THE **STA**

SECURITIES TRANSFER ASSOCIATION, INC.

Established 1911

April 13, 2016

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Dear Mr. Fields:

Re: Release No. 34-76743, File No. S7-27-15 (“Concept Release”).

On behalf of the Securities Transfer Association, Inc. (“STA”), we want to thank the U.S. Securities and Exchange Commission (“Commission”) and its Staff for the effort taken to produce a thoughtful release that is a first step in modernizing the transfer agent rules in light of the many changes in technology, products, and markets that have occurred since 1975. The thorough nature of the Commission’s work is evident in the 170 separate areas of inquiry and over 600 individual questions that are contained in the Concept Release.

As you are aware, the STA is an organization of professional recordkeepers that interact daily with both issuers and their investors. Founded in 1911, the STA’s membership is comprised of over 130 large and small registered transfer agents in the United States (U.S.) and Canada maintaining the records of more than 100 million registered shareholders on behalf of more than 15,000 issuers (from the largest public companies to small privately held companies). The transfer agents that comprise the membership of the STA primarily are equity transfer agents and range in size from small businesses to a limited number of large institutions that provide the lion’s share of transfer agency services to the corporations listed on national securities exchanges in the U.S.

In addition to advocacy on issues involving the Federal securities laws, the STA works with its members to provide informed comments on tax regulations and state commercial, escheatment and privacy laws, among others. The STA provides a host of other services that are designed to assist its members in complying with the many relevant laws. These include the development of industry guides that reflect best practices. The STA also holds annual and quarterly meetings and webinars in which experts (including

Commission Staff) recently have discussed topics that include annual reporting on Form TA-2, microcap fraud, business continuity, risk management and cybersecurity.

We think it important to note again that the STA, while it has many members that provide services to mutual funds and debt issuers, is primarily comprised of equity transfer agents. As the Commission recognized in the Concept Release, the interaction with shareholders and the services offered by our members are different, and more limited, than those provided by transfer agents for open-end mutual funds. We believe that any concerns that the Commission may have regarding activities unique to mutual fund transfer agents should be narrowly tailored and addressed separately. Our comments, therefore, do not speak for transfer agents of open-end mutual funds or those that provide services to debt issuers. We also understand that other associations may speak directly to matters that affect bank transfer agents and the issuer community.

Our response is roughly organized in four sections. At the outset, we have addressed broad topics that we believe need additional clarification. Secondly, we address the proposals covered by the Advanced Notice of Proposed Rulemaking. We then address more of the general points raised in the Concept Release. We also have attached an exhibit that contains more specific comments on potential rule amendments. Separately, we would like to discuss with the Commission's Staff the possibility of publishing FAQs that would address the most common questions asked by our members regarding the interpretation of specific items on the Forms TA-1 and TA-2.

I. Overview

The STA greatly appreciates the hard work of the Staff and Commission in preparing the Concept Release. We want to particularly note that the Concept Release provides an excellent, and thorough, background of the transfer agent industry.[1] Many of the issues raised in the Concept Release have been the subject of ongoing discussions with the Commission and its Staff for a number of years. A comprehensive review of the transfer agent rules is necessary to address the pragmatic issues that have arisen since the majority of the rules were promulgated over thirty years ago. In addition to technology changes and the emergence of book entry issuance that has supplanted certificates, the share volumes held directly on the register maintained by transfer agent have declined significantly with the emergence of the Depository Trust Company ("DTC") and broker-dealer accounts.

There also has been tremendous consolidation in the industry. There now are three distinct groups of commercial transfer agents that provide a variety of record keeping services to corporate issuers. In our experience, an issuer will select a transfer agent that can meet its shareholder/employee servicing needs based on pricing and reputation. For the most part, small transfer agents (servicing less than 100 thousand shareholders), can meet the needs of the most basic issuers who are typically not listed on an exchange. These basic services include, shareholder record keeping, transfers of ownership, account updates, proxy distribution and tabulation, corporate actions (*i.e.*, mergers, stock splits, acquisitions for stock or cash), abandoned property reporting and tax reporting. Pricing at the small agent level is negotiated with the issuer and in many cases the issuer pays very little for services while the shareholder incurs charges when they request a transfer. Medium size transfer agents (servicing between150 to 500

[1] Some of our comments are written for an audience less familiar with the issues confronting transfer agents than the Commission's Staff responsible for transfer agent regulation, including the Examination Staff.

thousand shareholders) typically have a mix of listed issuers, including Over the Counter ("OTC") issuers. They provide the same types of services as the small agents.

Because of consolidation, there now are five large transfer agents (servicing 1.5 to 18.8 million shareholders) that lead the industry. Four of the five are financial institutions and are subject to regulatory oversight from banking regulators as well as the Commission. Competition in this category is active and, because of scale and diversity of products and services, larger issuers usually will solicit bids only from these agents. In addition to the services described above for small agents, large agents offer Direct Stock Purchase Plans ("DSPP"), Employee Stock Purchase Plans ("ESPP"), Dividend Reinvestment Plans ("DRP"), and other employee plan services. Because four of the five are financial institutions, they can also offer escrow services in conjunction with a paying agent service. Large agents tend to service exchange listed issuers, as well as smaller issuers.

Before beginning a more detailed discussion of the issues presented by the Concept Release, we want to mention that we fully support the goals of the Commission and its Staff. In particular, we believe that the modernization of many aspects of the transfer agent rules is long overdue. As you will note, we are in favor of guidance or rulemaking efforts that will provide additional safeguards for monies or securities controlled by the transfer agent, require written contracts, and encourage or require transfer agents to engage in ongoing assessment of the risks relevant to their operations, including those related to business continuity and information security standards, now commonly referred to as cybersecurity. We believe that these items should be the top priority of the Commission.

We realize the challenge faced by the Commission and its Staff in drafting a broad statement in light of the many different types of services provided by transfer agents and the different segments of the market they serve. In developing new rules, we believe the Commission must consider the unique operations of bank versus non-bank transfer agents; transfer agents that provide services to smaller issuers versus large public companies versus open-end mutual funds versus debt issuers; issuers that act as their own non-commercial transfer agent; and, transfer agents that offer plan administration, paying agent, or other services that are not among the enumerated transfer agent functions in Section 3(a)(25) of the Securities Exchange Act of 1934 ("Exchange Act"). Thus, while portions of the Concept Release are very broad, we are pleased that the Commission and its Staff do not intend to take a "one size fits all" approach in proposing rules in the future.

II. Benefits and Costs

While we are in favor of changes that will both modernize the transfer agent rules and protect issuers and shareholders, we believe that any changes must be carefully considered in light of their benefits and costs. We understand that this will be a difficult undertaking that involves a balancing of policy interests.

As background, we think that it is important to note that equity transfer agent services are administrative in nature. In addition, in many cases transfer agent fees are paid entirely by the issuer. Most equity transfer agents already operate on thin margins. Their services frequently are published for bid or negotiated with the procurement departments of issuers. For this reason, fees are already highly competitive.

The STA believes that requirements of the Commission that increase the costs of the transfer agent will ultimately be passed on to the issuer or shareholders. As the Commission recognizes, these costs may take form of indirect costs such as increased labor expenses to hire more skilled workers, additional training, legal fees, the gathering of data and regulatory reporting, development and imposition of safeguards to prevent liability, as well as more direct costs in the form of insurance and capital, printing and mailing, etc. Regardless of the source, costs that must be absorbed by transfer agents as a result of new regulations may make their operations uneconomical and lead to further consolidation in the industry.

With respect to any regulations that increase the cost of servicing individual shareholder positions it is important to note that, unlike broker-dealers, a transfer agent does not hold "accounts" or have "customers." This means that multiple securities are not held in a single "account," as at a broker-dealer, and the transfer agent or issuer cannot charge its customers minimum account maintenance fees. Equity issuers, unlike open-end mutual funds, also do not have control over the minimum number of shares that a shareholder may own.[2] Thus, any new requirement related to mailing account statements or confirmations ultimately will be passed on to the issuer who will bear the full cost for each registered shareholder. In many cases, issuers will have to pay service fees for shareholders with low value holdings.

We believe that the Commission should carefully consider the economic effect that any increase in the cost of transfer agent services may have, particularly in light of the potential impact on both smaller transfer agents, that cannot absorb expenses, and smaller issuers who will be forced to divert funds from operating capital. Ultimately, we believe that increased expenses may encourage issuers to take action to reduce small shareholder positions, or to develop ways to pass the expenses onto shareholders.

The Commission also should be sensitive to the fact that unlike broker-dealers or investment advisers, services offered by registered transfer agents also may be offered by unregulated entities. For example, many of the services discussed in the Concept Release, such as paying agent services, are not among the enumerated "TA Functions" in Section 3(a)(25) of the Exchange Act and may be offered by unregistered entities as well. Similarly, the JOBS Act has created significant opportunities for entities to offer transfer agent services to issuers of "non-Qualifying Securities."[3] These entities also are not required to register with the Commission and are not subject to Commission regulation. For this reason, the Commission should weigh the fact that any unnecessarily burdensome or costly regulations are likely to create barriers to entry that both will discourage entities from registering as transfer agents, and that will make registered transfer agents uncompetitive in these markets.[4] The STA believes that neither alternative would benefit shareholders.

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[2] For example, unlike open end mutual funds that can establish a minimum dollar investment amount, an equity shareholder may own a single share, or even a fractional share of an issuer.

[3] The term "Qualifying Securities" is defined in the Concept Release, but generally includes exchange listed securities.

[4] Disparity in costs among registered transfer agents also may be attributable to unclear legal standards, with the result that transfer agents that adhere to higher standards may be less competitive.

III. The U.C.C. and Other Laws Also Govern Transfer Agent Activity

We also think that it is important to be mindful of the fact that, in addition to the Federal securities laws, transfer agents are also subject to many other regulations that may present difficult conflicts of law. For example, as the Commission is aware, transfer agents are subject to provisions of the Uniform Commercial Code ("U.C.C.") with respect to the state in which the issuer is incorporated. These laws define the rights and obligations of transfer agents in connection with the performance of their duties on behalf of issuers. The U.C.C. provisions are just as significant to transfer agents as the Commission's regulations, since they govern the day-to-day operations of the transfer agent and can be a significant source of liability.

In addition to the U.C.C., bank transfer agents must comply with the standards imposed by bank regulators, including the Office of the Comptroller of the Currency ("OCC") for national banks, the Federal Reserve Board, the FDIC, as well as state trust company regulators in many cases. These regulators often examine bank transfer agents on a twelve to eighteen month basis. All transfer agents, however, also are subject to laws relating to privacy of shareholder information, Federal and state tax reporting, escheatment, privacy, OFAC and other regulations. Although the Concept Release reflects the Commission's awareness of these different laws, we would encourage the Commission to give careful consideration to potential conflicting regulations in crafting any rule proposals.

IV. The Role of Transfer Agents

A. A Transfer Agent is an Agent of the Issuer – the Fully Disclosed Principal of the Transfer Agent.

It is important to preface our comments by making the simple observation that a transfer agent is an agent of the issuer – not the shareholder. The issuer is the fully disclosed principal of the transfer agent. The role of the transfer <u>agent</u> is reflected in the definition in Section 3(a)(25) of Exchange Act which states, in part, that a transfer agent is one that performs enumerated tasks "on behalf of an issuer…" This distinction is extremely important in understanding and outlining the duties of the transfer agent, and particularly the *duty of loyalty* and the *duty of care* under state common law agency principles when it is performing "TA Functions." State law holds that it is the issuer – not the transfer agent – that has a fiduciary obligation to shareholders.[5]

Under the U.C.C., the transfer agent generally is legally obligated to follow the instructions of the issuer; and it only rarely is allowed to substitute its judgment for that of its principal. The U.C.C. also requires the transfer agent to act "in good faith and due diligence in performing his functions".[6] Transfer agents that do not conform their conduct to the requirements of the U.C.C. frequently are the subject of shareholder litigation. These laws can, and do, present transfer agents with difficult practical choices in complying with the Federal securities laws.

As we discuss later, disputes occur most often between issuers and transfer agents because the transfer agent has difficulty following the issuer's instructions while trying to honor the Commission's demand that it monitor for fraud or illegal issuance or transfers of securities. The issuer is primarily liable for any unregistered distribution of its securities, unless there is an

[5] Issuers may not have the same obligation to debt holders.

[6] U.C.C. Section 8-406(1)(a).

exemption from registration under the Securities Act of 1933 ("1933 Act"). Under the U.C.C., it is the duty of the transfer agent to remain neutral in disputes between the issuer and shareholder over removal of restrictive legends.[7] However, Article 8 – 407 of the U.C.C. imposes on transfer agents the same liability to shareholders for the specific functions the transfer agent undertakes to perform, as the issuer has in performing these functions itself, such as processing items presented in good form in a timely manner.

B. Conflicts of Interest

1. General

Numerous references in the Concept Release speak of "conflicts of interest" without a clear explanation of the basis for these conflicts or how they would arise. Under common law and the U.C.C, agents have a duty of loyalty to their principal. Traditionally, a conflict of interest arises when an agent seeks to serve two masters, including placing its own self-interest above its principal – the issuer (not the shareholder).[8] Under state law, it is the issuer that owes certain fiduciary obligations to shareholders, not the transfer agent.

Because their *duty of loyalty* generally is owed to the issuer, not shareholders, transfer agents are different than either broker-dealers or investment advisers. Transfer agents also have a very different practical relationship with shareholders. For example, it is the issuer – not the shareholder – that selects the transfer agent. Shareholders do not choose the transfer agent like they may select a broker-dealer or investment adviser. Moreover, unlike broker-dealers or investment advisers in most instances it is the issuer – not the shareholder – that pays the transfer agent's fees for the services that it provides. To the extent that conflicts of interest arise, then agency law principles would require that the transfer agent disclose those conflicts to the issuer; and it is the issuer (and not the transfer agent), that would disclose relevant conflicts to shareholders.

2. Equity Ownership of Issuers and Conflicts

We would generally encourage the Commission to consider references to "conflicts of interest" in light of common law agency principles and the U.C.C. noted above.[9] However, in response to specific questions raised in the Concept Release, we understand that the Commission is concerned about transfer agents who receive stock in lieu of cash payment for providing transfer

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7 *See, e.g.* Bender v. Memory Metals, Inc., 514 A.2d 1109 (Del. Ch. 1986).

8 In this sense, we also are confused by portions of the Concept Release that seem to equate the Form TA-2 with Part 2 of Form ADV that, under the Investment Advisers Act of 1940 ("Advisers Act"), must be provided to advised accounts. As the Commission is aware, the Form TA-2 is filed with the Commission on Edgar and there is no requirement that it be provided to shareholders or issuers. Nor do we suspect that many issuers or shareholders review the Edgar database today for the Forms TA-2 of transfer agents. Moreover, Form TA-1 may be filed either with the Commission or a bank regulator, depending on the type of transfer agent. In the latter case, the Form is a very simple two page filing, approved by the FFIEC that is made in writing with banking regulators.

9 Section 8-406 of the U.C.C., requires the transfer agent to process the recordation of transfers of securities in the manner required by the U.C.C., and also imposes on the transfer agent a responsibility to the issuer to perform its transfer agency functions in good faith and with due diligence.

agent services. Most transfer agents do not take ownership positions in the issuers that are their customers. However, the practice of taking stock for services is not uncommon with entrepreneurial ventures. For a variety of reasons, we understand that this practice may occur in some instances among transfer agents in the microcap market.

We also understand that in some cases transfer agents that are affiliated with OTC market makers may receive stock compensation. In their capacity as transfer agent, they may have access to information, such as forthcoming conversions, that could affect the market price of securities. While we express no view on either of these practices, we believe that the Commission should carefully analyze whether they present an undisclosed conflict of interest for the transfer agent, or whether instead there is another concern under the Federal securities laws that is present. We believe that the Commission and the Financial Industry Regulatory Authority ("FINRA") have sufficient legal authority presently to address practices that they consider to be problematic.

C. Transfer Agents are Professional Record Keepers: They do not "Carry" "Customer" Accounts.

We think it also is important to clarify the role of transfer agents in light of the many references in the Concept Release that appear to be largely based on regulations and concepts that apply to broker-dealers or investment advisers. In particular, the distinctions between broker-dealers and transfer agents are relevant with respect to the risks posed by transfer agent activities, as well as the disclosure obligations of transfer agents.

Transfer agents are professional recordkeepers and their "back office" role in recording transactions as part of the settlement process is far more limited than the role of broker-dealers. Specifically, transfer agents perform the ministerial function of recording share ownership, as agreed upon with the issuer (their principal). They simply perform a ministerial function to facilitate settlement. This process is wholly apart from the sale of securities or the exchange of monies between the buyer and seller that are typical brokerage functions. Moreover, as emphasized later, shareholders are not the "customers" of transfer agents and transfer agents also do not "carry" accounts in the same sense as broker-dealers.[10]

Transfer agents also do not "recommend" securities transactions, solicit transactions, or assist in drafting any disclosure documents. In fact, they generally do not know what disclosure has been provided by the issuer, or seller, much less whether it is accurate or not. In fact, most communication regarding transfers occurs in writing after the shareholder has purchased a security. When transfer agents offer plan services in reliance on the exemption from broker-dealer registration in Section 3(a)(4), and maintain call centers, they are prohibited from "solicit[ing] transactions or provid[ing] investment advice."

V. Suitability and Due Diligence

The STA particularly appreciates that the Commission and the Staff have offered commenters the opportunity to provide their views on transfer agent's duties and responsibilities with respect to

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10 Transfer agents are recordkeepers; they do not actually hold securities as a custodian for a registered holder. Their vaults generally hold only blank or cancelled stock certificates. Certificates reflecting actual ("live") securities are held by the registered shareholder. Moreover, while they perform the administrative task of keeping a record of ownership for the issuer - they do not execute or settle transactions. The records that they keep as agent for the issuer are the issuer's records.

compliance with Federal securities laws in connection with preventing violations of Section 5 of the 1933 Act as well as microcap fraud. While the Commission has on occasion taken action against transfer agents that participated in distributions that violate Section 5 of the 1933 Act, in recent years the Commission and its Staff have sought to impose greater responsibilities on transfer agents to prevent issuer fraud.

This new duty is similar to the suitability obligations of broker-dealers and investment advisers. However, unlike broker-dealers or investment advisers, as noted earlier, the principal of the transfer agent is the issuer and not the shareholder. Obligations imposed on broker-dealers derived from agency law, or under the "shingle theory,"[11] or obligations imposed on investment advisers under fiduciary law[12] are not applicable. The transfer agent is not a "fiduciary" of the shareholder, has no "suitability" obligation, and owes no "duty of care" to shareholders, except under the U.C.C.

Even assuming that a transfer agent was an agent of the shareholders, and thus had a general due diligence or suitability obligation, the duties that the Commission and its Staff have suggested exceed those imposed on broker-dealers. For example, underwriters in registered offerings have an exclusion from liability under Section 12 of the 1933 Act, if they perform reasonable due diligence of the issuer's disclosure. However, unlike underwriters, transfer agents do not "offer" or "sell" securities and therefore are not subject to Section 12.[13]

Broker-dealers also have an obligation under Section 10(b) and15(c) of the Exchange Act, and FINRA regulations, to "know the security" whenever they make a recommendation – whether in the secondary or primary market.[14] However, both FINRA and the Commission have stated that broker-dealers do not have due diligence or suitability obligations with respect to a security when they are simply acting as "order takers" (often deemed "unsolicited transactions") and do not make a recommendation.[15]

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[11] The shingle theory holds that when a broker-dealer holds out its shingle inviting new customers to do business, it impliedly represents that it will deal fairly with those customers, and, therefore, any unfair dealing is a breach of this implied representation and a violation of the antifraud provisions. Hughes v. SEC, 174 F.2d 969, 974-76 (D.C. Cir. 1949) (noting broker's duty of disclosure); In re Norris & Hirshberg, Inc., 21 S.E.C. 865, 896 (1946), aff'd, 177 F.2d 228 (D.C. Cir. 1949). Transfer agents do not hold out a shingle that shareholders rely on.

[12] SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180 (1963).

[13] Liability under Section 17 of the 1933 Act also is predicated on an "offer or sale" of securities.

[14] Compare, *Unregistered Resales of Restricted Securities*, FINRA NTM 09-05 (January 2009) (Referring to sales activities of broker-dealers, FINRA noted "[f]irms typically serve as the channel of distribution through which issuers, affiliates and promoters can access the public securities markets. Firms that do not adequately supervise or manage their role in such distributions run the risk of participating in an illegal, unregistered distribution.")

[15] *See, e.g., On-Line Suitability,* NASD (now FINRA) Notice to Members 01-23 (April 2001) ("A member or associated person who simply effects a trade initiated by a customer without a related "recommendation" from the member or associated person is not required to perform a suitability analysis, although members may elect to determine whether a security is suitable under such circumstances for their own business reasons."); *SEC Announcement of Final Rule on Sales Practice Requirements for Certain Low-Priced Securities*, Release No. 34-27160 (Aug. 22, 1989) ("[T]he NASD and other suitability rules have long applied only to 'recommended' transactions.").

In this same vein, the Courts consistently have found that clearing firms do not have any antifraud liability if they simply perform the administrative function of processing securities transactions that they do not recommend – even though they, like the NSCC, are "necessary participants" in a transaction. For example, the courts generally have found that a clearing broker engaged in its routine clearing functions is performing merely ministerial tasks and is not liable for the wrongdoing of an introducing broker.[16] Instead, the courts have required a showing that the clearing firm provide "substantial assistance" in connection with the fraud in order to prove liability.[17]

As discussed later, we believe that the role of transfer agents in recording transfers to facilitate changes in ownership is analogous for Federal securities law purposes to the administrative functions of clearing firms in the settlement process. In both cases, the role of the clearing firm or transfer agent is a "back office" function and arises only after the investment decision has been made by the purchaser and seller. Processing transfers, like clearing transactions, is an administrative, ministerial function that does not involve any solicitation or recommendation.[18] In light of the clear standards applied to broker-dealers, investment advisers, and clearing firms,

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16 Transfer agents also should not have to know whether shareholders are engaging in a transaction that is suitable for them.

17 *See, e.g.*, Levitt v. J.P. Morgan Securities, Inc., (2d. Cir. March 15, 2013) (Noting as follows::

> …in cases where a clearing broker was simply providing normal clearing services, district courts have declined to "impose[] liability on the clearing broker for the transgressions of the introducing broker." Fezzani v. Bear, Stearns & Co., 592 F. Supp. 2d 410, 425-26 (S.D.N.Y. 2008); see also, e.g., Cromer Fin. Ltd. v. Berger, 137 F. Supp. 2d 452, 470 (S.D.N.Y. 2001) ("A clearing broker does not provide 'substantial assistance' to or 'participate' in a fraud when it merely clears trades."); In re Blech Sec. Litig., 961 F. Supp. 569, 15 584 (S.D.N.Y. 1997) ("[P]rimary liability [under § 10(b)] cannot attach when the fraudulent conduct that is alleged is no more tha[n] the performance of routine clearing functions."). The district courts have so held even if the clearing broker was alleged to have known that the introducing broker was committing fraud, Fezzani, 592 F. Supp. at 425….. (footnotes omitted).

18 *See*, Morgan, Richard J., *Reconciling the "Conflicting" Duties of Transfer Agents and Issuers Under the Securities Act and the Uniform Commercial Code*, Ohio State Law Journal: Volume 42, Issue 4 (1981), stating:

> While the transfer of securities in a purchase or sale transaction is accomplished by the parties to the transaction or their brokers, the transfer agent's main function is to implement the recordation of these transfers on the issuer's books and records and to do so quickly so that the records of the issuer, the brokers, and their customers as to the ownership of the securities are kept up to date…..
>
> In performing this basic role, the transfer agent's activities are ministerial in nature, not judgmental. Because the transfer agent, as an agent of the issuer, is generally bound to follow the instructions of its principal, rarely brings its judgment to bear on whether or not transfers should or should not be recorded, or whether or not legends restricting transfer should be imposed or removed. On matters such as these it usually follows the directions of its principal, as an agent is bound to do.
>
> Although it has been asserted by certain commentators' that the duties of the transfer agent are more than ministerial, this assertion fails to recognize the agency relationship between the issuer and the transfer agent and the effect of that relationship upon the nature of the agent's duty: as an agent the transfer agent can rarely, if ever, substitute its judgment for the instructions of its principal. (Footnotes omitted).

we encourage the Commission to undertake a careful legal analysis of the duty of transfer agents to perform any due diligence review to prevent fraud.[19]

A. A Due Diligence Standard Will Increase Costs.

From a policy perspective, the Commission also should take into account the administrative nature of the transfer operations and carefully consider the likely costs of any new "monitoring" standard of care on issuers and transfer agents; as well as the potential impact on settlement efficiency. Larger transfer agents may process the removal of legends 50,000 times a year. Any regulation that requires due diligence of the issuer would be unnecessarily expensive and would likely be an impediment to efficient settlement. The Commission should carefully consider how compliance with any expanded duties would be implemented since it could fundamentally change the way that services are provided and the expense structure of the industry.

Transfer agent employees who engage in the day-to-day processing of transactions are trained to perform administrative tasks and are not expected to have a deep understanding of the securities laws or finance. They are not investment bankers, financial analysts, investment advisers, securities lawyers, or brokers and are not compensated as such. At a minimum, any expanded obligations placed on registered transfer agents, similar to a placement agent's or underwriter's due diligence review, or any liability incurred by transfer agents under these theories, would force transfer agents to substantially increase their fees to reflect all of the costs of a due diligence review and any potential liability.

Expenses associated with training or upgrading staff, conducting credit[20] and criminal background checks for issuers' officers and directors and shareholders requesting legend removal, and obtaining and reviewing publicly available news articles or information on issuers or principals would be passed on to issuers.[21] We believe that these added requirements and costs ultimately would cause transfer agents to reject business from smaller and crowdfunding issuers, and make the services of registered transfer agents uncompetitive with unregistered entities offering the same services to issuers of non-Qualifying Securities (as defined in the Concept Release).

B. New Rules are not Necessary

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19 For example, we note that the Commission undertook such an analysis in connection with municipal underwriters and found that a due diligence obligation rested on an "implied recommendation." *See*, Exchange Act Release No. 34-26985 (June 28, 1989); see also, Exchange Act Release No. 34-26100 (Sept. 22, 1988) (Relating to the adoption of Rule 15c2-12 under the Exchange Act and noting that by participating in an offering, an underwriter makes an implied recommendation about the securities it is underwriting. By holding itself out as a securities professional and, especially in light of its relationship with the issuer, a municipal underwriter also makes a representation that it has a reasonable belief in the truthfulness and completeness of the key representations made in any disclosure documents used in the offering.). The STA notes that, unlike underwriters, transfer agents do not draft disclosure documents nor solicit transactions.

20 The STA would strongly object to any requirements that would subject transfer agents to the additional regulations under the Fair Credit Reporting Act.

21 Some transfer agents may presently engage in limited diligence of an issuer as part of the onboarding process. However, these reviews generally are undertaken for business and risk management reasons.

1. The "Substantial Factor" Test.

Closely related to the previous discussion, the Commission indicated in the Concept Release that it intends to propose a new rule that will make a transfer agent, and its officers and directors, liable for a distribution that it "knew or should have known" was illegal. The STA would strongly object to any rule that would make a transfer agent liable based on a negligence standard that assumes that transfer agents have a duty to police transactions for fraud or illegal distributions. While the Concept Release cites *settled* Commission enforcement cases – we believe that the common sense standard for determining liability is whether, as discussed below, the transfer agent was a "substantial factor" in the illegal activity.

As we discuss in more detail later in this comment letter, the tasks associated with transfers and new issuance of securities are performed by administrative staff of a transfer agent for only nominal fees. Moreover, transfer agents are in a difficult position when confronted with their obligations under the U.C.C. to process transactions in a timely fashion and their obligation to comply with the Federal securities laws. From a policy and legal perspective the correct standard of care, which is similar to that imposed on clearing brokers, should be that articulated in a recent Opinion by the Ninth Circuit Court of Appeals[22] involving unregistered offerings. In this decision, the Court stated:

> "*[w]e reject the SEC's contention* that [the transfer agent and its owner] are necessarily liable under Section 5 by virtue of their position as [the issuer's]… transfer agent." (Parentheticals added).

The Court also cited Geiger v. SEC, 363 F.3d 481, 487 (D.C. Cir. 2004) ("[N]ot everyone in the chain of intermediaries between a seller of securities and the ultimate buyer is sufficiently involved in the process to make him responsible for an unlawful distribution." (Internal quotation marks omitted)).

In the STA's view, transfer agents should not be liable for participating in an illegal distribution if they act in good faith and only perform routine transfer agent functions. Consistent with this view, the Ninth Circuit explained in the same decision that the test for liability under Section 5 of the 1933 Act is a "substantial factor" test that requires more than "but for" causation.[23] The Court concluded:

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[22] SEC v CMKM Diamonds, Inc. and 1st Global Stock Transfer LLC, et. al Nos. 11-17021, 11-17025 (9th Cir. Sept. 10, 2013) ("*CMKM Diamonds Decision*").

[23] The Court also noted:

> We have previously stressed that the substantial factor test requires more than a finding of "but for" causation, explaining:
>
>> Prior to the issuance of a security, numerous persons perform mechanical acts without which there could be no sale. For example, a printer may prepare key documents or a bank may advance cash to a customer upon the customer's presentation of an instrument and then pass the instrument to another person. Both would satisfy a "but for" causation test, but these acts nonetheless do not render the defendants sellers. Before a person's acts can be considered the proximate cause of a sale, his acts must also be a substantial factor in bringing about the transaction.

> "That [the transfer agent and its owner]… issued large quantities of shares without a restrictive legend after receiving two attorney opinion letters *is insufficient*, in and of itself, to establish that [the transfer agent and its owner]… were substantial factors as a matter of law." (Parentheticals added and emphasis supplied).[24]

The fact that the transfer agent in this case requested, and received, opinion letters that it relied on in good faith is important.[25] We believe that good faith reliance on legal opinions or representation by authorized officers of the issuer should provide transfer agents with a defense to claims by the Commission under Section 5 of the 1933 Act. As we explain later, we think that a non-exclusive "safe harbor" for transfer agents that rely in good faith on legal opinions, in particular, would address concerns of the transfer agent community and promote the goals of the Commission.

2. Transfer Agents Should Not be Liable for "Omissions."

The Commission also stated that it intends to propose a rule that would prohibit a transfer agent, and its officers and directors, from making false or misleading statements "or omissions" in connection with various activities. We share the Investment Company Institute's ("ICI") view,[26] which suggests that the Commission presently may have sufficient authority under Rule 10b-5 of the Exchange Act, and other provisions, to address situations in which a transfer agent "knowingly" aids and abets a violation of the law by an issuer or seller, or makes false statements regarding an issuer. However, we also note that liability for *omissions* under Rule 10b-5 of the Exchange Act generally is premised on a *duty to speak*.

Regarding Rule 10b-5, the Supreme Court famously noted in Chiarella v. United States, 445 U.S. 222, 230 (1980):

> [w]hen an allegation of fraud is based upon nondisclosure, there can be no fraud absent a duty to speak" and that such a duty arises only when one party has information "that the other is entitled to know because of a fiduciary or similar relation of trust and confidence between them.

As we indicated earlier, the transfer agent is an agent of the issuer and owes no agency duty of loyalty or care to shareholders that should give rise to any "obligation to speak "in connection with its transfer agent activities. A new rule that would make a transfer agent specifically liable for "omissions" not only is impractical but would create unintended mischief, particularly in light of the wide variety of issuers served by the transfer agent community; and, the diverse nature of

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24 *Id*.

25 As we note later, the transfer agent in this case received an initial opinion then, out of caution, paid for a second opinion from a different law firm.

26 *See*, Comment letter of the Investment Company Institute (dated March 10, 2016). The ICI stated that it:

> [s]upports the Commission adopting an anti-fraud rule for transfer agents provided it documents why Rule 10b-5 is insufficient to sanction fraudulent conduct by transfer agents and determines it has legal authority to adopt such a rule.

both public and non-public, material and non-material, information that transfer agents receive in connection with transactions.

As we have emphasized, transfer agents are not broker-dealers and do not solicit transactions or recommend any securities. Their role is simply to process transactions after an "investment decision" has been made and a binding contract has been formed between the purchaser and seller. Moreover, transfer agents may not have been retained at the time the securities first were offered to the public and typically are not aware of the disclosures already made between purchaser and seller of securities.[27] Thus, generally they cannot know whether any specific information, true or false, has been disclosed elsewhere.

The STA would strongly object to any rule that imposes an affirmative diligence or disclosure obligation on transfer agents.[28] It is not clear to us why transfer agents, who are back-office recordkeepers, should have obligations that exceed those imposed on broker-dealers and their clearing firms. We would encourage the Commission to carefully consider this issue in light of the nature of transfer agent services.

VI. Employees of Transfer Agents are Not the Same as Registered Representatives

A number of questions have been raised in the Concept Release that are related to the individual employees of transfer agents. Consistent with the views expressed above, the STA believes that it is important to distinguish between the activities performed by employees of equity transfer agents and those performed by registered representatives of broker-dealers. Employees of broker dealers, even those who take orders, generally communicate over the phone or electronically and must be knowledgeable about markets and the securities industry to ensure that investors' orders are entered correctly and that investors are not misinformed.

However, as we have emphasized earlier, the function of transfer agents largely is a ministerial, "back office" function relating solely to the proper recordation of transactions. In contrast to broker-dealers, most of the communication with shareholders, particularly with respect to transfers, is in writing. Correspondingly, the work performed by transfer agent employees largely is administrative, involving data entry, and does not entail executing transactions or providing investment advice. Moreover, transfer agent employees are not-compensated on the basis of transactions.

For example, the most fundamental of transfer agent service offerings, the processing of stock transfers, is delineated into a series of administrative steps intentionally designed to remove all discretion from processing. Employees are tasked with receiving and recording the date/time of presentments received,[29] verifying the authenticity of Medallion Guarantee stamps, reviewing documents for completion and clarity, keying the transfer request into the system of record and

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27 Along the same line, it also is important to note that an issuer can change transfer agents, without notice to shareholders, and it is not reasonable to expect that the identity of a particular transfer agent is likely to be a material factor in any shareholder's investment decision.

28 The STA also suggests that any rulemaking by the SEC in the area of microcap fraud should be limited to issuers that are not listed on an exchange. The STA believes that issuers listed on national securities exchanges are less likely to be involved in the types of activities that the SEC is attempting to prevent.

29 Some agents use scanning technology rather than physically stamping packages.

recording on the master securityholder file, stamping/perforating certificates cancelled, printing stock certificates or statements, and delivering new certificates or statements as directed by a presenter.

Other core transfer agent services also are broken into ministerial tasks: stock issuances and cancellations, lost certificate replacements, address changes, proxy tabulation, issuer reports and account statement generation, interfacing with the DTC, corporate action processing, dividend payments, etc. In every instance, employees follow a series of prescribed steps to carry out instructions they receive from an issuer, shareholder, broker or intermediary. Any requirement for the employees to make subjective decisions is minimized, if not altogether eliminated, in any of these processes.

Transfer agent employees receive the policies and training necessary to be successful in their job functions. However, they are not expected to be investment bankers, brokers, financial analysts or to have a nuanced understanding of the securities laws. They also are subject to ongoing oversight by their employer to ensure that relevant standards are met. The level of oversight, however, depends on the function performed by each employee and the transfer agent's assessment of any potential risks. Thus, the STA also does not believe that any higher educational requirements or a formal ongoing education program is necessary. In our view, these requirements would be unduly burdensome and costly, while offering little additional benefit in terms of investor protection.

While in some cases transfer agents perform security checks on employees, the STA also does not see any benefit from requiring transfer agent employees to be subject to universal background checks or making the employees register with the Commission. All transfer agents have to fingerprint employees with limited exceptions, which includes, by default, a background check. However, a further Federal background check may be problematic due to the different state employment laws that may be applicable. The STA believes that the current focus under the transfer agent rules on controls and safeguards to prevent theft is appropriate.

VII. Plan Administration Should Not Require Broker-Dealer Registration

Related to the Commission's analogy to broker-dealer regulations is the Commission's reference to the exemption from broker-dealer registration afforded to bank transfer agents in connection with their administration of various types of plans. We believe that the specific exemption from broker-dealer registration for bank transfer agents reflects a Congressional determination that regulation and oversight by bank regulators provided a sufficient safeguard to protect plan participants. Bank transfer agents currently look for guidance regarding the scope of their transfer agent activities both in terms of the express exemption in Section 3(a)(4) of the Exchange Act, as well as at the Commission Staff's no-action letters to the STA.[30] which are referred to in the Exchange Act exemption.

In our view, the services offered by bank transfer agents already are adequately regulated by banking regulators. Efforts to impose "broker-dealer-like" regulatory requirements over the activities of bank transfer agents administering plans would subvert the intention of Congress in this area. We do believe, however, that non-bank transfer agents should be able to offer plan

[30] *The Securities Transfer Association, Inc.*, SEC No-Action Letter (September 14, 1995) and *The Securities Transfer Association, Inc.*, SEC No-Action Letter (October 24, 1997).

services similar to bank transfer agents; if they are subject to regulatory requirements that are equivalent to those which apply to bank transfer agents.

VIII. Paying Agent and Other Services

A. Types of Services Covered

As the Commission notes in the Concept Release, TA Functions are defined in Section 3(a)(25) of the Exchange Act as services engaged in on behalf of an issuer that includes: "(A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance (i.e., a registrar); (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by bookkeeping entry without the physical issuance of securities certificates."

The Concept Release contains multiple questions relating to the expansion or clarification of the Commission's regulatory authority with respect to different types of services offered by transfer agents. Specifically, the Commission has requested comment with respect to paying agent activities,[31] tender agent, subscription agent, conversion agent, escrow agent and plan administration. In addition, the Commission has requested comment on the Staff position regarding non-Qualifying Securities as well as the extraterritorial application of the transfer agent regulations.

As the Commission is aware, paying agent and other services are not enumerated activities that require transfer agent registration. However, Rule 17Ad-13 already requires that an independent accountant annually review dividend disbursement and certain paying agent activities. Any expansion of the Commission's oversight of these activities – even within registered transfer agents – raises jurisdictional issues that should be carefully vetted.[32] Moreover, entities that are not subject to the Commission's oversight may offer these services and would not be subject to any Commission regulation. For this reason, the STA would respectfully oppose any new regulations designed to address paying agent or other activities not enumerated in Section 3(a)(25) – if they would be costly to comply with and make transfer agents uncompetitive.

B. Non-Qualifying Securities

We also note that the Commission has requested comment on the Staff position regarding the application of its rules to transfers of non-Qualifying Securities. Although not fully articulated in the Concept Release, this position is based on a release issued by the Commission in 1980 ("1980

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[31] For example, both with respect to safeguarding of funds and securities, the Commission indicates that its concerns relate to paying agent activities.

[32] We note that the Commission cites the Committee Report that accompanied Section 17A(d)(1) of S.249, the precursor to Section 17A(d)(1) of the 1975 Amendments. Specifically a statement that Congress intended to ". . . empower[] [the Commission] with broad rulemaking authority over all aspects of a transfer agents' activities as transfer agent." (Emphasis supplied). *Citing*, Senate Report on Securities Act Amendments of 1975, S. Rep. No. 94-75 (1975) at 57. Our review of this citation suggests that the Commission only is empowered to adopt rules relating to "transfer agent activities" as defined in Section 3(a)(25). We also note that more recently, when it chose to address paying agent activities, Congress specifically added language to the Exchange Act to achieve this purpose. Compare 17A(g) of the Exchange Act (giving the Commission limited jurisdiction over paying agent activities).

Release").[33] In the 1980 Release, the Commission attempted to provide answers to routine questions about its new transfer agent regulations. With respect to the item processing rules and statistics reports required by the Exchange Act, the Commission stated that all securities transactions processed by the registered transfer agent must be included, regardless of whether or not those transactions occurred in Qualifying Securities. Thus, once registered, the Commission's statement has been interpreted by the Staff to mean that transfer agents must abide by the transfer agent rules with respect to transactions involving both Qualifying Securities and non-Qualifying Securities.

This interpretation has far reaching implications for transfer agents that act on behalf of non-Section 12 issuers, including issuers relying on the crowdfunding exemptions, debt issuers, as well as foreign transfer agents that are registered with the Commission, but also provide services to issuers whose securities do not trade on U.S. markets. Because of the significance of this position,[34] and because of the relatively obscure thread on which it is based, we believe that the interpretation should be published for comment and fully vetted. While the STA has no opinion at this time on whether the current interpretation is the best from a policy perspective, it does note that some attention should be given to the issue in light of the growing complexity of the regulatory position with respect to foreign global issuers with Qualifying Securities.[35]

IX. Advanced Notice of Proposed Rulemaking

As set forth in the Concept Release, we understand that the Commission intends to publish for comment a new rule, or rules, that will, among other things, expand the scope of information collected by Forms TA-1 and TA-2; require written agreements setting forth transfer agent services; enhance the safeguarding of issuer and securityholder funds and securities; add specific antifraud provisions to the transfer agent rules; require business continuity and disaster recovery plans; require basic procedures regarding the use of information technology; expand recordkeeping requirements; and conform and update various terms in the transfer agent rules. Below, we have outlined our thoughts regarding each of these proposals.

A. Forms TA-1 and TA-2

At the outset, we share the Commission's concern that transfer agents should be able to be fully compliant with the applicable transfer agent regulations at the time their registration becomes

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33 *See*, Exchange Act Release No. 17111 (September 2, 1980), Question I(A)(1) (relating to turnaround processing).

34 Our members report that most registered transfer agents already treat private companies the same as their public companies because of the 1980 Release, and because the software is usually already written to accommodate this compliance. There is little extra expense that goes into this and benefits private companies that may want to become go public, since there is less expense for them to re-structure their records to meet listing requirements.

35 Certain of the STA's members may comment on this issue more fully. Regarding the scope of the Exchange Act and the intent of Congress, the STA does note that the U.S. Supreme Court stated in Morrison v. National Australia, 561 U.S. 247 (2010), that "[n]othing suggests that this national public interest pertains to transactions conducted upon foreign exchanges and markets." *Compare* Section 30(a) expressly extending the jurisdiction of the Exchange Act to "broker-dealers" transacting on foreign exchanges. *See also*, Arthur B. Laby, *Regulation of Global Financial Firms After Morrison v. National Australia Bank*, 87 St. Johns Law Rev, Issue 2 (April 2014).

effective. However, we do not advocate making the registration process overly onerous, or similar to the broker-dealer membership process at FINRA.[36] We also favor the collection of information by the Commission on the Forms TA-1 and TA-2, provided that it is not unduly costly and is appropriately crafted to fit the needs of the Commission in its oversight and enforcement programs.

B. Fees, Material Contracts, and Client Information

We believe that it is important to observe, however, that the Form TA-2 is filed with the Commission and used primarily by the Commission or other transfer agents for competitive purposes. As such, we wish to note that any additional information required to be reported on Form TA-1 and TA-2, both of which are public documents, would not be confidential. We also note that the Form is not a document that is delivered to, or searched by, shareholders (like Part 2 of the Form ADV). Accordingly, the Commission should recognize that certain of the proposed disclosures on the Form TA-2, such as disclosures of fees or contracts would not benefit shareholders and may be harmful to transfer agents.

As outlined in the Concept Release, we understand that the Commission may require transfer agents to file on Form TA-2 the fee schedule for each new account, and any fees, such as corporate action fees, that are in addition to the initial transfer agent agreement. With respect to fees, in particular, it is important to distinguish transfer agent fees from the fees that are imposed by investment advisers or broker-dealers. As we commented earlier, most fees charged by transfer agents are paid for by the issuer and not shareholders. For these fees, greater transparency would not affect shareholder decisions. Certain fees, however, that are paid for by shareholders in connection with various plan services or other optional services already are disclosed in plan documents or on the transfer agent's website.

The STA would strongly oppose any requirement to standardize fees or related terminology, require all fees to be disclosed on Form TA-2, provide client lists, or mandate the filing of material contracts with the Commission. The formulation of a fee schedule for transfer agent services, in particular, is integral to the marketing strategy of transfer agents and is based on a specific combination of services required by the issuer, and often is the result of considerable negotiations with the issuer.[37] The equity transfer agent business is highly competitive. Issuers routinely conduct RFPs and in many cases they can move from one transfer agent to another with relative ease.

We also believe that disclosure of fees and written agreements alone, or the precise details of any written agreement, may minimize the highly important element of the transfer agents' service capabilities and other factors that are not reflected in fees. The Commission's proposal incorrectly assumes that all services are the same for all transfer agents. However, the services offered by one transfer agent are not the same as those offered by another transfer agent. Transfer

[36] Nonetheless, we do believe that examinations of transfer agents should occur early in the life of newly registered transfer agents (possibly within the first year).

[37] Fees may vary greatly. For example, large and medium-sized full service transfer agents may charge issuers monthly administrative fees for their broad array of services. Smaller agents, providing only core services, may offer small issuers an alternative billing structures that include nominal or no monthly charges to the issuer with transaction fees paid by presenters. As we emphasized in our comment letter on crowdfunding, the market for transfer agent services is highly competitive.

agents also compete on the basis of products and services. Thus, each fee arrangement may be unique to an issuer. Depending on the needs of the issuer, fees may be bundled or the issuer may choose from a laundry list of itemized services. When a contract is negotiated, both the issuer and the transfer agent maintain a complete understanding of all the significant details to a transaction.

In our view, these proposals would do little to promote shareholder protection. They would be closely reviewed by issuers and each transfer agent's competitors and distort the competitive relationships among industry participants and are contrary to the purposes of the Exchange Act[38] because they would make publicly available proprietary, confidential business information, and thus be anticompetitive. The STA is not aware of any other instance in which the Exchange Act requires similar disclosures.

C. Written Agreements

The STA supports the Commission's proposal to require transfer agents to have written agreements with issuers defining the rights and obligations of the parties. In our view, any rule addressing contractual agreements between the issuer and transfer agent should be general in scope and identify broad topics that need to be addressed. Moreover, the requirement only should apply with respect to the services identified in Section 3(a)(25), and should not apply to other types of services offered by the transfer agent.

While we favor a proposal to require that the terms of the agreement between the issuer and transfer agent be memorialized in writing, we do not believe that it is appropriate for the Commission to interfere with the actual business relationship between the parties.[39] In this regard, as we noted earlier, in most cases transfer agent services are competitively bid and contracts are frequently negotiated.

We agree with the Commission that any written agreement for transfer agent services[40] should address the areas outlined in the Concept Release, including the following items: (1) the services to be provided; (2) the responsibilities of the parties; (3) the duration of the agreement; (4) fees and terms of payment; (5) the terms that govern termination of the agreement, including any fees for early termination or migration of records; (6) the disposition of securityholder records after the agreement's termination; (7) the use and protection of data, such as privacy and business continuity/disaster recovery requirements; and (8) any indemnification requirements agreed upon by the parties. Moreover, as we discuss below, providing specific terms in agreements addressing other concerns of the Commission, such as insurance, may be an alternative to Commission requirements that would be more reflective of a free market.

[38] We note Section 3(f) of the Exchange Act, which requires that the Commission "consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."

[39] For example, while we believe that the Commission might have a general rule relating to contracts, the relationship between the transfer agent and issuer should be appreciated as a broad picture relationship and not one subject to Commission management. Further, the Commission's rule should not affect the terms of existing relationships.

[40] The requirement should not apply to other types of services offered by the transfer agent.

Terms of termination should generally provide for the prompt and complete transfer of the issuer's records to a newly appointed or successor transfer agent.[41] However, we understand that among smaller transfer agents withholding records until fees are paid fully is industry practice and an economic necessity to avoid costly litigation.[42] As an alternative to requiring the transfer of records in each case, we believe that the practice of withholding records should be permitted to the extent that it is fully disclosed in the written agreement with the issuer, and the fees disputed also are fully and clearly disclosed, even if the precise dollar amount is not known at the time the agreement is signed.[43] Thus, transfer agents would not be permitted to withhold records pending the payment of fees that are not agreed upon by the issuer in writing. Finally, we note that while we believe that most transfer agents currently have written agreements that would comply with the Commission's proposed terms, any rulemaking by the Commission should be prospective and not require transfer agents to renegotiate the terms of existing arrangements, including those that automatically renew.

D. Enhanced Safeguards for Issuer and Shareholder Funds and Securities

The STA also supports the Commission's goal of ensuring that all transfer agents have controls related to safeguarding funds and securities, such as: (i) maintaining secure vaults; (ii) installing theft and fire alarms; (iii) developing specific written procedures for access and control over client accounts and information; and, (iv) employing adequate recordkeeping requirements. At the outset of our comments on issues related to safeguarding of customer funds and securities, we want to note that the SEC already has a flexible mechanism to address many of its concerns in Rule 17Ad-13. This rule requires an annual independent audit of the transfer agents' control environment related to the safeguarding of funds and securities. The Rule states that:

> the objectives of a transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds should be to provide reasonable, but not absolute, assurance that securities and funds are safeguarded against loss from unauthorized use or disposition and that transfer agent activities are performed promptly and accurately.

The STA believes strongly that issuer funds should not be co-mingled with transfer agent funds; that funds should be reconciled periodically, and also subject to an annual audit. The STA would endorse new rules specifically requiring transfer agents to segregate funds and to ensure that bank accounts are appropriately designated to protect funds from being regarded as transfer agent assets in the event of insolvency. And, we would support a requirement for transfer agents to maintain written policies and procedures addressing transfer agent safeguards over funds.

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41 We also believe that the terms of the agreement should address conversion procedures. If an issuer migrates to a new agent, the old agent should follow STA Conversion Guidelines to the extent that the data resides on its system.

42 The STA notes that even if the practice of not turning over records is in the agreement, and fees clearly spelled out, transfers may not be processed during dispute period.

43 For example, often the "fees" that are owed to the transfer agent, which are being disputed, are out-of-pocket expenses, such as postage and stationary. The precise amount of these fees may not be specifically covered in the agreement, except under general heading of "out-of-pocket expenses". Thus, it may not be feasible to know exactly what these fees would be upon termination.

As we emphasize elsewhere, however, the risks presented by transfer agent activity are not the same as those faced by a broker-dealer. While large brokerage firms and banks have been continually in the news as being responsible for fraud and billions of dollars in shareholder losses, the transfer agent community has rarely been involved in such problems. We are not aware of any shareholder or issuer losses attributable to insolvency of transfer agents, as opposed to fraud.[44]

While portions of the Commission's regulations applicable to broker-dealers may be relevant to transfer agent activity, the broker-dealer template is not universally applicable. As we noted earlier, transfer agents do not extend margin, hold an inventory of securities for trading, lend customer securities, or finance their operations with leverage. Other concerns, for example, relating to control of collateral that restrict the holding of funds in affiliated banks, also have very little relevance in the context of the transfer agent operations.

Thus, while transfer agents share certain business and recordkeeping risks in common with broker-dealers, their operations do not generally present the same risks to shareholders or the settlement process as broker-dealers. In sum, the STA does not believe that current transfer agent practices present significant risks. For this reason, while we support fully the Commission's goals, any effort to advance those goals through rulemaking should be narrowly tailored. Finally, many of the largest transfer agents that provide transfer agent services to publicly traded companies, and that offer plan services, already are subject to extensive regulation by banking authorities.

1. Capital and Insurance.

As the Commission notes in the Concept Release, the New York Stock Exchange ("NYSE") has capital and insurance requirements for agents. These requirements only apply to transfer agents for companies listed on the NYSE; but require that unless the NYSE grants an exemption, "[t]he transfer agent must (i) have capital, surplus (both capital and earned), undivided profits, and capital reserves aggregating at least $10,000,000 and (ii) maintain insurance coverage of at least $25,000,000 to protect securities while in process."[45] The STA believes that transfer agents should have some level of capital, as well as Errors and Omissions ("E&O") and fidelity insurance,[46] appropriate to cover their business activities.[47] Nevertheless, in the STA's view the level of capital and insurance primarily should be a business consideration.

In formulating any policies regarding capital, we specifically note that the Commission's net capital and customer protection requirements for broker-dealers, set forth in Rules 15c3-1 and 15c3-3 of the Exchange Act, are designed for organizations that present a very different risk profile than transfer agents. For example, the net capital rule, Rule 15c3-1, focuses on liquidity

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[44] In the event that monies are stolen by the transfer agent, any losses are borne by the issuer in most cases.

[45] NYSE Rule 601.01. DTC also requires all transfer agents that participate in its FAST program to maintain a minimum of $10 million in insurance.

[46] This coverage may be known by different terms, but is designed to protect against fraud and theft.

[47] FINRA Rule 4360 requires a fidelity bond for broker-dealers that must be members of SIPC. The amount of the bond, and the permissible deductible, are based on the type of activity engaged in by the broker-dealer and its corresponding net capital requirement. The Rule also requires an annual assessment of the adequacy of insurance coverage.

and is intended to protect their customers, among others, by requiring that broker-dealers maintain a level of excess net capital at all times to satisfy claims promptly; and to provide a cushion of liquid assets in excess of liabilities to cover potential market, credit, and other risks if they should be required to liquidate.[48] Transfer agents are recordkeepers and do not have exposure to counterparties as part of the settlement process. Also, the losses experienced by transfer agents generally are subject to indemnities from issuers; and any losses of transfer agents commonly play out over time in the form of legal expenses and judgments.

In addition, while they are recordkeepers, they do not hold customer securities, nor should they hold client monies in commingled accounts that could be affected by a liquidation. Thus, they are not exposed to the same types of risks as broker-dealers that require liquid capital, which would mandate "haircuts" similar to that imposed by the Commission's net capital rule, or that mandate ongoing calculation and reporting.[49] The STA recommends that any rulemaking in this area should take into account the transfer agent's actual need for capital in light of its practices for safeguarding shareholder and issuer funds, insurance coverage, and any deductibles on the insurance.[50]

The STA also would strongly encourage the Commission to consider capital and insurance requirements in conjunction with amendments to Rules 17Ad-12 and 17Ad-13 that are designed to reduce any risk that issuer or shareholder funds would be lost as a result of transfer agent actions. In the STA's view, decisions regarding the appropriate level of insurance or capital should be a business-by-business decision based on the agent's particular circumstances.[51] In addition, we believe that the Commission should consider an exemption for bank transfer agents, which already are subject to capital requirements under banking laws. We would welcome the chance to discuss this issue further with the Commission and its Staff.

2. Segregation of Funds

Related to the discussion above, the STA supports any requirement to require issuer or shareholder monies to be held in segregated bank accounts. We do not believe, however, that the Commission's rules regarding protection of customer funds set forth in Rule 15c3-3 provide a precise template for transfer agent regulation.[52] For example, longstanding industry practice is to

[48] In fact, the STA noted in its comment letter on proposed Regulation SCI that, "…unlike the currently regulated entities, if a transfer agent's system is down for a day, there is no material effect on the aforesaid trading, clearance and settlement, order routing, market data, regulation, or surveillance activities. This has been proven historically in the aftermath of both 9/11 and Hurricane Sandy, when certain large agents in the New York area had system downtime with no material effect on marking trading, or on the overall clearance and settlement system." *See, STA Comment letter to the Commission on Proposed Regulation SCI* (dated April 3, 2013).

[49] The STA also notes that the NYSE requirements, which are approved by the Commission, also are not modeled after Rule 15c3-1.

[50] The STA notes, for example, that an introducing broker which does not carry accounts has only minimal net capital requirements.

[51] We understand that as a practical matter, insurance may not be available to smaller transfer agents. The Commission also should take into account the fact that insurance with a high deductible may not be effective if the transfer agent cannot afford the deductible.

[52] Transfer agents generally are not "custodians" as that term is commonly used. We believe that the more appropriate term is "custody or control."

hold funds at banks in segregated accounts in the name of the transfer agent "as agent for [issuer]." In our view, this approach satisfies the Commission's concern about insolvency risk.[53] We also note that the Commission's concerns with respect to the segregation of funds could be addressed by requiring a written representation from the transfer agent, in the transfer agent agreement or another document, that the funds will be held in an account that is not subject to any claim of the transfer agent or its creditors.[54]

Additionally, as suggested in the Concept Release, requiring transfer agents to provide notifications concerning accounts held "as agent for an issuer" would be burdensome for both the transfer agent and the financial institution, resulting in added costs and resources. To the extent the Commission needs evidence of compliance with any segregation requirements, transfer agents easily could provide its Examination Staff and independent auditors with evidence of reports or statements from a bank reflecting that accounts are being held "as agent for…" the transfer agent's principal. In light of the functions and risks associated with transfer agent activity, we also would not support any limitations on the use of affiliated broker-dealers[55] or banks.

E. Prevention of Section 5 Violations and Microcap Fraud

The Commission requested comment on the role of transfer agents in preventing unregistered distributions in violation of the 1933 Act. This is an important issue that has been discussed in a variety of forums in recent years. The STA has made education and training on this issue a high priority for its members. Our members are very active in regulatory initiatives to prevent both fraud and 1933 Act violations. Thus, while we already have provided context for the following comments, including our views about the need for additional antifraud rules, we want to specifically address several points that were raised in the Concept Release.

1. Interplay between the U.C.C. and the Securities Laws.

We want to note again the ministerial function that transfer agents fulfill in the recordkeeping and processing of securities; the limited resources that they have at their disposal; the financial impact on issuers as well as transfer agents of imposing due diligence duties and obligations compared with the nominal fees that the transfer agents charge for their services; the emphasis placed on the

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53 As an example, funding for dividends would generally be wired into a bank account as instructed by the agent. Funds are held "as agent," "as plan administrator" or in a similar registration clearly indicating the funds are not the agent's assets. For example, for optional cash purchases, these are deposited in a similar agency or plan administrator account either via check or through ACH debit at the option of the investor/shareholder. For employee plan participants or employees enrolled in their employer's DRP/DSPP, funding is received by agents from the issuer based on payroll deductions authorized by the employee. Dividend funds deposited with agents are held by the agent until dividend checks are cashed or eventually escheated. Funds for optional cash purchases are delivered to the executing broker-dealer for settlement of the purchase, if an open market purchase, or to the issuer (at a bank account designed by the issuer) for original issuance purchases made under an issuer's registered plan. Investment times for plans are clearly set out in the plan brochures or prospectuses.

54 This form of representation is commonly used by broker-dealers holding shares on the books of the transfer agent. These assurances from the transfer agent are known as the "No Lien Assurances."

55 We understand that the Commission may have concerns about affiliated broker-dealers in the microcap market. The STA believes that existing laws applicable to broker-dealers should be sufficient to address the Commission's concerns.

prompt and timely processing of issuance and transfer requests; and, the potentially severe consequences transfer agents face based on potential liability imposed by Article 8 of the U.C.C. and the state laws governing the activities of transfer agents.

As we have stressed throughout this letter, transfer agents are first and foremost agents of the issuers for whom they maintain books and records. While there are exceptions to every rule, the notion that the agent would not follow the instructions of its principal imposes an immediate disconnect in the fundamental relationship between transfer agents and their clients.[56] Yet, the STA notes that is exactly the situation in which our members repeatedly find themselves when questioning instructions to issue shares or remove restrictive investment legends from shares previously issued. At the same time, there is little or no express legal or regulatory support on which transfer agents can rely upon to rely to meet the responsibilities that the Commission has informally imposed on them.

2. Processing Transactions is a Time-Sensitive Administrative Function.

As we noted above, transfer agents perform the ministerial task of maintaining the books and records of issuers of securities, recording transfers of registered ownership and processing the issuance of shares when so instructed by their principal. This function is time sensitive. However, the fees charged typically are minimal for individual tasks and not dependent on a time driven formula. Specifically, transfer agents do not charge underwriter or placement agent fees, and they do not have the time nor ability to conduct any meaningful due diligence.[57]

The framework of existing Federal regulations and applicable state laws place an emphasis on the prompt processing by transfer agents of the tasks they undertake to perform. For example, Rule 17Ad-(2)(a) under the Exchange Act requires that 90% of all routine items presented for transfer must be processed within three business days. Moreover, as noted earlier, U.C.C. Article §8-401 imposes a duty to register a transfer when certain preconditions are met and imposes liability for an unreasonable delay in doing so. Other regulations speak to the emphasis on prompt processing, such as the requirement that agents adopt policies and procedures for the acceptance of medallion signature guarantees.[58]

On a daily basis, transfer agents are presented with this division between the need for prompt processing and the Commission's suggestion that transfer agents must engage in an independent due diligence review of transfer and issuance requests for compliance with Federal securities laws. This discord is further complicated by the potential liability for rejecting a request to remove a restrictive investment legend. The Commission has correctly pointed out that the conditions to transfer set forth in U.C.C. §8-401 include that transfer requests must be rightful. This means that requests that would violate the Federal securities laws need not be completed.

[56] Historically, transfer agents, as agents for disclosed principals, were not liable to shareholders for their actions. The enactment of U.C.C. § 8-407 altered the common law and imposed liability on transfer agents with the respect to the specific functions that they undertake to provide.

[57] Transfer agents, especially successor agents, are not able to investigate and warrant the prior corporate history of an issuer. Instead, the transfer agent receives representations from the issuer or prior transfer agent that the records are accurate and correct. Transfer agents also do not have subpoena power or the ability to compel individuals or entities to produce documentation.

[58] 240.17Ad-15.

However, the Commission has overlooked the fact that transfer agents face potential liability for making an incorrect decision, or for a delay in making the correct decision.

Requests for legend removal have been held to be a request to transfer subject to U.C.C. Article 8 provisions on duty to transfer and liability for delays in processing.[59] Courts that have reviewed the question of what liability an agent incurs for rejecting a transfer request, because it was uncertain whether the request was compliant with securities laws, have made it clear that if the transfer request was valid, the agent who delays or refuses the request will be liable for a wrongful refusal to transfer.[60] And, courts have also ruled that an agent cannot protect itself from this potential liability by seeking to interplead the issuer of the security, requesting that the court determine whether the request is valid.[61]

In this regard, it is not uncommon for disputes to arise between shareholder's counsel, providing an opinion stating that under the securities laws a legend may be removed; and issuer's counsel, that threatens the transfer agent with legal action if it removes the legend. In this scenario, the transfer agent often finds itself threatened with legal action under the U.C.C. by the shareholder if it does not process the legend removal, and by the issuer, if it does. Yet, the transfer agent has no guidance under the existing regulatory scheme on how to proceed. The resolution of these competing claims may cause the transfer agent to incur substantial legal fees, even if it ultimately prevails, or enforcement action by the Commission if it chooses wrongly. The extensive liability to which the transfer agent might be subject for a decision found to be erroneous is grossly disproportionate to the fees it receives.

As a practical illustration of the challenge faced by transfer agents, one of our small transfer agent members detected "red flags" in a transfer request several years ago. The issuer, two law firms retained by the issuer, and the transfer agent each conducted an extensive review of the legend removal request and determined it was a potentially fraudulent transaction and part of an attempted scheme to evade certain securities regulations. Out of concern for possible Commission enforcement action, and under direction of the issuer and its counsel, the transfer agent rejected the legend removal request. The shareholder sued the issuer and the transfer agent in state court for failure to process the transfer that it claimed was presented in good form.

The lawsuit proceeded for several years until discovery proceedings demonstrated that the shareholder had indeed been engaged in a scheme to evade the law, committed perjury, and intentionally destroyed documents to conceal its actions. The transfer agent had correctly identified red flags and successfully prevented fraudulent shares from entering the marketplace, but did so at the incredible expense of several years of litigation and hundreds of thousands of dollars in legal fees.[62]

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[59] *See*, Bender v. Memory Metal, Inc., 514 A.2d 1109 (Del. Ch. 1986).

[60] *See*, Dewitt v. American Stock Transfer Company, 433 F. Supp. 994 (SDNY 1977).

[61] *See*, American Securities Transfer, Inc. v. Pantheon Industries, 871 F. Supp. 400 (D. Colorado 1994).

[62] Although the Commission was made aware of the proceedings on multiple occasions, and the actions of the transfer agent were consistent with the Commission's "monitoring" expectations, the transfer agent was offered no assistance by the Commission and left to defend itself in state court. The issuer ultimately did not have the financial resources to cover the transfer agent's legal expenses.

The illustration above presents the very real costs that may be incurred by transfer agents attempting to comply with the Commission's informal guidance in this area. However, since the Commission's guidance in this area is not published or specific, there are a variety of practices in the market that directly affect price competition among transfer agents. The lack of uniform standards means that those transfer agents that adhere to higher, though unpublished, standards will have a higher cost structure and be less competitive in pricing their services.

3. Legal Opinions

As discussed earlier, in order to limit their exposure to liability and determine whether a specific request for share issuance or of a restricted legend removal is in good order, transfer agents frequently request opinions of counsel from issuers or shareholders attesting to the legality of the request. However, despite the fact that Commission Examination Staff routinely request copies of these opinions, there is no statutory or regulatory basis for demanding an opinion. In some cases lawyers, and law firms, possibly because of the difficulty and expense of obtaining approval from opinion committees, refuse to provide legal opinions.

In the absence of any statutory or regulatory support for obtaining a legal opinion, transfer agents are left without a legitimate basis for insisting on such opinions as a predicate for processing the requests. Further complicating the landscape, the Commission has taken the position that obtaining a legal opinion does not protect a transfer agent from liability under Section 5. The difficult situation encountered by transfer agents is illustrated by the facts set forth in the *CMKM Diamonds Decision* noted earlier.

According to the Court's opinion in that case, the Commission brought an enforcement action against a small transfer agent that had actually retained its own counsel to review the legal opinion provided by the issuer's counsel in connection with certain transactions. Both sets of counsel opined that the transactions at issue were legal. However, despite the fact that the transfer agent had two confirming opinions of counsel, the Commission named the transfer agent – along with the issuer – in an action involving a violation of Section 5 of the 1933 Act.

4. Non-Exclusive "Safe Harbor" and Clear Guidance

The Concept Release requested information about a potential "safe harbor." The STA believes that almost universally its members take seriously their obligations and make good faith efforts to avoid issuance of unregistered shares, or removal of restrictive legends, in the absence of an exemption from registration under the 1933 Act. However, as we have stressed, both transfer agents and issuers today are uncertain of the Commission's expectations regarding support for transactions. From the transfer agent's perspective, the absence of regulatory support often hinders their ability to demand supporting documentation or to request legal opinions.[63] While

[63] The STA notes the comment letter dated February 10, 2016 from Sullivan and Cromwell. This letter reflects the position that many issuers take in terms of providing, or not providing, opinions in connection with legend removal, or facilitating a transfer, and highlights the challenge many transfer agents face in requesting opinions. From the issuer's perspective, the issuance of an opinion from one of the larger law firms may be an expensive endeavor, involving a review by an opinion committee. It is the experience of many STA members, however, that the exceptions to the opinion requirement are few and not as prevalent as the comment letter states. Agents are not generally accepting issuer instruction letters rather than opinions for Rule 144 transactions as indicated by Sullivan and

we are not seeking a safe harbor from antifraud liability, a safe harbor or some other guidance clarifying the Commission's expectations of transfer agents, taking into consideration the ministerial nature of their duties and functions (and the skill sets of the transfer agent staff that perform these functions) would further the Commission's interest in preventing illegal distributions and enable transfer agents to obtain greater cooperation from issuers, shareholders, and their counsel in gathering documentation to support the requested activity.

Whether expressed as a safe harbor, or in some other form, any relief should be framed to provide quantifiable standards. However, we recognize that the myriad possible exemptions employed by issuers, investors, and shareholders do not lend themselves to a rote or detailed procedure analysis that transfer agents can script in advance. Nor do most transfer agents – all but the largest – employ in-house counsel on whom they can rely for advice.[64]

The knowledge that following a specific rule or guidelines would meet the Commission's expectations would remove the current uncertainty faced by transfer agents. The STA believes that the terms of a non-exclusive safe harbor would become best practices in the industry, as they have in other areas. In very basic terms, we believe that the Commission could address transfer agent's concerns by adopting a safe harbor rule, or providing other guidance, which essentially indicates that:

> A transfer agent will not be deemed to have participated in an unregistered distribution of securities in violation of the 1933 Act, or subject to Commission enforcement action, if it meets the following conditions:
>
>> The transfer agent relies in good faith on representations in writing made by an authorized officer of the issuer that the shares presented have been registered with the Commission under the 1933 Act; or,
>>
>> The transfer agent relies in good faith on an opinion of counsel indicating that the shares may be issued without a restrictive legend, that the restricted legend may be removed from the shares, or, that the shares may be transferred without a legend being placed on the transferred shares, in compliance with the 1933 Act; provided that the opinion identifies the relevant exemption and contains a detailed description of facts and how they support the opinion.[65]

Because the safe harbor would be conditioned on the transfer agent's good faith reliance on representations from the issuer or legal opinion,[66] it would not be inconsistent with the

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Cromwell. While we disagree with Sullivan and Cromwell regarding current practice, we do agree with their comment that additional clarity in this area needs to be provided by the Commission.

64 The STA notes that it is smaller firms that typically are transfer agents for issuers that might be engaged in microcap fraud. Because these smaller transfer agents do not usually have internal counsel, it is even more important for the rules to be clearly defined.

65 Conclusory statements should not be considered sufficient. The opinion of counsel should relate how the facts support the conclusion that the action will not violate the 1933 Act.

66 Transfer agents do not, for the most part, have the same legal sophistication as lawyers. The STA does not believe that they should be required under most circumstances to question the adequacy of counsel; and should be entitled to rely on legal opinions that are not facially inaccurate. *See, e.g.*,

Commission's current expectations of transfer agents reflected in the practices of its Examination Staff or of the policies developed by the Commission through its enforcement process. In this regard, we specifically note that a transfer agent could not rely in good faith on the safe harbor if it possessed facts indicating that the representations by the issuer were not accurate;[67] or the legal opinion did not contain sufficient facts to support the conclusion, or contained factual representations that the transfer agent knew were not correct.

Thus, while the STA does not believe that new rulemaking is necessary to impose liability on transfer agents, it does feel that a "safe harbor" would apprise shareholders, issuers and other market participants of the Commission's expectations; and permit transfer agents to demand supporting legal opinions from internal counsel or outside counsel in connection with legend removal and new issuance of unrestricted shares.[68] In our view, a safe harbor, or other conditional relief, along the lines that we have outlined above, would provide a basis for agents to obtain opinions, and also would provide some certainty to agents in conducting their activities. Moreover, it would serve the Commission's goal of preventing fraud or the issuance of securities in violation of the 1933 Act by placing the obligation on those with access to the facts and most knowledgeable of the law.

5. Issuance of Restricted Shares.

The Commission has raised questions relating to the handling of certificates and specifically how restricted shares are issued and held. As there is no requirement that shares be embossed with a restrictive legend, the practice has developed as a means of protecting the issuer's complicity with an unlawful distribution of unregistered securities.[69] Shares issued in paper form – certificates – generally are stamped with a legend that must be removed before the shares are eligible to be sold.

Restricted shares are also held in book entry form on the records of transfer agents. The applicable restriction (or an indication that there is a restriction) is noted on the statement generated for the shares. Transfer agents typically code their own records to reflect the existence of restrictions and place a stop on the restricted securities as an additional safeguard against the transfer or sale of such shares without a demonstration of compliance with securities laws or other requirements related to the transfer of shares. If, however, restricted shares were permitted to be held by brokers in street name, issuers would lose the ability to track those shares or provide

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SEC v. Spectrum, Ltd., 489 F.2d 535, 541–42 (2d Cir. 1973) (''The legal profession plays a unique and pivotal role in the effective implementation of the securities laws. Questions of compliance with the intricate provisions of these statutes are ever present and the smooth functioning of the securities markets will be seriously disturbed if the public cannot rely on the expertise proffered by an attorney when he renders an opinion on such matters.''). The STA notes that the Commission has sanctioned lawyers in many cases for providing false opinions in furtherance of violations of the securities laws.

67 *See, also,* Rule 3a71-3(a)(3)(ii). *Cross-border security-based swap dealing activity* (" … a person would have reason to know the representation is not accurate if a reasonable person should know, under all of the facts of which the person is aware, that it is not accurate.").

68 The STA notes that a written opinion of counsel already is required for certain transactions under Rule 903 of the 1933 Act (Regulation S).

69 *See also,* U.C.C., Article 8-204 (explain). Article 8 provides that any restrictions on transfer must be noted on the face of a certificate; and any clean certificate is, therefore, not subject to restrictions.

important information bearing on whether the restrictions can be lifted and the brokers alone would be in a position to review these transactions.[70]

F. Cybersecurity, Business Continuity and Disaster Recovery

The STA shares the Commission's concerns relating to cybersecurity, information technology ("IT"), business continuity, and disaster recovery. At the outset of our comments on cybersecurity, we think it is important to note that many of these issues and concerns are already addressed by regulations or guidance from banking regulators who examine bank transfer agents.[71] Among larger transfer agents that are subject to oversight by banking regulators, best practices are already mandated by FFIEC regulations and guidance, including multifactor authentication for certain internet and high risk transactions, a business continuity plan, restricted access, segregation of duties, background checks, password validation and firewalls. For this reason, we believe that the Commission should exempt bank transfer agents from any rulemaking in this area. Thus, our comments below primarily relate to non-bank transfer agent activity.

1. Cybersecurity

As the Commission is aware, the STA participated in the 2014 cyber security roundtable. Issues surrounding cyber security also have been the subject of educational programs offered by the STA to its members in recent years. We believe also that the guidance offered by the Commission Staff as well as other regulatory agencies is helpful to transfer agents in assessing their own risks in this area.[72]

Best practices among transfer agents are to have an information security program ("ISP") relevant to their business size and services provided. A typical ISP would include, among other things, the following: administrative and technical safeguards (application, authorized users, segregation of duties, and infrastructure); adequate employee expertise; policies and procedures; training/employee awareness; periodic risk assessments; monitoring and testing; and physical controls for protecting access to customer information. All ISPs should comply with Federal and state regulations/laws, as applicable.

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[70] Today, while it is industry practice to place legends on account statements, this may or may not act as notice of restriction. It also is not clear, for example, that account statements are evidence of ownership of shares. For example, they are not, like certificates, used to accomplish a transfer of ownership.

[71] *See, e.g.,* 12 C.F.R. 30 Appendix B.

[72] With respect to communications, to protect electronic communications between agents and other market participants, best practices would include the use of an FTP site (or similar) with data transmitted securely with adequate encryption. Because the technology is always evolving, there is no one standard. In the event of a privacy breach the issuer should be informed. The STA believes that agents should work with the issuer to send out required notices.

[72] The STA also notes that today there is not an electronic signature guarantee. Agents still require the existent form of Medallion for both book and certificated shares (and the current surety under the Profile System). Agents also employ change of address notices and hold periods before funds are released after an address change. The STA believes the current processes provide adequate protection.

While the STA is opposed to any rulemaking that would be targeted solely at transfer agents, we believe that guidance by the Commission Staff and the release of best practices[73] would be helpful, provided that it takes into account the individual circumstances of the transfer agent. In response to questions relating to cybersecurity insurance, in our view the Commission should not dictate the level of cybersecurity insurance protection necessary, if any. We believe that the marketplace and technology will continue to evolve, and that the marketplace, in the form of negotiated commercial relationships, should determine what, if any, level of insurance is appropriate.

2. Business Continuity and Disaster Recovery

The STA is in favor of having written and tested business continuity and disaster recovery plans. With respect to business continuity and disaster recovery, the STA would support Commission rulemaking patterned after FINRA rule 4370, which requires broker-dealers to have plans that are "flexible and may be tailored to the size and needs of the member." We feel that a bespoke plan, which is based on the unique characteristics of the transfer agent's business operations, is consistent with the approach outlined in the Concept Release and preferable to a "one size fits all" rulemaking.

3. Information Technology

While we believe that transfer agents should have controls over technology, we do not believe that the Commission should specify technology governance practices. We specifically do not believe that transfer agents should be subject to Regulation SCI[74] and note that the Commission did not prescribe any uniform standards for technology development when it adopted Regulation SCI. Further, we believe that it is important for the Commission to note that many transfer agents rely on third-party software and may not have access to source code or other details of the development and maintenance process.

G. Annual Audit, Reconciliations, and Risk Assessment

The Concept Release also indicates that the Commission intends to propose new rules that would require amended annual reporting, an independent audit, and certain notification requirements, patterned after rules applicable to broker-dealers. The Commission believes that these rules are necessary in "light of the activities and risks associated with their paying agent activities." The STA supports a requirement both for an annual risk assessment, appropriate to each business, as well as periodic reconciliations. It is not clear to the STA, however, what benefit would accrue from new rules that would require transfer agents "to prepare and file annual financial reports consisting of a statement of financial condition, a statement of income, a statement of cash flows, and certain other financial statements…"

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[73] The STA believes that systems must be able to safeguard uncertificated securities as well as certificated. Over the years, agents have amassed more data of all kinds (cost basis, FATCA, mail preference etc.). Transfer agents do not have credit card information in their systems. The agents with the majority of the business (perhaps 90%), already follow proscribed guidelines, established by banking regulators relating to privacy and the protection of data.

[74] *See, STA Comment letter to the Commission on Proposed Regulation SCI* (dated April 3, 2013).

The STA notes that not all transfer agents are stand-alone entities, so trying to compare or test transfer agents based on their financial reports could be problematic. Our members also believe that the financial condition of the company, cash flows and income, as well as client lists and fees, should not be publicly disclosed. Such disclosure would be overly burdensome to transfer agents and could inappropriately direct potential new business away from smaller transfer agents. Moreover, they feel that there is no direct correlation between the financial capacity of a transfer agent and the quality of its recordkeeping; but a bias against small agents could develop in the eyes of potential new issuers with this information disclosure. In the view of the STA, there is no real gain in disclosing financial information, and asking small transfer agents, in particular, to provide audited financial statements will be a tremendous financial burden.

As we have noted earlier, transfer agents are not subject to the same risks as broker-dealers that demand capital which exposes shareholders to risk. While we feel that an annual risk assessment is a best practice, the risks encountered by transfer agents do not warrant interim reporting to the Commission of capital levels or audited year-end financials.[75] We believe that the greatest prophylactic requirement is the annual independent audit of the transfer agent's control environment currently required by Rule 17Ad-13. If the Commission believes that greater attention needs to be focused on paying agent, or other activities, then it could make explicit a requirement to audit for controls in these areas.

We also note that Exchange Act Rule 17a-5, which is referenced in the Concept Release as a template for future transfer agent regulation, requires a broker-dealer to provide annual reports, but contains an exemption for broker-dealers that do not "carry" customer accounts.[76] While

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[75] Both with respect to any new financial reporting requirement, and Rule 17Ad-13, we would object to any requirement to supply audit documentation. *See, Statement by Commissioners Gallagher and Paredes Concerning Commission Adoption of a Final Rule Regarding Assets Being Held by Broker-Dealers* (July 31, 2013) (regarding the adoption of Rule 17a-5):

> Ear1ier today, the Commission adopted a final rule amending certain broker-dealer annual reporting, audit, and notification requirements (Release No. 34-70073). We respectfully dissented from the adoption of the rule amendments because of our concerns regarding the requirement that broker-dealers provide access to accountant and audit documentation. We are concerned that the final rule does not explicitly limit the scope of the Commission's audit documentation requests and the uses to which the Commission could put any information it receives from an auditor. Accordingly, the final rule could chill important discussions between a broker-dealer and its auditor. Because of the gatekeeping role that auditors perform in the securities markets, we cannot support a rule that could deprive auditors of potentially important information regarding the broker-dealers they audit. In addition, the rule could compromise any privileges that cover communications between a broker-dealer and its auditor or between a broker-dealer and its attorney, depending on the documents that are produced. In our view, the Commission's decision to adopt a final rule that places such privileges at risk sets a problematic precedent.

[76] Under Rule 17a-5 of the Exchange Act, the level of disclosure is determined by whether the broker-dealer is a "carrying" or "non-carrying" firm. A carrying firm must file an annual Compliance Report with the Commission, which must be prepared by an independent public accountant. The Compliance Report is required to include, among other things, a statement as to whether the firm established and maintained internal control over compliance during the previous fiscal year. On the other hand, a non-carrying firm must file an Exemption Report that specifies which exemption from Rule 15c3-3 the firm is relying and whether the firm complied with such exemption during the previous fiscal year. A non-carrying firm must also engage an independent registered public accountant to perform a review

transfer agents maintain records, they generally do not hold funds or securities on behalf of issuers in their own accounts. If the Commission determines to require annual reporting, then the STA believes that it should make comparable distinctions for filing purposes based on the activities actually engaged in by the transfer agent. Transfer agents that promptly transmit funds of either issuers or shareholders to segregated bank accounts should not be subject to the annual reporting requirement. We also believe that an independent financial audit would be unduly costly in light of the risk profile of most non-bank transfer agents.[77]

H. Chief Compliance Officer and Written Procedures

The STA supports the designation of a Chief Compliance Officer ("CCO") by each transfer agent.[78] In addition, the STA supports a requirement that each transfer agent have written policies and procedures reasonably designed to comply with the Federal securities laws, including existing regulations under Section 17A as well as any new regulations that the Commission may adopt.[79]

Whether formally or informally, most transfer agents designate a person or persons to be responsible for the review and oversight of particular compliance functions, including oversight of the firm's processes regarding the issuance and legend removal functions. Where that has been done formally, the title of CCO currently may be designated.[80] A requirement that every transfer agent formally designate one or more individuals to be primarily responsible for compliance (regardless of their formal title and other responsibilities within the organization) would help to assure to each transfer agent has persons with sufficient experience and training to perform the type of oversight that is appropriate. However, we note that the compliance function must be tailored to the needs of each organization and should not be the responsibility of the CCO alone. Ultimately, it is the responsibility of company and its management to ensure compliance with the Federal securities laws – which may involve internal and external audit, as well as other resources.

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of the statements included in the Exemption Report. *See, also* Exchange Act Release No. 34-70073 (July 30, 2013). The STA believes that the reports and independent audit already required by Ru1e 17Ad-13 is comparable to the new requirements imposed on broker-dealers; and there is no justification for requiring a financial audit in addition to the Rule 17Ad-13 audit.

77 As the Commission also is aware, the larger transfer agents are subject to the oversight of banking regulators and already are required to have financial and operational safeguards in place, provided that they provide comparable reports to their boards of directors and banking regulators. Regardless of any decision reached with respect to non-bank transfer agents, bank transfer agents should be exempt from any annual audit or financial reporting requirement to the same extent that they are exempt from the requirements of Rule 17Ad-13.

78 We note that Schedule A to Form BD requires a registrant to disclose the names of various officers, including the "Chief Legal Officer, Chief Compliance Officer, Director… and individuals with similar status or functions."

79 In our view, this rule should be patterned after the Advisers Act Rule 206(4)-7. The STA does not believe that the structure set forth for registered investment companies in Rule 38a-1 under the Investment Company Act of 1940 is an appropriate template for transfer agents.

80 We note that FINRA Rule 3030, which also requires broker-dealers to designate a chief compliance officer, permits broker-dealers to designate multiple chief compliance officers across business segments, so long as the duties of each is defined.

While we believe that compliance procedures should be in writing, requiring detailed policies and procedures that cover each conceivable transaction is not realistic and would not provide transfer agents with the flexibility necessary to evaluate the myriad transactions that are presented by issuers, investors , and shareholders, and is not necessary to assure compliance with the Federal securities laws. We also note that transfer agents have various types of policies and procedures. Other policies may be intended to comply with bank regulatory requirements, tax or privacy laws or regulations, or to prevent exposure to liability under the U.C.C., among others. For example, the STA publishes a guide to transfers that outlines best practices for the supporting documentation to obtain for a transfer, such as evidence of death.

Any rulemaking by the Commission should be careful to specify that the policies and procedures addressed, and the obligations of the CCO or other transfer agent management personnel, are those reasonably designed to ensure compliance with the *Federal securities laws*. Of course, organizations may delegate additional responsibilities to the CCO, but the failure of a transfer agent to have reasonable policies with respect to U.C.C. or escheatment should not be considered a securities law violation. Nor, for example, should IT development protocols be considered "compliance policies."

I. Modernization of Existing Rules

We understand from the Concept Release that the Commission intends to propose amendments to Rules 17Ad-1 through 17Ad-20 that are designed to modernize and simplify the existing transfer agent rules. Among other things, the Commission intends to propose to:

> rescind Rules 17Ad-18 and 17Ad-21T; (ii) consolidate all definitions, including those in Rule 17Ad-1 and 17Ad-9, as well as specific definitions embedded in Rules 17Ad-5 (written inquiries), 17Ad-15 (signature guarantees), 17Ad-17 (lost securityholders), and 17Ad-19 (cancellation of securities certificates) into a single rule; (iii) update various definitions and references throughout the rules to correspond more accurately to the prevailing industry practices and standards, including clarifying that Rule 17Ad-2's turnaround provisions apply with equal force to book-entry securities and clarifying, where appropriate, that other references to "certificates" include book-entry securities, defining the terms "promptly, "as soon as possible," and "non-routine" in Rule 17Ad-2, and other clarifications; (iv) update the current turnaround, recordkeeping, and retention requirements to correspond more closely to the operations and capabilities of modern transfer agents; (v) amend the recordkeeping and retention requirements in Rules 17Ad-7 (record retention), 17Ad-10 (prompt posting of certificate detail, etc.), 17Ad-11 (aged record differences), and 17Ad-16 (notice of assumption and termination) and consolidate them into a single rule; (vi) update the dollar and share thresholds reflected in Rule 17Ad-11 (aged record differences); (vii) amend Rule 17Ad-13 to provide additional and more useful information regarding transfer agents' internal controls; (viii) amend Rule 17Ad-15 to require transfer agents to document in writing their procedures and requirements for accepting signature guarantees; and (ix) propose other new rules and amendments designed to address certain TA activities not currently addressed by the rules, as discussed throughout this release.

We agree that many of these amendments are appropriate and applaud the Commission for its efforts in modernizing these rules. Our preliminary comments regarding these proposals, as well as our answers regarding the related issues raised for comment in the Concept Release, and other changes intended to modernize or clarify the rules, are set forth in an Exhibit, which is attached to this letter.[81]

In addition to our comments regarding specific rules, we believe it would be helpful for our members if the Commission's Staff provided informal guidance with respect to current Forms TA-1 and TA-2 in the format of an FAQ published on the Commission's website. In this regard, we would like to work with the Staff to address questions that routinely have arisen among our members in completing the Form TA-2, in particular. We believe that many of these questions already are addressed in guidance published by the Commission, but could be more easily accessible to transfer agents if the Commission's Staff presented them in an FAQ format.

X. Additional Comments

A. Disclosure of the Shareholder Information – Items 99,100 and 122

The STA has no position on whether the transfer agent regulations, or other regulations, should apply to broker-dealers. However, it does believe that information sufficient for issuers to communicate with beneficial owners should be provided by the broker-dealer to the transfer agent for this purpose. As the STA has indicated in prior comment letters, policies developed in the early 1980s, based largely on the technology of that era, no longer can be used to justify support of a monopoly provider to distribute shareholder communications.[82] The Concept Release indicates that transfer agents provide communication services with respect to the registered shareholders of an issuer, but they are not permitted to distribute materials on behalf of the issuer with respect to the majority of its shareholders who hold their shares in street name. Instead, the issuer has no control over the selection of the service provider or the fees that it will pay for this service.

The STA believes that in the modern environment the technology changes necessary for broker-dealers to communicate the data regarding ownership of an issuer's shareholders would be negligible compared to the potential savings to issuers that would result from selecting service providers in the free market.[83] The STA further believes that concerns about the scope of information and privacy, or unintended uses, could be easily resolved – as they are under Regulation S-P. We would welcome the opportunity to discuss with the Commission a targeted solution that would open competition, reduce the costs borne by issuers, and increase shareholder communication.

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[81] Certain of the rules provide exemptions for low volume commercial transfer agents. Although this letter does not address these exemptions, we believe that the Commission should review whether or not the exemptions remain relevant.

[82] The current proxy delivery system, and the use of a central monopoly, which today is Broadridge, Inc., appears to partly have been the result of the technology environment in the early 1980s in which some transfer agents still maintained records on ledger cards and there was no standard format for electronic storage of records. The concerns of that era, which were used to justify the development of a central monopoly, are no longer present. Nevertheless, the Commission has permitted this monopoly system to remain in place. See, STA Comment Letter on Concept Release on the U.S. Proxy System Release No. 34-62495 (dated October 19, 2010).

[83] The basic information would be name, address, and share ownership.

B. Shareholder Advices and Annual Statements

The STA supports requirements to provide shareholders with information similar to a confirmation required by Rule 10b-10, but notes that it already is current practice. Today, state law[84] and banking regulations, require that an "advice" be sent when shares are issued. In the case of bank transfer agents, the applicable rules are quite similar to 10b-10.[85] The STA is in favor of similar regulations for non-bank agents who may administer plans, but they are not needed for bank or trust company agents. The industry's DRS Guidelines also indicate that a statement or advice should be sent each time the account balance changes.

The STA does not oppose any requirement for annual statements. However, transfer agent agreements would have to be revised so that the costs are borne by the issuer, who would pay for printing and mailing.[86] As we noted earlier, an investor holding positions at a brokerage firm covers the cost of holding that position. Fees charged by broker-dealers can include annual account fees, transfer fees, inactivity fees, etc., in addition to fees for buying and selling securities. In a registered shareholder position, issuers frequently cover the expenditure for maintaining the shareholder account. Regulations that would increase the expense of maintaining shareholder positions would ultimately affect the investor.

The Commission also might consider the fact that an annual statement requirement would impact issuers differently. For example, a dividend paying issuer could include a statement with one of its dividends, while a non-dividend paying issuer would need to complete a separate annual statement mailing at a much greater cost. The STA believes, however, that many small issuers that do not pay dividends will not be able to afford to print and mail these statements. For this reason, we suggest that any requirement to deliver annual statements distinguish among issuers based on their ability to incur the costs associated with any additional expense. The Commission might further distinguish between certificated and book-entry positions, and issuers whose securities are listed on an exchange and those, such as small crowdfunding issuers, whose securities are unlisted. The Commission also should bear in mind that the additional costs in serving the registered shareholder base could cause issuers to engage in odd lot round-up or sale programs or offer incentives to eliminate the small shareholder positions.[87]

C. Plan Administration

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[84] In the case of book entry securities, the advice generally will bear the legend if the shares are restricted. Subsequent notices may say that shares are restricted, but not print the actual legend.

[85] *See, e.g.*, 12 C.F.R. § 12.4 and § 12.5.

[86] The Commission needs to be very mindful of the fact that unless the transfer agent can obligate the issuer to cover the expenses associated with any Commission requirement, the transfer agent would bear the cost directly. Unreimbursed expenses associated with mailings to many registered holders could force smaller transfer agents out of business.

[87] In fact, the industry already has begun to see incentives offered by issuers to their small shareholders to move their position to a broker as a way for the issuer to save costs. If the shareholder does not possess large holdings, the expense to the shareholder for moving to a broker can be high. However, the promotions that we have seen to date do not disclose the additional costs that registered shareholders may incur in moving their positions to a broker-dealer. Registered shareholders have chosen to be registered on the books of the issuer. We encourage the Commission to allow these shareholders to continue enjoy this right, and to make sure that any additional costs imposed by a broker-dealer are fully disclosed to shareholders before they transfer their positions.

With respect to plan administration, the STA believes that the current system operates effectively. As the Commission is aware, a transfer agent's internal controls surrounding the operation of any dividend reinvestment plans are subject to the annual independent audit requirement in Rule 17Ad-13. Presently, bank transfer agents offer the majority of plan services based on the exception from broker-dealer registration in Section 3(a)(4) of the Exchange Act. Transfer agents that are national banks are subject to specific regulations of the OCC regarding their plan services. These regulations also address recordkeeping and are similar to the Commission's recordkeeping requirements for broker-dealers. Below, we have provided specific comments that address issues raised in the Concept Release.

1. Fees for DRIP and DSP Plans

Plans offer many benefits to shareholders and generally there are no fees, other than the transactional fees. Plan brochures disclose the terms of plans and dictate, among other things, the terms of any purchases and sales. The fees, which also are disclosed in statements issued on a transactional basis, generally are less than a brokerage commission,[88] and generally are administrative in nature and related to the cost of providing the service.

2. Employee Plans and Affirmative Consent

With respect to employee plans, fees, if any, are disclosed at the time of enrollment. In general, however, the STA is not in favor of a rule that would require an automatic enrollment, but allow shareholders to opt out. The STA believes that participation in employee plans should require an affirmative consent.

3. Bank DRPs and Negative Consents

A negative consent is used most often for bank sponsored plans where the plan document is that of the bank transfer agent and cannot be used by the new agent.[89] As a practice, we do not recommend automatic enrollment in a plan, except in the two limited circumstances where a new bank sponsored plan is established due to movement to a new transfer agent, or the issuer is involved in a merger or acquisition.[90] For example, the STA believes that plan shareholders appreciate the use of negative consent in instances in which an issuer and its plan move from one agent to another, either because of a decision of the issuer or in connection with an acquisition of the plan agent or issuer. It is the experience of our members that participants do not want to re-enroll in the plan when this occurs.

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88 All fees between the transfer agent and the broker-dealer are fully disclosed. Thus, while we agree fees should be fair and reasonable; the transfer agent business is very competitive and issuers receive competitive bids for services.

89 There would generally not be a need for any negative consent for an ESPP, as the plan terms would stay the same if the client chooses another plan administrator, since the employer issuer sets the terms of the plan. For an issuer registered DRP/DSPP, there also wouldn't be a need for negative consent, since if the plan administrator changes, the plan itself isn't replaced with a new plan. Rather an amendment would be made to the existing plan naming the new administrator.

90 We note that the use of negative consents is similar to the practice followed in the brokerage industry, in which FINRA permits brokers to use negative consent letters to transfer accounts in instances involving mergers of brokerage firms. See, FINRA Notice to Members (NTM) 02-57, *Bulk Transfer of Customer Accounts* (September 2002).

4. Call Centers and Solicitation

A number of questions in the Concept Release are directed at plans and call center activity. Transfer agents are aware that as a condition to the exemption from broker-dealer registration they are not permitted to engage in solicitation activity. Transfer agents customarily have policies and procedures designed to ensure that they remain in compliance with this limitation. These policies generally emphasize the use of scripts and regular training of employees who answer inquiries from shareholders at call centers. Additionally, transfer agents will perform quality control of calls for accuracy and compliance with policies and procedures, as well as testing independently by audit, and self-testing by department management.

With respect to employee plans, at times plan agents go to employers' workplaces and talk about the plan, explaining the plan and its operation. Specific policies, including scripts, are used to assure that agents do not endorse plans or provide information other than that contained in plan documents.[91]

D. DRS Concerns

The STA does not believe that the Commission should regulate fees for DRS transactions. In our view, the current fees charged by transfer agents are relatively modest and commercially reasonable. Although DRS Profile involves an electronic automated component, there are still manual processes involved. The fees imposed are intended to cover the various operational tasks performed such as debiting accounts, handling rejected items, and responding to broker-dealer inquiries. However, the STA is concerned that brokers may impose unreasonable fees as a disincentive for customers that want their share ownership represented by a certificate issued by the transfer agent. For example, we understand that certain brokers and DTC may charge as much as $500 for this service. As we noted earlier, we also are concerned that some brokers may attempt to lure shareholders to move their positions through DRS to brokers without disclosing to investors the additional costs they may encounter.

E. Outsourcing and Delegating

In the Concept Release, the Commission requested comment on outsourcing practices. A number of larger transfer agents outsource certain functions to locations in which the labor cost is less expensive. This reduces the overall costs to the issuer of transfer agent services. Although the STA will allow its individual members to comment directly on their practices, we note that whenever an agent delegates functions to a third party it must use reasonable care. Transfer agents who choose to outsource service functions perform due diligence, have vendor management programs, enter into contracts for services performed, and are responsible for making sure that vendors meet their obligations.

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91 For DRPs/DSPPs, enrollment is done through the plan administration, either by paper, online, or through a call center representative. For employee plans, the employer may also collect the enrollment forms (and will make them available if needed to the agent). Call center representatives receive training on plan enrollments and other plan transactions, including that they may not solicit someone to join a plan or to purchase or sell securities, and cannot provide investment advice. Scripting is used to ensure call center representatives do not engage in any such activities. Calls are monitored by management for quality control and compliance purposes. Call center representatives also have no incentive to solicit someone to enroll in the plan or conduct activities since they are not paid commissions or other compensation based on transactions.

F. SRO for Transfer Agents and the Role of DTC

The Commission asked several questions about the role of DTC and also whether there was a need for a self-regulatory organization ("SRO") for transfer agents. As explained below, since the transfer agent rules were first adopted, DTC has become a monopoly provider of essential services to the industry. We believe that it is important for the Commission to give careful consideration to the new role assumed by DTC and the effect on industry participants who are not full members of DTC, including transfer agents and issuers.

1. Self-Regulatory Organization for Transfer Agents

The STA would not support the creation of a SRO for transfer agents. As we have noted before, many, if not all, of the larger transfer agents are banks or trust companies that must comply both with any transfer agent obligations of the Commission, and are subject to the rules and policies as well as ongoing oversight by banking regulators. Additional oversight of these transfer agents would not be beneficial. Most small transfer agents are not well capitalized and the cost of funding an SRO would be prohibitive.

2. Role of DTC and T+2 Initiative

Finally, the Commission has requested comment from the industry on the role of DTC and any other actions that the Commission might take to further the goals of the Exchange Act. We think that it is particularly important to note the role of DTC as it has evolved since amendments to the Exchange Act in 1975. In the settlement system, DTC currently serves as a central utility and monopoly provider of services. Because DTC is a monopoly, the Commission should exercise its oversight to assure that DTC's practices are fair to all users, and that it acts in the interests of investors and the markets.

In this regard, as the Commission is aware, transfer agents universally are required to rely on the facilities of DTC, and particularly its FAST program, in order to provide their services to companies whose shares are listed on any national securities exchange. Issuers also must become "FAST eligible" in order to assure that settlement in their securities is efficient and that there are competitive markets for their securities

a. DTC is a Standard-Setting Monopoly Controlling Entry into FAST Program

We think that it is important to note the role of DTC. In the settlement system, DTC currently serves as a central utility and monopoly provider of services. As the Commission is aware, transfer agents universally are required to rely on the facilities of DTC, and particularly its FAST program, in order to provide their services to companies whose shares are listed on any national securities exchange. Issuers also must become "FAST eligible" in order to assure that settlement in their securities is efficient and that there are competitive markets for their securities. In fact, many brokers will not trade or settle transactions by their customers in securities of issuers that are not FAST eligible.

b. DTC's Actions May Impair the Industry's T+2 Initiative.

Many markets around the world already settle transactions on a T+2 basis. The U.S. securities industry, with the assistance of DTC, has been working to shorten the settlement cycle in the U.S - with the goal of implementing new standards by the third quarter of 2017.[92] The initiative is an important step in limiting risk in the U.S. settlement system, which has been supported by the Commission.

Participation in the FAST program is essential for efficient settlement of an issuer's securities. However, an issuer may not be admitted to the FAST program by DTC despite being approved for trading on the OTC markets. The STA is concerned that DTC has delayed access to its FAST program by many issuers whose shares trade in the OTC markets. In fact, the STA understands that hundreds of issuers in the OTC markets have not been admitted to FAST for reasons that are not clear. This means that these issuers will maintain shares in certificated form, which may affect the full success of the industry's T+2 initiative, and harms their investors.

3. DTC Usurps the Commission's Role and Sets Standards for Transfer Agents.

a. DTC's FAST Agent Standards

The STA notes that despite being registered with the Commission, a transfer agent is not able to offer its services to listed issuers unless it becomes a limited participant in DTC and a member of the FAST program. However, the standards actually applied by DTC for membership in FAST are not fully transparent; or there is no indication of how DTC applies its published standards. For example, DTC requests that a transfer agent submit a prior exam report by the Commission as part of the application for its FAST program. We understand that historically the Commission's exam cycle for registered transfer agents was as long as seven years. Thus, it presumably could have taken seven years after a transfer agent became registered with the Commission to acquire the access to DTC's facilities necessary to engage in business.[93] Similarly, DTC appears to request Federal tax information about the transfer agent, without indicating how the information

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[92] *See*, *www.ust2.com* (the securities industry website for the T+2 initiative).

[93] DTC's website has an FAQ which states:

> *Is an SEC Audit really required when we apply for FAST?* Yes. All of the items from the FAST Requirements document are required with the exception of the DWAC Agreement.

will be evaluated.[94] Moreover, unlike applications to FINRA or the Commission, there are no time periods associated with DTC review of applications to its programs and the process for appealing any decision by DTC is ill-defined and confusing to applicants. [95]

b. DTC's Other Standards and Operational Arrangements

In the absence of Commission regulations, DTC has sought to impose its own combination of discretionary and express standards on transfer agents as though it has an ordinary commercial relationship with affected parties. It is important to note that many transfer agents are only "limited participants" of DTC and therefore not entitled to the full due process requirements of DTC's members, like other SROs. Because of its monopoly position, however, the express standards of DTC are akin to rules adopted by the Commission in terms of their pervasive effect. As an example, the Commission has requested in the Concept Release comment on insurance requirements for transfer agents even though DTC has already imposed those standards on the industry by demanding proof of DTC-prescribed insurance in order to be eligible for FAST. Thus, a transfer agent may not provide services to an issuer of National Market System securities unless it meets DTC's insurance standards.

Another example is the recent rule change made by DTC to its Fee Schedule.[96] The new rule imposes a fee of $1,000 on any DTC-eligible issue when the transfer agent notifies DTC of a corporate action event requiring a new CUSIP. Although the fee is really intended as a fee on the issuer related to the issuer's corporate action event, DTC imposes the requirement on the transfer agent who then has to collect the fee from the issuer and will ultimately be responsible if it is not paid. Although DTC had discussions with the STA concerning the fee before the rule was published, the imposition of the fee and amount of the fee was not presented as negotiable. This is generally the case with DTC fees imposed on transfer agents and issuers participating in the DTC system. As the fee change became effective when the rule was published, there was no real opportunity to object.

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[94] Illustrations are found in the FAST application guidance published by DTC on its website, which instructs applicants to, among other things:

> Please review the **Key Elements of Insurance** requirements and provide a current copy of your insurance coverage. The minimum acceptable insurance limit is $10 million or a higher amount if required by law, rule or by a Self-Regulatory Organization, such as the NYSE.
>
> Include the most recent SEC audit examination reports with any letters of response you provided to the SEC on their audit findings.
>
> Original tax form. Please download the correct form and provide with your documentation: http://www.irs.gov/pub/irs-pdf/fw9.pdf

See, DTC Requirements for FAST Agents (November 2014).

[95] *See, STA Petition for Commission Review of Securities Exchange Act ReI. No. 34-60196* (June 30, 2009) (Filed August 5, 2009).

[96] See, File No. SR-DTC-2015-012 (December 30, 2015). The filing notes: "Written comments relating to the proposed rule change have not been solicited or received. DTC will notify the Commission of any written comments received by DTC. DTC management has discussed its intent to implement the New Fee with members of the Securities Transfer Association at industry meetings."

Finally, when agents begin acting for DTC eligible companies, they are required to agree to DTC's Operational Arrangements. These impose detailed and specific processing requirements and duties on agents and can be changed by DTC at any time under the same publication process noted above. DTC also is free to interpret the Operational Arrangements in any way it chooses and agents must comply with DTC's requests or risk DTC's revoking the transfer agent's or its issuer clients' ability to participate in the system or refusing to process transactions.[97]

c. Commission Rulemaking Recommended

Despite its central role in the industry, DTC wishes to maintain complete discretion with respect to its informal practices and avoid the development of transparent standards. The STA preliminarily recommends that the Commission adopt a rule, patterned after Section 15(i) of the Exchange Act, prohibiting DTC from adopting any rule, policy, contract provision, or interpretation: imposing capital, custody, or financial responsibility standards; concerning the making and keeping of records; relating to the provision of confidential Commission exam findings; or establishing any bonding, financial or operational reporting requirements for transfer agents that are in addition to, or contrary to, the requirements established for transfer agents by the Commission or banking regulators. We also recommend that DTC be prohibited from making changes to its Operational Arrangements or Fee Schedule without prior publication and an opportunity for transfer agents and issuers impacted by such changes to comment.

d. DTC has Not Heeded Prior Commission Directives

The STA would like to highlight for the Commission a related issue: the fact that in 2012 it directed DTC to develop fair standards for denying services to issuers.[98] Today, those standards still are not in place. Moreover, the latest attempt by DTC to propose a fair process was withdrawn by DTC well over a year ago after receiving negative comments. It has not been reproposed.[99] The STA does not believe that the actions of DTC in this matter are consistent with either the express direction of the Commission or the Congressional intent reflected in the Exchange Act.[100]

* * *

We greatly appreciate the effort undertaken by the Commission and its Staff in preparing the Concept Release. While we are hopeful that the Commission will act quickly on many of the proposals outlined in the Concept Release, we believe that given the number of areas the

[97] Although Rule 19b-4(f) of the Exchange Act provides that rules of a self-regulatory organization relating to fees charged to its members may become effective on filing with the Commission, we note that transfer agents are not full members of DTC, and the fees that DTC imposes on transfer agents may be passed on to issuers, who also are not members of DTC. We would encourage the Commission to examine the fairness of DTC's process for setting fees.

[98] *International Power Group, Ltd.*, Ad. Proc. File. No.3-13687 (March15, 2012).

[99] *See*, File No. SR-DTC-2013-11 (Dec. 18, 2013).

[100] The STA has commented on DTC's practices on several occasions; and particularly its reticence to provide the same fair appeal rights that are found when exchanges or SROs deny access to their facilities to non-members.

Commission is focusing on, the Commission should be mindful of the focus in the industry on implementing T+2 next year. Therefore, we suggest that any significant new rules should be phased in.

As we noted at the outset of this letter, we have not responded to each of the questions presented in the Concept Release. However, we may offer supplemental comments on the proposals set forth in the Concept Release. In addition, we welcome any questions that the Commission or its Staff may have regarding this comment letter or any of the issues outlined in the Concept Release. We look forward to working with the Commission and its Staff in the future.

Sincerely,

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

Attachment

CC: Stephen Luparello, Director
Christian Sabella, Associate Director
Moshe Rothman, Branch Chief
Thomas Etter, Special Counsel
Catherine Whiting, Special Counsel
Mark Saltzburg, Special Counsel,
Lauren Sprague, Special Counsel
Elizabeth de Boyrie, Counsel
Division of Trading and Markets

Exhibit

STA Response to SEC Concept Release No. 34-76743 – File No. S7-27-15 ("Concept Release")

The STA requests additional guidance from the Staff (including examples where warranted) to assist registrants in completing the Form accurately. In particular, we believe a "Frequently Asked Questions" (FAQs) section would also be helpful to registrants. The STA would support the Staff's efforts in identifying topics that could be addressed.

The following comments relate to specific Rules and are in response to Items 72-95 of the Concept Release, as well as additional sections of the Concept Release. As with the comments in our letter, these recommendations represent the perspective of equity transfer agents, and we believe reflect current processes and understanding within the transfer agent industry. The STA would be pleased to meet with the Commission's Staff to go through each of the below recommendations

As used herein, "Rules" means the existing transfer agent rules.

Rule 17Ac2-1 - Application for Registration of Transfer Agents (SEC Form TA-1)

Suggested changes to the questions on Form TA-1 include the following:

Question #s 10(a) through (f): The information requested in questions 10(a) through (f) is inconsistent with respect to disciplinary history. The requests either reference "in the past ten years" or since inception denoted as "ever." Although we support the Commission's efforts to ensure transparency in the industry, we believe it would be reasonable to have all disciplinary history (if any) be disclosed by the registrant within "the past ten years."

Rule 17Ac2-1- Annual Reporting Requirement for Registered Transfer Agents (SEC Form TA-2)

Suggested changes to the questions on Form TA-2 include the following:

Question # 1(e): If Question 1(e) box is checked and Form TA-2 is actually being filed for the first time in the reporting period, the Form should not be automatically accepted, but rejected or not allowed to be submitted as denoted - systematically.

Question #s 4(b) and 5(a): We recommend that the Commission provide additional guidance to outline the difference between questions 4(b) and 5(a) and how a transfer agent should report. Also, clarification from the Commission would be helpful with respect to question 4(b) accounts are reflective of the number of issues reported in Question 6(a).

Question 5(a): Clarification from the Commission would be helpful with respect to Question 5(a), which is understood to mean; the total number of individual securityholder accounts, plus the recordkeeping transfer agent accounts, and co-transfer agent accounts. Additionally, question 5(a) accounts are reflective of the number of issues reported in Question 6(a), (b), and (c).

Question # 5(d): We recommend that the Commission provide guidance and set forth examples pertaining to the information currently required to be reported. Additionally, we would request clarification that rounding of the % of categories in this section is deemed acceptable by the Commission.

Question #s 5(d) and 6(a): We recommend further clarification and guidance as to what is considered "Other Securities."

Questions #7(a): We recommend that the Commission clarify whether the response to this item should correlate with the number of securityholders reported in response to Item 5(b).

Question #7(b): We recommend that the Commission clarify that the response to this item correlates with the information provided in Item #5(c).

Rule 17Ad-1 – "Definitions"

The STA suggests having all definitions in one section of the Rules instead of interspersed throughout the Rules.

17Ad-1(a)(1) and (2) "Item": The STA believes that "item" should remain a transfer of registered ownership, change in form of share (e.g., certificate to book-entry and vice versa; name change due to marriage), or removal of legend (certificate or book). We do not believe that the maintenance of a shareholder record, (e.g., address changes) or sales should be considered items.

We also suggest that the definition of an "item" should be revised to reflect a presentment per issue and account. This definition would apply regardless of whether the presentment is for certificated shares, uncertificated shares, or presentments from DTC via a shipment control list. For example, a transfer request involving two certificates for the same issuer and account would be one item (one debit). A transfer request involving two certificates from two accounts (one individual, one joint tenant) for the same issuer would be two items (two debits).

Additionally, we would appreciate the Commission's clarification, as it pertains to our understanding that a corporate action transaction, that is not associated with a transfer, is not considered a transfer on its own.

17Ad-1(a)(iii): The STA recommends that this section be eliminated to the extent that outside registrars are no longer used.

17Ad-1(b), (c), (e) and (f): The STA also recommends the elimination of these sections to the extent outside registrars are no longer used.

17Ad-1(a)(3) and (4): The STA believes these definitions should be deleted, since they are not used elsewhere in the Rules.

17Ad-1(d) – Definition of "transfer": The STA recommends the deletion of the reference to "holds securities" in 5th line down. We suggest replacing the language beginning "a transfer agent which holds securities" to read "for uncertificated securities registered in the name of the presentor, when a transfer agent completes ...."

> *(d) The "transfer" of an item is accomplished when, in accordance with the presentor's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presentor by the transfer agent, or when, in accordance with the presentor's instructions, for uncertificated securities registered in the name of the presentor, when a transfer agent completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presentor or a person designated by the presentor or, with respect to those transfers 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.*

The STA also would appreciate clarification of what is considered a transfer. It is clear to the membership that an item is considered a transfer as a result of a change in ownership. However, this definition currently does not spell out all transfers, as we understand it. Examples include the following: a) certificate to certificate (e.g., 1 certificate of 100 shares to 2 certificates of 50 shares each); b) book to certificate (could be more than one certificate representing the book position); c) book to book (typically this is a change of ownership, but not in all cases); and d) certificate to book (could be more than 1 certificate). We believe specific examples and guidance from the Commission would be very helpful to the members.

17Ad-1(g): The STA suggests adding "as defined in Rule 17Ad-5" after "written inquiry or request" or put all definitions located throughout the Rules into one section of the 17Ad Rules.

17Ad-1(i): The STA recommends expanding the definition of non-routine to include restricted stock, all accounts with stops (including accounts with uncertificated shares), transactions including the replacement of certificated shares, and transfers presented with a waiver of probate bond.

17Ad-1(j): The STA recommends changing "eligible for deposit" to "eligible for recordkeeping."

Rule 17Ad-2 - Turnaround, Processing, and Forwarding of Items

The STA recommends eliminating references to outside registrars and to the noon cut-off time. Instead the definition of business day in 17Ad-1 should apply, e.g., item received any time today / Monday – item is to be completed by Thursday, end of business day. Note: This revised requirement will allow for system updates ("night pass") and file transmissions to DTC to be completed prior to 9:00 a.m. the following business day, as made available.

Rule 17Ad-3 – Limitations on Expansion

Rule 17Ad-3 should conform to any changes to routine transfers versus non-routine transfers from Rules 17Ad-1 and 17Ad-2 above.

Rule 17Ad-4 – Applicability of 240.17Ad-2, 240.17Ad-3, 240.17Ad-6(a)(1) through (7) and (11)

The inclusion or exclusion of the below is dependent on the above discussion and result.

17Ad-4(a): Although Rule 17Ad-4(a) allows for an exemption for DRP shares, as well as interests in limited partnerships from the requirements of Rules 17Ad-2, 17Ad-3, and 17Ad-6(a)(1) through (7) and (11), it should be noted that several transfer agents include these securities along with all other securities when processing transfers, keeping records, and calculating transfer turnaround.

17Ad-4(b): All equity TAs should be required to comply with the rules, without exemption.

Rule 17Ad-5 – Written Inquiries and Requests

The STA believes that it is appropriate, at a minimum, to change references from "anyone acting on his behalf" or "anyone acting under his authority" to "appropriate person" as this obligation is clearly defined under the UCC.

We recommend the deletion of all references to revalidating a window ticket, as this is no longer applicable in the industry.

17Ad-5(a)and (b): In subsections (a) and (b) of this section, change the last sentence to reflect book-entry ownership:

> "If a new certificate or uncertificated share position statement is dispatched or mailed to the presentor within five business days following receipt of a request pertaining to that certificate or transfer instruction, no further response to the inquiry shall be required pursuant to this paragraph.

We recommend the Commission sets a threshold for complying with response timeliness, as is in place with routine turnaround requirements (currently at 90%) and as requested within Rule 17Ad-5 above. The STA requests the Commission establish a 95% completion rate for this section.

The STA would like clarification regarding the resolution of certain inquiries. Written inquiries should be able to be resolved with electronic or verbal responses. For example, agents often get pre-presentment calls asking whether certain documentation will be acceptable. Agents do not consider these inquiries that are resolved over the phone to be subject to the requirements of 17Ad-5 and do not believe agents should have to confirm whether something will be acceptable until it is received.

We also recommend that a new response type of "Electronic Delivery of Response" be added if an inquiry of the type set forth in 17Ad-5 is made electronically (e.g., e-mail or through the holder's online account) or if the holder has consented to the electronic delivery of documents (such as correspondence, statements). In our view, transfer agents want the ability to respond electronically (by e-mail or delivery of the document to the holder's online account) thus deemed an acceptable method of response. The use of electronic delivery will continue to be subject to any privacy considerations and applicable privacy laws.
We don't believe the Rule should be expanded to include all inquiries.

There are some concerns of our members around current language "anyone acting on his [the owner's] behalf" and what needs to be provided to the agent to be able to respond to the transaction. The language needs to reflect that transfer agents may have more stringent authentication requirements before releasing information to a third-party.

Rule 17Ad-6 - Recordkeeping

Throughout the Rule, the STA recommends changing the listed documents (e.g., receipt, ticket, log, schedule, etc.) to just "A record, paper or electronic,"... . We believe "record" should be general to allow different forms, either paper or electronic. Listing specific record types as is the case with the current Rule, such as "journal, receipt, ticket, log" may be problematic in the future if these types of records become obsolete or new forms are used.

We recommend deleting references to outside registrar.

We believe the current list of records to be maintained covers the activities of transfer agents.

17Ad-6(b)(9): The STA recommends providing more specific definitions of: "stop order" and "adverse claim." We suggest that definition of "adverse claim" have the same meaning as set out in the UCC.

17Ad-6(b)(10): The STA recommends changing the language of this provision to read: "A transfer journal prepared by such registered transfer agent," thus eliminating the registrar journal.

In connection with recordkeeping of e-mails, we would like clarification that the Rule only requires recordkeeping of e-mails for defined communications that need to be maintained under the Rules. We believe there has been confusion regarding whether transfer agents are required to maintain e-mail communications, regardless of the subject matter and whether they fall under the type of correspondence required to be kept under the Rules. For example, not every e-mail received from a shareholder is required to be maintained under the Rules.

Rule 17Ad-7 – Record Retention

17Ad-7(f): The STA recommends that the Commission update the definition of “electronic storage media” to include any digital storage medium or system, for example computer hard disk, removable storage (USB, tape and CD/DVD) and portable media devices (smartphones, tablets), and to ensure this includes “cloud” storage, and provide clarification that only if the transfer agent chooses to maintain/retain records in this format will it apply.

17Ad-7(f)(5)(ii): The STA also recommends deletion of 17Ad-7(f)(5)(ii) requiring escrow of source code, as it is not necessary or practical. Agents often use off the shelf software as part of their recordkeeping systems or use third party systems, not internal proprietary systems. In such situations, it is not possible to get the source code from the licensors of the software or owners of such third party systems. We believe it would be more appropriate and effective to cover the requirement for systems back-up as part of any proposed Rules concerning disaster recovery.

Rule 17Ad-8 – Securities Position Listings

The STA recommends that this rule be removed, as it does not relate to transfer agents. The SEC should propose this Rule apply to DTC and not part of the transfer agent rules.

Rule 17Ad-9 - Definitions

As the industry continues to move towards dematerialization, the STA recommends a change throughout the Rule to reference “security holder detail” in place of “certificate detail.” The STA recommends that security holder detail include: (1) email address, if provided, and (2) delivery reference (electronic or paper), if preference is provided.

The STA also recommends changing “cancel date” to “debit date,” as “cancel date” is not the term used for book-entry shares.

As noted previously, we also suggest having all definitions in one section of the 17Ad Rules.

Rule 17Ad-10 – Prompt Posting of Certificate Detail to Master Securityholder Files, Maintenance of Accurate Securityholder Files, Communications between co-Transfer Agents and Recordkeeping Transfer Agents, Maintenance of Current Control Book, Retention of Certificate Detail and "Buy-in" of Physical Over-Issuance

17Ad-10(a)(2): The STA recommends that the definition of “promptly” in Section 17Ad-10(a)(2) should be made uniform throughout this section and recommends a definition of five business days for all. We believe that different times for posting of debits and credits to the master securityholder file are an area of confusion in the industry.

17Ad-10(c)(1): We recommend changing the language to be neutral with respect to the methods that a co-transfer agent communicates with the recordkeeping transfer agent, so as to allow paper, electronic or other communication methods that may evolve in the future.

17Ad-10(g): The STA recommends that the Commission clarify the meaning of “physical overissuance.” We suggest the definition be consistent with the UCC and only includes situations where the records reflect share issuance amounts beyond what is authorized by the issuer.

We also suggest that the Commission clarify “buy-ins” should only be required if there is physical overissuance (physical certificated shares issued beyond what is authorized by the issuer). For all other aged record differences, agents should “exercise diligent and continuous attention to resolving the record difference.”

The STA also recommends the Rule be revised to include a provision stating that prior to conversion to a new agent, the prior transfer agent should either resolve all out-of-balance conditions or record-differences or provide written information to the issuer and new transfer agent concerning the reason for and status of resolving the out-of-balance or record difference. The responsibility of resolving the record difference should remain between the transfer agent and issuer at the time the record difference occurred.

Rule 17Ad-11 – Reports Regarding Aged Record Differences, Buy-ins and Failure to Post Certificate Detail to Master Securityholder and Subsidiary Files

17Ad-11(b): The STA suggests that the Commission review the current thresholds in "reporting to issuers" in the context of corporate reporting requirements.

We request clarification that reporting of aged record differences is for those aged records differences outstanding at the end of the calendar quarter, not during the quarter, as those items may have been resolved before quarter end.

Rule 17Ad-12 – Safeguarding of Funds and Securities

17Ad-12(a): We recommend the deletion of reference of "custody" in subsection (a).

The STA also suggests that the Commission clarify the rule applies to safeguarding of physical securities, not book-entry positions. Safeguarding of book-entry positions should be covered separately in the context of disaster recovery/business continuity and information security. We believe the Rule should be more specific with respect to what is meant by keeping physical securities in a manner "reasonably free from risk of theft, loss or destruction." As the Commission is aware, this is open to different interpretations and can lead to unequal treatment of transfer agents.

Rule 17Ad-13 – Annual Study and Evaluation of Internal Accounting Controls

The STA recommends that the exemption in 17Ad-13(d)(3) for banks should remain in the Rule.

Additionally, we would expect that any additional requirements will be made within this section to the extent changes are made to Rule 17Ad-12 and other Rules.

Rule 17Ad-14 – Tender Agents

The STA recommends removing this Rule.

There are no longer multiple securities depositories. DTC's Operational Arrangements and procedures already address setting up accounts with DTC for tender offers and exchanges.

Rule 17Ad-15 – Signature Guarantees

17Ad-15(d)(2): The STA recommends revising the Rule to eliminate the requirement to notify the guarantor unless the reason for rejection is that the stamp was reported stolen, missing or was destroyed. We do not believe there is any benefit to notifying the guarantor if the item is rejected because the prefix on the Medallion does not cover the value of the transaction. As the holder in this situation may choose to go to another guarantor, the original guarantor would not see the item again. We believe better training of guarantors would help reduce rejects based on the value of the transaction. We would still notify the presentor of all rejections.

The STA recommends changing the time period for reporting rejected medallion signature guarantees in this section from 2 business days to 3 business days to be consistent with the turnaround timeframe for routine items.

We also recommend that the Commission clarify that transfer agents can amend their procedures to allow transfer agents to reject a signature guarantee if provided by an entity that has failed to meet its obligations under the program in the event of a claim, or if a claim is pending with a guarantor.

Rule 17Ad-16 – Notice of Assumption or Termination of Transfer Agent Services

17Ad-16(a): The STA recommends changing the time period to notify DTC from "the day the transfer agent is notified of the effective date" to "within one business day of the transfer agent being notified of the effective date." We note that it's not always possible to notify same day if notice is given by the issuer at the end of the business day, on a non-business day, holiday, or after business hours in the time zone in which the agent is receiving the notification. Currently, transfer agents notify DTC of all assumption or termination of transfer agent services, including private companies.

We recommend the Commission sets a threshold for complying with response timeliness, as is in place with routine turnaround requirements (currently at 90%) and as requested within Rule 17Ad-5 above. The STA requests the Commission establish a 95% completion rate for this section.

The STA also recommends changing this Rule to only require notification for DTC eligible issues. Private companies sometimes have objected to such notifications as confidential. In addition, other entities handling recordkeeping for private companies (such as law firms) aren't required to provide any notification of a change in recordkeepers. As a result, it's not clear what benefit is achieved in DTC having information for some private companies but not others. This notification requirement could become more burdensome for private companies with the rollout of crowdfunding.

17Ad-16(c): The STA recommends changes throughout the Rule to reference notification methodology as specified by DTC.

Rule 17Ad-17 – Lost Securityholders and Unresponsive Payees

17Ad-17(c)(1): The STA recommends the required notices should be extended from 210 days to 12 months. This requested change is based upon results quantified by transfer agents since the new unresponsive payee notification requirements became effective. We believe that a longer time period would result in more uncashed payments being included on one notice and, thus, a higher likelihood of a response from the holder.

Consideration should be given that lost shareholder searches and unresponsive payee notices should be limited to U.S. addressees. For non-U.S. residents, the SEC could leave it to the regulatory authorities in those jurisdictions to determine appropriate investor protection. Also, from a practical perspective, non-U.S. addressees will not have TIN on the recordkeeping file of the agent, so the only search criteria is name, which is a much less effective approach.

Rule 17Ad-18 –Year 2000 Reports

The STA agrees that this Rule is no longer needed and should be rescinded.

Rule 17Ad-19 – Cancelled Certificates

The STA requests clarification and confirmation that the Rule contemplates situations where certificates may be cancelled or voided on the records of the transfer agent without physical presentment.

Rule 17Ad-20 - Issuer Restrictions on Ownership by Intermediaries

The STA recommends deleting this rule as it is not common for securities to have a restriction on transfer specifically by a securities intermediary. This Rule no longer appears to be relevant.

Rule 17Ad-21T – Operations Capability in Year 2000

The STA believes that this Rule is obsolete and should be rescinded.

Rule 17f-1 – Requirements for Reporting and Inquiry with Respect to Missing, Lost, Counterfeit or Stolen Securities

We understand the Staff's concerns with respect to timeliness of notifications to the Securities Information Center ("SIC") following the transfer agent's discovery of missing, lost, counterfeit, recovered, or stolen certificates.

The Rule provides for timeframes in which reporting institutions (defined to include transfer agents) are required to notify the SIC when the reporting institution becomes aware ("discovery") of a missing, lost, stolen, recovered, or counterfeit certificate. When the Rule was initially enacted in 1976, the method to notify SIC was a written submission via Form X-17F-1A (paper format). As technology within the industry has progressed, reporting institutions (as agreed upon by the SEC and SIC) modified the reporting format to include electronic file submissions. Submissions are now accepted through: i) the SIC's secure Lost and Stolen Securities Program ("LSSP") Internet portal; ii) the system file feed in agreed upon format between the SIC and the reporting institution; or iii) a combination of both.

On May 25, 2005, the SIC notified all reporting institutions there would be a change to the method by which reporting institutions would notify the SIC. As of January 1, 2006, the SIC no longer accepted paper forms (Form X-17F-1A) and would only accept electronic notification. Notifications accepted would be from either: *i)* system data feed; or *ii)* SIC secure website. The Rule has not yet been amended to include the aforementioned processes, but still refers to "Forms" [101] to be submitted.

Prior to automation, a transfer agent completed Form X-17F-1A and mailed the hard copy to the SIC within one business day of discovery, via regular mail. The SIC would receive the notification based upon the delivery of the mail by the U.S. Post Office, which, depending on the transfer agent's geographical location, could be more than 3 days. Today, via automated file transfers between transfers agents and the SIC, the process is more effective.

The STA recommends that the required electronic submission to the SIC be prior to the opening of the 2nd business day after receipt of notification. By way of example, written notification is received from a shareholder on Monday and the stop placed on Tuesday. Transfer agency systems begin nightly updates after the close of business (e.g., 8:00 PM) and continue to run until the last job completes, with some updates not completing until well after midnight. The system records are then formatted (SIC compatible) and transmitted to the SIC. In this case, the notification to SIC would be received and uploaded by the SIC prior to the opening of business on Wednesday (US stock markets open at 9:30 AM EST).

[101] ***17f-1(c)(7) - Forms.*** *Reporting institutions shall make all reports to the Commission or its designee and to a registered transfer agent for the issue pursuant to this section on Form X-17F-1A. Reporting institutions shall make reports to the Federal Bureau of Investigation pursuant to this Section on Form X-17F-1A, unless the reporting institution is a member of the Federal Reserve System or a bank whose deposits are insured by the Federal Deposit Insurance Corporation, in which case reports may be made on the form required by the institution's appropriate regulatory agency for reports to the Federal Bureau of Investigation.*

The above reporting methodology is common within the industry. It is our opinion that this methodology is in compliance with the Rule.

Reporting Cancelled Certificates to the LSSP/SIC

The transfer agency industry has been looking to have additional controls over cancelled certificates for a number of years. Since 2000, transfer agents began voluntarily reporting cancelled certificates to the SIC, with approximately 90% of the transfer agent market volume of cancelled certificates being reported. It is the STA's position that the SIC is a viable and effective solution, and should be strongly considered to record cancelled certificates. Reporting cancelled certificates, along with missing, lost, counterfeit, or stolen certificates to the SIC will continue to benefit individual investors, issuers, and financial intermediaries who deal with physical certificates by deterring fraud, speeding settlement, and reducing failed trade charges that broker-dealers may incur when they unwittingly buy or sell certificates whose transferability has been compromised.

If cancelled certificates are required by the Rules to be reported to the SIC, we suggest that the Commission and Staff revisit whether all of the requirements of Rule 17Ad-19 are still necessary.

Rule 17f-2 – Fingerprinting of Securities Industry Personnel

Checking employee fingerprints of non-U.S. persons (non-US locations) with the Attorney General of the United States or its designee, would make more sense if the Rule included "or equivalent local law enforcement agency." While we suspect that the Attorney General of the United States or its designee' database (typically the F.B.I.) includes some non-US records, there are jurisdictional issues to consider here.

We believe the spirit of the Rule would be better served by checking with local law enforcement because as currently applied, local criminal records are ignored and non-U.S. persons (e.g., Canadians) are not in the U.S. but rather another jurisdiction.

The Commission should recognize there are privacy and/or employment laws in non-U.S. jurisdictions that may prohibit fingerprinting or certain background checks.

Consideration should be given to the associated cost of fingerprinting individuals as well as associated monitoring and recordkeeping, for those non-U.S. persons whose prints will most likely not result in a match to the Attorney General of the United States or designee' database.

Note: The STA is aware this Rule does not only apply to transfer agents and its partners, directors, officers and employees, but requires every member of a national securities exchange, broker, dealer, and registered clearing agency and their partners, directors, officers and employees to be fingerprinted, with noted exemptions, as set forth in Section (a)(1) and (2) of the Rule.