

June 5, 2023

Vanessa Countryman, Secretary
U.S. Securities and Exchange Commission
By email: rule-comments@sec.gov

Re: Securities and Exchange Commission Release No. 34-97141 (the “Release”)
**File Number S7-05-23, Regulation S-P: Privacy of Consumer Financial
Information and Safeguarding Customer Information** (“Proposed Reg S-P”
or the “Safeguard Rule”)

Dear Secretary Countryman:

Computershare Limited, on behalf of itself and the U.S., Canadian and Hong Kong registered transfer agent affiliates and U.S. registered broker-dealer affiliate described below (collectively, “Computershare”), appreciates the opportunity to provide comments to the Securities and Exchange Commission (the “Commission” or “SEC”) on the proposed changes to Reg S-P relating to safeguarding customer information.

Computershare Limited (ASX: CPU) is a global market leader in transfer agency and share registration, employee equity plans, mortgage servicing, proxy solicitation and stakeholder communications. We also specialize in corporate trust and a range of other diversified financial and governance services. Computershare is represented in all major financial markets, with Computershare US and Computershare Canada combined servicing over 25,000 transfer agency clients, and over 18 million registered securityholder accounts.

Within the Computershare family, Computershare Inc., Computershare Trust Company, N.A., and Computershare Delaware Trust Company (collectively, “Computershare US”) are registered transfer agents located in the United States. Computershare Trust Company of Canada and Computershare Investor Services, Inc. (collectively, “Computershare Canada”) are registered transfer agents located in Canada. Computershare Investor Services Limited (Hong Kong) is a registered transfer agent located in Hong Kong (“Computershare HK”). Georgeson Securities Corporation is a registered broker-dealer.

I. GENERAL COMMENTS

Computershare agrees with and supports the position of the Securities Transfer Association (“STA”) in its comment letter to the Commission dated June 5, 2023 (the “STA Comment Letter”). We note that Computershare US takes an active role in this industry organization through membership on the Board and various committees and participated in the development of the STA Comment Letter.

Computershare, however, would like to offer its additional comments and recommendations and its unique view due to its global enterprise. Computershare believes Proposed Reg S-P is an unnecessary regulation for transfer agents, as they are already subject, either directly or indirectly, to state, federal or provincial laws designed to protect personal information of securityholders and requiring breach notification. Computershare further believes certain provisions of Proposed Reg S-P are unduly burdensome, and that compliance with other provisions will be difficult, if not impossible, to achieve.

While Computershare supports the Commission in its endeavors to protect the personal information of securityholders and investors, the application of Proposed Reg S-P to transfer agents is not appropriate or necessary for the reasons set forth in the STA Comment Letter. We note that transfer agents provide services to the issuers of equity securities (held by shareholders) and to the issuers of debt securities (held by bondholders). Collectively these investors are referred to as “securityholders” in Proposed Reg S-P. Securityholders of issuers are not customers of the transfer agent (the issuer is the customer of the transfer agent) and imposing Proposed Reg S-P on them creates conflicting and duplicative requirements (in particular with respect to breach notification) to those already in place through state and federal laws to safeguard securityholders’ personal information. Likewise, Computershare Canada and Computershare HK are also subject to privacy laws designed to protect securityholders.¹

Computershare would, however, support general safeguarding of securityholder information requirements to be enacted under the transfer agent regulations codified at 17 C.F.R. § 240.17Ad (the “17Ad Rules”), similar to those set forth in part (b) of the Safeguard Rule. As set forth in the STA Comment Letter, transfer agents, including Computershare, have been advocating for many years to update the 17Ad Rules, and spent significant time working with the Commission towards this goal, in particular in connection with the Commission’s 2015 Concept Release and Request for Comment on Transfer Agent Regulations². Any requirements for transfer agents related to safeguarding securityholder information would be better addressed as part of updates to the 17Ad Rules due to the unique position of transfer agents in the marketplace.

Notwithstanding our objection to transfer agents being subject to Proposed Reg S-P, given the breadth of the changes that would be required under Proposed Reg S-P, Computershare agrees with the STA’s recommendation that any final rule includes a minimum of 24-36 months’ compliance period, not one year as proposed, to ensure covered entities have sufficient time for

¹ See, e.g., <https://www.elegislation.gov.hk/hk/cap486> (the ordinance) and https://www.pcpd.org.hk/english/data_privacy_law/ordinance_at_a_Glance/ordinance.html (the regulator) for Hong Kong; and The Personal Information Protection and Electronic Documents Act (PIPEDA), a federal privacy law for Canada, https://www.priv.gc.ca/en/privacy-topics/privacy-laws-in-canada/the-personal-information-protection-and-electronic-documents-act-pipeda/r_o_p/.

² Concept Release and Request for Comment on Transfer Agent Regulations Name of Release, 60 Fed. Reg. 81,948 (Dec. 31, 2015).

the development and implementation of policies and procedures needed to meet the new requirements.

II. EXISTING PRIVACY LAWS APPLICABLE TO TRANSFER AGENTS

A. Banking Laws

Many registered transfer agents like Computershare US and Computershare Canada entities are banks or trust companies, and therefore already subject to state, federal, or provincial banking laws, rules, regulations and inter-agency guidelines. For such agents, banking law already addresses privacy, breach notification, and disposal of personal information.³

To the extent Proposed Reg S-P is adopted, Computershare would request that banks already subject to existing banking laws (whether US or non-US, as applicable) addressing privacy and safeguarding customer information be exempt from the Safeguard Rule. It would not only be challenging from a compliance standpoint, but also burdensome, to have to comply with multiple sets of similar but different rules on the same topic. In addition, having separate sets of rules could become problematic if the transfer agent is examined by multiple regulators with respect to such rules, and the regulators provide different or conflicting interpretations or guidance.

B. State Laws

In addition to banking laws, many states have enacted legislation addressing data privacy and safeguarding of personal information. For example, Massachusetts has had regulations in place since 2010 requiring companies handling Massachusetts' residents' information to implement an information security program to protect data.⁴ In the past five years, nine (9) states⁵ have enacted data privacy laws, which also include provisions relating to safeguarding personal information. As discussed in more detail below, all states have breach notification laws in place to notify their residents of unauthorized access to their residents' data.

Foreign jurisdictions such as the European Union, Canada, and Hong Kong also have data privacy laws addressing information security and breach notification. Transfer agents are subject to such foreign laws either directly (in the case of non-US registered transfer agents) or indirectly as "service providers" or "processors" of the data for their issuer clients.

As noted in the STA Comment Letter, absent preemption of state law by the SEC when state laws conflict with Proposed Reg S-P, or exemption with respect to transfer agents subject to

³ See, e.g., Title V, Subtitle A, of the Gramm–Leach–Bliley Act, 15 U.S.C. §§ 6801–6809; 12 C.F.R. § 30, Appendix B to Part 30 - Interagency Guidelines Establishing Information Security Standards; and New York State Department of Financial Services Cybersecurity Regulation, 23 NYCRR Part 500.

⁴ 201 Code Mass. Regs. § 17.

⁵ https://iapp.org/media/pdf/resource_center/State_Comp_Privacy_Law_Chart.pdf

banking laws, it will be extremely challenging for transfer agents or other covered entities to comply with both sets of laws. Likewise, it will be challenging for non-US transfer agents who are covered institutions to comply with potentially different and redundant foreign laws.

III. SAFEGUARD RULE

A. Definitions (§ 248.30(e))

Computershare notes that the definition of “sensitive customer information” under Proposed Reg S-P is not consistent with state or foreign privacy laws in that it includes certain information such as a social security number or other state or government issued identification. Typically, the definition of sensitive customer information under state laws also does not include general financial information such as such as account number, name or online user name, credit card details, or security questions and codes. The state law definitions of sensitive customer information usually relate to items such as biometric details, sexual orientation, and religious beliefs. As a result, it will create challenges in creating policies and procedures to meet the different regulatory requirements that relate to the protection and use of sensitive customer information, and training of staff. For example, some states require consent to process sensitive customer information, which would not be defined to include a social security number.⁶ As a result, procedures would have to note that while sensitive customer information for purposes of SEC requirements includes a social security number, it does not include this for other state law requirements. This may create confusion with staff and will make compliance more difficult. Computershare would recommend that the definitions of customer information and sensitive customer information be aligned with state law definitions of personal information and sensitive personal information, respectively.

The proposed definition of “customer” as it relates to transfer agents means “any natural person who is a securityholder of an issuer for which the transfer agent acts or has acted as a transfer agent”.⁷ As noted above, securityholders are not transfer agent customers. This proposed definition does not accurately reflect the non-customer relationship between transfer agents and securityholders and does not take into account the principal-agency relationship between issuers and transfer agents. It is also contrary to privacy laws that deem the issuer to be the “controller” or “business” with respect to securityholders and their data and deem the transfer agent based on its role to be the “processor” or “service provider.” This proposed definition of “customer” could create direct conflict around roles and responsibilities in the event of a breach and for other data privacy purposes. The current state privacy law designations of “controller” and “business” for issuers and “processor” or “service provider” for transfer agents allow for clear understanding of roles and responsibilities in the event of a breach and with respect to consumer rights.

⁶ See, e.g., Va. Code Ann. § 59.1; Conn Gen. Stat. § 42-515- § 42-526 (eff. July 1, 2023); Utah Code Ann. § 13-61-102 (eff. Dec. 31, 2023); Col. Rev. Stat. § 6-1-1301 (eff. July 1, 2023).

⁷ Regulation S-P: Privacy of Consumer Financial Information and Safeguarding Customer Information, 88 Fed. Reg. 20616 (April 6, 2023), at 20684.

B. Notifying affected individuals of unauthorized access or use (§ 248.30(b)(4))

Requiring transfer agents to notify individuals of unauthorized access to or use of their sensitive customer information as proposed in the Safeguard Rule would result in duplicate and potentially conflicting and/or confusing notifications to securityholders. All fifty states have breach notification laws in place, with the earliest states adopting such laws in the early 2000's. Under such laws, transfer agents are required to notify their issuer clients (as the "owners" of the data) of unauthorized access to personal information of securityholders. The issuer is then required to notify securityholders depending on whether the standards of the state law have been met. The Commission acknowledges that states have existing laws requiring notification and that these differ from state to state, and indicates its goal is to establish a Federal minimum standard⁸ to assist customers when a breach occurs. However, as state breach notification laws have been in effect for nearly two decades, Computershare has long-standing policies and procedures for notification, and contractual obligations to clients that are designed to track state law requirements. Such contract provisions may specifically prohibit Computershare as the transfer agent from notifying securityholders as the issuers have the requirement to notify their securityholders under state law. In addition, as noted in the STA Comment Letter, issuers may have adopted policies to adhere the strictest state standards thereby already notifying securityholders consistent with Proposed Reg S-P.

As the Commission recognizes in the Release, Proposed Reg S-P requirements may result in two notifications to customers, given in accordance with different time periods and with different information. There is no solution proposed in the Release to address this problem, other than the Commission noting that 11 states may exempt notification by entities subject to GLBA or other rules issued by federal regulators, where notification is provided under such rules⁹. However, this relief would not apply to transfer agents, as transfer agents do not have notification requirements to securityholders under state law. As a result, the issuer would still be required to notify securityholders under state law, even if the transfer agent notifies securityholders under Proposed Reg S-P. A securityholder would then receive two notifications, one from the transfer agent and one from the issuer, at different times and with different information, potentially resulting in confusion, questions, and unnecessary costs to the transfer agent and issuer.

C. Notifying affected individuals of unauthorized access or use – Affected individuals (§ 248.30(b)(4)(ii))

The notification requirements of Proposed Reg S-P include notifying "all individuals whose sensitive customer information resides in the customer information system that was, or was reasonably likely to have been accessed or used without authorization" in the event the covered

⁸ *Id.* at 20618.

⁹ *Id.*

institution cannot identify the specific individuals impacted.¹⁰ This requirement, depending on the number of registered securityholder accounts being maintained by a transfer agent, could result in a significant number of notifications, would unduly alarm securityholders (with transfer agents unable to answer inquiries as it would not be able to advise holders if their account was impacted), would create reputational risks for transfer agents, and result in significant costs. Computershare would question the benefit of such notification and believes a covered institution's efforts and resources would be better spent investigating the incident and determining the impacted securityholders.

D. Service providers (§ 248.30(b)(5))

The Commission has proposed that contracts with service providers require the service providers to notify covered institutions "as soon as possible, but no later than 48 hours after becoming aware of a breach".¹¹ As set forth in the STA Comment Letter, it may be challenging for transfer agents to mandate contractual requirements with service providers, especially requirements such as this notification by service providers in such a short time period. Service providers may object to such provisions as they are not subject to Proposed Reg S-P, may not be subject to the jurisdiction of the SEC, and would have their own policies and procedures on breach notification. Furthermore, notwithstanding our opposition to a service provider requirement, to the extent any provision related to service providers were to be adopted, Computershare would recommend that any requirement be applied prospectively only, and not to existing service provider contracts, as transfer agents would have no ability to require service providers to amend agreements and may have no recourse, absent termination, if a service provider refuses.

IV. CONCLUSION

Computershare supports the Commission's goal to ensure the safeguarding of securityholder information. It believes the best way to achieve this goal would be to propose a rule specific to transfer agents through an amendment to existing transfer agent rules, requiring policies and procedures to safeguard customer information and ensure proper disposal of such information. Computershare believes breach notification requirements are not necessary as there is already well-established state law to notify securityholders in the event of a breach. An alternative to address conflicting state laws, as set forth in the STA Comment Letter, is for the Commission to consider preempting state laws to minimize the potential for multiple and competing obligations; provided, however, if the Commission does not intend to use its preemption authority, we support the STA's position that a cost-benefit analysis should be performed to identify the specific ways in which Proposed Reg S-P would be an improvement over existing regulations. In addition, Computershare would request the Commission consider its other recommendations for changes.

¹⁰ *Id.* at 20683.

¹¹ *Id.* at 20684.

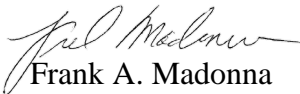
Vanessa Countryman, Secretary
Securities and Exchange Commission
Page 7
June 5, 2023

Computershare truly appreciates the opportunity to comment on Proposed Reg S-P. As noted in the STA Comment Letter, in view of the short time period permitted to provide comments to Proposed Reg S-P, we were unable to address all of the questions posed by the Commission but would be glad to answer any questions directly or to further discuss with the Commission Proposed Reg S-P and Computershare's comments herein.

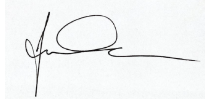
Sincerely,



Ann M. Bowering
CEO US Issuer Services, Computershare Inc.



Frank A. Madonna
President, Computershare Trust Company, N.A.
and Computershare Delaware Trust Company
CEO, Computershare Corporate Trust Integration



Irfan Motiwala
CEO Issuer Services, Computershare Trust Company of Canada and
Computershare Investor Services, Inc.



Richard Houg
CEO Issuer Services, Asia
Computershare Investor Services Limited (Hong Kong)

cc (by e-mail): Moshe Rothman, Assistant Director
Mark Saltzburg, Senior Special Counsel
Catherine Whiting, Special Counsel
Elizabeth de Boyrie, Counsel
Division of Trading and Markets