

Note: "Exempt Transfer Agents" are not required to maintain these records. See SEC Rule 17Ad-4(b)

- Three years, first year in easily accessible place
 - Records demonstrating compliance with the search obligations for lost securityholders under SEC Rule 17Ad-17(c). 17Ad-7(i)
- Easily accessible and one year after termination of TA
 - Documentation of appointment. 17Ad-6(a)(8)
 - Records of active (i.e. unreleased) stop orders, notice of adverse claims, or other restrictions on transfer. 17Ad-6(a)(9)
 - Copies of any transfer journals or registrar journals. 17Ad-6(a)(10)
 - Control books. 17Ad-6(b)

These records must be maintained during the continuance of the transfer agency appointment for a particular issue, and for one year after the appointment is terminated. The time period in question does not refer to the period of time that the transfer agent is registered.

- Six years, first six months in easily accessible place
 - Cancelled certificates and all accompanying documentation, except legal papers returned to presenter. 17Ad-6(c)
- Easily accessible place
 - Records relating to the fingerprinting of securities industry personnel. Records must be retained for at least three years after the termination of employment of those persons required by SEC Rule 17f-2 to be fingerprinted. 17Ad7(e)(1)
 - Notice pursuant to Rule 17f-2. 17Ad-7(e)(2)

Note: A registered transfer agent that performs transfer agent functions only for itself as an issuer and that receives fewer than 500 "items" for transfer or fewer than 500 "items" for processing during any consecutive six-month period is exempt from having to maintain a Notice Pursuant to Rule 17f-2.

- Retention Requirements Upon Termination of Appointment

When a registered transfer agent stops performing transfer agent services for an issue, the transfer agent's responsibility for maintaining the following records terminates when the records are transferred to the successor transfer agent:

- Daily Log
- Copies of Written Inquiries and Requests
- Records of Active (i.e. unreleased) Stop Orders, Notices of Adverse Claim or Other Restrictions on Transfer
- Copies of transfer or registrar journals
- Documents relied upon to determine that an "item" was received in conjunction with a reorganization, tender offer, redemption, etc.
- Control Books
- Cancelled Certificates

A registered transfer agent that is terminating transfer agent services for a particular issue, or terminating transfer agent activity entirely, can satisfy its recordkeeping and retention responsibilities by delivering these records to the issuer, an outside service bureau, or to a successor transfer agent. If the transfer agent delivers the records to the issuer or an outside service bureau, the transfer agent must obtain a written agreement from the issuer or service bureau. The written agreement must state that the records will be maintained for the required time periods and will be made available to the SEC or ARA as required. No written agreement is required if the records are delivered to a successor transfer agent.

For those records not specific above, a transfer agent that has stopped providing transfer agent services with respect to a particular issue or that has ceased all transfer agent activities must maintain the records as required by 17Ad-7.

- Electronic and Micrographic Recordkeeping

SEC Rule 17Ad-7(f) permits registered transfer agents to utilize micrographic and electronic storage media for keeping and maintaining required records. Micrographic media include microfilm, microfiche and similar methods. Electronic media are digital storage media or systems. Registered transfer agents that utilize these types of recordkeeping systems, however, are required to comply with SEC requirements designed to ensure the security and integrity of the underlying records. Registered transfer agents that use electronic or micrographic media to store records must:

- Provide facilities to project or produce immediately easily readable images of the records. These facilities must be available at all times to the SEC and the appropriate regulatory agency (ARA);
- Be ready at all times to provide the records requested by the SEC or the ARA;
- Create an accurate index of the records. The index must be stored with the records and the index must be available at all times to the SEC and the ARA;

- Establish procedures for assuring the quality and accuracy of the micrographic or electronic recordkeeping system;
- Maintain duplicates of the original records, along with the corresponding index. The duplicate records and index must be stored separately from the original records. Duplicate records can be stored using any storage media permitted, i.e. hardcopy, micrographically, or electronically. The records must be created and maintained in accordance with the requirements set forth in Rules 17Ad-6 and 17Ad-7.

In addition, the storage media must provide the following:

- Ensure the security and accuracy of the records. The storage media must:
 - Incorporate controls that assure the authenticity and quality of the records, by the use of either manual or automated controls;
 - Detect attempts to alter or remove records;
 - Provide a means of recovering altered, damaged, or lost records, regardless of the cause.
- Externally label all removable storage media units with a unique identifier that allows the manual association of the unit with its place and order in the recordkeeping system.
- Identify and internally label each file. The label used should:
 - Be unique;
 - Include the date and time the file was created;
 - Include the date and time the file was last modified or extended;
 - Include a file sequence number when the file spans more than one volume.

Registered transfer agents that use micrographic or electronic recordkeeping systems must have an audit system that tracks the inputting of records, along with changes to any record stored. The results of the audit system must:

- Be available at all times to the SEC and ARA; and
- Be retained for the same time periods as the underlying records.

Registered transfer agents that use micrographic or electronic recordkeeping systems must ensure that the records can be accessed by the SEC or ARA when necessary. Therefore, transfer agents using such media must:

- Maintain, keep current and provide to the SEC or ARA all information necessary to access the records and indexes stored;
- Place in escrow with an independent third party and keep current the following:
 - a copy of the physical and logical format of the electronic or micrographic records;
 - the field format of all the different information types stored;
 - the source code; and
 - the appropriate documentation and information necessary to access records and indexes.

The independent escrow agent must file and undertaking with the SEC and the ARA. The undertaking must be signed by a duly authorized individual and must state:

- [Name of Third Party] hereby undertakes to furnish promptly upon request to the U.S. Securities and Exchange Commission, its designees, or representatives, upon reasonable request, a current copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access the records and indexes of [Name of Transfer Agent]'s electronic records management system."

A registered transfer agent can use a third party to maintain or preserve some or all of the records required by Rules 17Ad-6 and 17Ad-7 in electronic or micrographic form. If a transfer agent uses a third party provider, the third party provider must file a written undertaking to the SEC and the ARA. The undertaking must be signed by a duly appointed individual and must state:

- With respect to any books and records maintained or preserved on behalf of [Name of Transfer Agent], [Name of Third Party] hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the U.S. Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records."

Note that Rule 17Ad-7(f) (6)(ii) states that "Agreement with a third party to maintain your records shall not relieve you from the responsibility to prepare and maintain records as specified in this section or in § 240.17Ad-6." Thus, registered transfer agents need to ensure that required records are being created and maintained and should have policies and procedures to ensure that third party providers are, in fact, maintaining and preserving records in accordance with SEC requirements.

Access to Records Maintained by Outside Service Bureaus, Third Parties or the Issuer

When a registered transfer agent uses an outside service bureau, third party recordkeeping, or the issuer keeps and maintains records, the transfer agent must obtain a written agreement which:

- Specifies that the records are subject from time to time, to reasonable periodic or special examinations by the SEC or the ARA; and
- Specifies that complete, correct, and current hard copies of all records will be furnished to the SEC or ARA upon demand. The records will be furnished at the principal office or at any regional office.