June 2, 2023

Vanessa Countryman
Secretary, Securities and Exchange Commission
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

By email: rule-comments@sec.gov

Re: **File No. S7-05-23**, Release Nos. 34-97141, IA-6262, and IC-34854, Proposed Amendments to Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information ("Proposed Regulation S-P") and
File No. S7-06-23, Release No. 34-97142, Cybersecurity Risk Management Rule for Broker-Dealers, Clearing Agencies, Major Security-Based Swap Participants, the Municipal Securities Rulemaking Board, National Securities Associations, National Securities Exchanges, Security-Based Swap Data Repositories, Security-Based Swap Dealers, and Transfer Agents ("Proposed Cybersecurity Rule" and, together with Proposed Reg S-P, the "Proposed Rules")

Dear Secretary Countryman:

On behalf of the Securities Transfer Association, Inc. ("STA"), we want to thank the Securities and Exchange Commission ("Commission") for the opportunity to comment on the Proposed Rules concerning the protection of shareholder records and information. STA appreciates the importance of protecting the privacy of shareholder information and supports the Commission's efforts to safeguard that information. STA writes respectfully to suggest that the Proposed Rules, as they apply to transfer agents, will not meaningfully increase the safeguarding of shareholder information and, instead, will cause ambiguity among competing laws, shareholder confusion and, possibly, a substantial financial strain on the smallest agents.

The Securities Transfer Association is an organization of professional recordkeepers that interact daily with both issuers and their investors. Founded in 1911, STA is the professional association of transfer agents and represents more than 130 commercial stock transfer agents, bond agents, mutual fund agents, and related service providers within the United States and Canada. STA membership consists of

banks and independent transfer agents that perform record keeping services for publicly traded companies and mutual funds, corporate transfer agents that perform the same service for their own corporations, and companies that support organizations involved in the transfer of securities. Collectively, STA members serve as transfer agents for more than 15,000 publicly traded corporations, providing record keeping and other services to more than 100 million shareholders.

Notably, STA has been advocating for and, several years ago, spent significant time and resources working with the Commission toward adopting updated and amended transfer agent regulations codified at 17 C.F.R. § 240.17Ad ("Rule 17Ad"). Ideally, to achieve its goal, the Commission would amend Rule 17Ad, which is in need of modernizing and is designed with the specific role and complexities of transfer agents in mind. Attempting to incorporate transfer agents into regulations designed for other market participants, like broker-dealers and investment companies, results in ill-fitting regulations which minimize their efficacy, maximize their complications, and fail to consider the unique position and activities of transfer agents in the markets.

Transfer agents, which maintain the books and records of companies and record the issuance and transfer of shares, have long been viewed as important players in facilitating an efficient and orderly market. Their role, however, is fundamentally different from those of other market participants. Principally: (1) transfer agents generally do not have possession of shareholder assets, (2) transfer agents generally do not have the type and scope of shareholder information that other market participants maintain; and (3) issuers – not shareholders – are the clients of transfer agents. These differences are meaningful, as discussed in greater detail below, and the Proposed Rules do not account for these distinctions.

Before turning to some of the more significant concerns with the Proposed Rules as they would impact transfer agents, it is important to note that, irrespective of the Proposed Rules, transfer agents are subject to numerous federal and state laws and regulations which work to safeguard shareholder's private information. One of the provisions of Regulation S-P in its current form, rule 248.30(b) ("disposal rule"), requires proper disposal of consumer report information. Laws in all fifty states mandate notification to shareholders of a data breach. *See* Proposal,[*] pp. 43-44. State and federal banking laws, which apply to many of the larger transfer agents, demand rigorous safeguarding policies and procedures. *See, e.g.*, 23 NYCRR 500.0 through 500.23.

[*] As used herein, "Regulation S-P Proposal" refers to the information and analysis concerning the Proposed Regulation S-P which the Commission provides at https://www.sec.gov/rules/proposed/2023/34-97141.pdf.

In this landscape of multiple and layered laws and regulations, adding another rule, without preempting similar state laws which address these issues, or exempting entities otherwise regulated by certain state or federal laws, will create more uncertainty and further complicate compliance. Additionally, the notification requirements are likely to cause shareholder confusion, without providing shareholders with any corresponding benefit. The Proposed Rules also purport to require transfer agents to undertake monitoring and enforcement roles over third party service providers which they are unlikely able to perform, because transfer agents are not sufficiently large enough to influence third party service providers.

In an effort to pull transfer agents within the purview of the safeguard provisions of Proposed Regulation S-P, which were designed to apply to broker-dealers and other market participants, Proposed Regulation S-P provides an entirely different definition of the fundamental term "customer information," only as that term relates to transfer agents. As concerns transfer agents only, "customer information" includes "any record containing nonpublic personal information…identified with any natural person, who is a securityholder of an issuer for which the transfer agent acts or has acted as transfer agent, that is handled or maintained by the transfer agent or on its behalf." *See* Proposed Regulation S-P, 248.30(e)(5)(ii). This manipulation is necessary because transfer agents have a fundamentally different relationship with shareholders than other Covered Entities.† Unlike other Covered Entities, shareholders are not customers of transfer agents. A transfer agent's customers are issuers. Needing to re-define a key term in order for it to have any application to transfer agents is a red flag that Proposed Regulation S-P is not well-suited for transfer agents and highlights the need to have a more in-depth analysis of how these rules may impact transfer agents, their customers, and shareholders.

One consequence of this effort to regulate transfer agents in the same way as differently-situated market participants is that, as concerns transfer agents, Proposed Regulation S-P will result in confusing – but not new – notification to shareholders. Proposed Regulation S-P requires transfer agents to notify shareholders "whose sensitive customer information was, or was reasonably likely to have been, accessed or used without authorization." This type of notice, however, is already provided to shareholders. As the Commission acknowledges, all fifty states have enacted laws obligating entities to provide notice to individuals of unauthorized access to personal information. These laws obligate transfer agents, as agents for their issuer clients, to notify issuers of data breaches relevant to the issuer's shareholders.‡ Issuers are then obligated to provide notice to their shareholders. Thus, Proposed Regulation S-P does not provide shareholders with helpful, new

† Unless otherwise stated herein, capitalized terms have the same meanings given to them in the Proposed Rules.

‡ Often, this obligation also appears in the contracts that govern the transfer agent relationship.

information. Rather, Proposed Regulation S-P would result in shareholders receiving two different notices, from two different entities, concerning the same breach, likely resulting in shareholder confusion. This is particularly true, because many shareholders are not familiar with an issuer's transfer agent, as transfer agents have a very limited relationship with shareholders, who are not their customers.

The Commission suggests that because "[t]wenty-one states only require notice if, after an investigation, the institution finds that a risk of harm exists," it is beneficial to "set[] a minimum standard based on an affirmative presumption of notification." *See* Reg S-P Proposal, pp. 43-44. This fails to recognize, though, that because issuers have shareholders nationwide and because treating shareholders individually based on where they reside is overly burdensome, issuers have policies and procedures that are already designed to satisfy the strictest standard, which is an affirmative presumption of notification "imposed by 22 states and [] consistent with the standard [] propos[ed]" by Proposed Regulation S-P. *See* Reg S-P Proposal, pp. 43-44.

Any benefit of a second notification to shareholders is further undermined by the limited personal information which transfer agents maintain. Many transfer agents simply do not have the type or scope of personal information which could lead to further complications for shareholders. For example, transfer agents are not subject to the same know-your-customer obligations to which other market participants are subject and, therefore, do not have extensive background information concerning shareholders. Moreover, transfer agents generally do not have possession of shareholder assets or have information which could be used to take or transfer assets of shareholders.

The above notification example also demonstrates the potential for conflicts and confusion where there are overlapping state and federal regulations. As stated above, there are several state regulations which concern the safeguarding of personal information and data breach notifications, some of which conflict with the Proposed Rules. Rather than preempting or deferring to state law, the Proposed Rules sow confusion which will likely lead to various strategies for navigating the conflicts. The confusion will also lead to unnecessary expenses as transfer agents attempt to develop policies and procedures capable of addressing conflicting regulations.

Another consequence of the Proposed Rules, as they apply to transfer agents, is that they demand that transfer agents perform, for many, an unachievable task. Proposed Regulation S-P "require[s] covered institutions, pursuant to a written contract between the covered institution and its service providers, to require service providers to take appropriate measures that are designed to protect against unauthorized access to or use of customer information." The Proposed

Cybersecurity Rule requires that "the policies and procedures for protecting information would need to require oversight of service providers that receive, maintain, or process the Covered Entity's information, or are otherwise permitted to access the Covered Entity's information systems and the information residing on those systems, pursuant to a written contract between the covered entity and the service provider." *See* Cybersecurity Proposal,[§] p. 108. Indeed, the Cybersecurity Proposal suggests that Covered Entities' "policies and procedures could include measures to perform due diligence on a service provider's cybersecurity risk management prior to using the service provider and periodically thereafter during the relationship with the service provider." *See id*.

Whether the Commission has the authority to regulate, through requisite contractual terms, entities which it does not otherwise have the authority to regulate is dubious. Irrespective of the Commission's authority, however, transfer agents, because of their relatively small size, simply do not have the negotiating power to demand contractual terms requiring third party service providers to maintain certain policies and procedures, or to demand permission to perform due diligence on a service provider's systems, policies, and procedures. This is patently true as to service providers such as Google and Microsoft, but also true of many other providers which service transfer agents. Transfer agents would be forced to find, if they exist, providers already in compliance with the Proposed Rules' requirements and potentially to pay a premium therefor. Moreover, the Proposed Rules would hold transfer agents responsible for breaches at third party service providers, imposing further costly measures on transfer agents. These financial burdens would be particularly acute for small transfer agents which, paradoxically, are less likely to have the type of information that would render shareholders particularly vulnerable to adverse outcomes.

The Proposed Cybersecurity Rule also imposes unnecessary financial burdens on transfer agents in requiring them to amend the Form SCIR within 48 hours of discovering any new and various other specific information concerning the cybersecurity event. This could lead to filing several Forms SCIR during the course of an investigation, where only one would have the same effect. Simply requiring a single Form SCIR to be filed upon completion of the investigation of the cybersecurity event would provide the Commission with the same information without undermining its goals. There should be no urgency in receiving an initial Form SCIR and any amendments thereto where Covered Entities are also obligated to notify and open lines of communication with the Commission immediately upon discovery of any possible cybersecurity event. *See* Cybersecurity Proposal, p. 134.

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§ As used herein, "Cybersecurity Proposal" refers to the information and analysis concerning the Proposed Cybersecurity Regulation which the Commission provides at https://www.sec.gov/rules/proposed/2023/34-97142.pdf. The Cybersecurity Proposal and Regulation S-P Proposal, together, are referred to as "Proposals."

The proposed public disclosures, too, are overly burdensome and unnecessary as concerns transfer agents. Public disclosures have far less benefit as concerns transfer agents, because transfer agents' clients are not the general public who may be shareholders. Transfer agents' clients are issuers; and information may be provided to would-be issuer clients without unnecessarily alerting would-be threat actors to potential security weaknesses in any specific transfer agent or the industry as a whole. Moreover, public disclosures by transfer agents could invite unwarranted scrutiny, disruptive shareholder inquiries and, potentially, litigation by shareholders who have a minimal relationship with transfer agents and where transfer agents generally have relatively limited information concerning shareholders. There is simply insufficient benefit to the general public to outweigh these costs.

Ideally, the Commission would remove transfer agents entirely from the purview of the Proposed Rules and, instead, modernize Rule 17Ad to effectuate the Commission's privacy and cybersecurity goals in a manner specific to the business and role of transfer agents. In the alternative, to minimize the deleterious effects identified herein, the Commission should consider tailoring the Proposed Rules to exempt transfer agents which satisfy certain criteria. For example, the Proposed Rules could exempt transfer agents (1) which are otherwise subject to state or federal banking laws; (2) that do not perform certain services, such as paying agent services; or (3) that do not maintain a threshold number of shareholder accounts. Tailoring the Proposed Rules in this manner would reduce the number of overlapping regulations, resulting in greater compliance, without meaningfully sacrificing the proposed benefits to shareholders.

STA further requests that the Commission consider preempting state laws to minimize the potential for multiple and competing obligations. Using its preemption authority would alleviate the guesswork that transfer agents will be required to undertake when managing conflicts between these Proposed Rules and existing state regulations, which will otherwise leave transfer agents gleaning clarity from enforcement proceedings rather than the regulation itself. If the Commission does not intend to use its preemption authority, it should prepare and produce a cost-benefit analysis identifying the specific ways in which the Proposed Rules would be an improvement over existing regulations.

Finally, STA requests that Covered Entities be given a 24-36 month period to comply with the final regulations,[**] given the breadth of the regulations and the many nuances and details which will likely be addressed in examining, revising, and implementing the policies and procedures required by these rules.

[**] Proposed Regulation S-P states that compliance must be achieved within one year from the date the regulation is finalized. *See* Regulation S-P Proposal, p. 131.

Given the quick turnaround time permitted to provide comments to these Proposed Rules, STA was unable to address all of the questions posed by the Proposals, but would be glad to answer any questions directly or to further discuss with the Commission any specific aspects of the Proposed Regulations. STA appreciates your time considering these important issues. Thank you again for your efforts to safeguard personal information, and thank you for providing STA with the opportunity to provide these comments in response thereto.

Sincerely,

Peter Duggan
President