

By Federal Express and Electronic Submission

May 12, 2008

Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

RE: Securities and Exchange Commission (the "Commission") Release No. 34-57427,  
File No. S7-06-08, Regulation S-P: Privacy of Consumer Financial Information and  
Safeguarding Personal Information

Dear Ms. Morris:

Computershare appreciates the opportunity to comment on the proposed amendments to Regulation S-P set forth in the above-referenced release (the "Proposal"). Computershare, including through its wholly-owned subsidiary, Computershare Trust Company, N.A. (the "Trust Company"), provides transfer agent services for approximately 2,700 issuer clients and approximately 17 million of their registered shareholders.

Computershare commends and supports the Commission in its efforts to ensure all transfer agents have the appropriate procedures in place to safeguard personal information of security holders, and to address security breach incidents. As the Trust Company is a national bank and limited purpose trust company chartered with The Office of the Comptroller of the Currency, it is already subject to the banking rules and guidelines referenced in the Proposal and upon which many of the proposed amendments are based. As a result, Computershare agrees with most of the proposed amendments to Regulation S-P, which appear to be materially in line with the current banking guidelines and regulations.

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In addition, as a bank transfer agent, Computershare is placed in a competitive disadvantage with non-bank transfer agents in view of the significant costs it must bear to comply with bank regulatory requirements for information security and privacy. As a result, Computershare fully supports the Commission's efforts to require all transfer agents to be subject to the same information security and privacy requirements. This will result in a more even distribution of compliance costs among agents.

Computershare has specific concerns with the proposed notification requirements, which are different from those under state law and banking guidelines. In addition, Computershare would like to respond to a number of specific questions presented by the Commission.

### **Notification Requirements**

The Commission proposes to require transfer agents to notify individual security holders in the event of a security breach involving their personal information. In general, transfer agents, unlike broker-dealers and investment advisers, do not have a direct customer relationship with security holders. Transfer agents maintain security holder records on behalf of their clients, *i.e.*, security issuers. Generally, under state notification laws, as transfer agents are not the owners of the data, they are not required to notify affected individuals of a breach. Instead, they are required to notify the owner of the data – the issuer – who in turn is required to notify the affected individuals. Likewise, under banking guidelines, Computershare would notify its customer – the issuer.

Currently, in the event of a breach, Computershare would work with its issuer client to provide notification meeting all legal requirements. The notifications would be sent out by Computershare on behalf of its clients.

If transfer agents are required to send a separate additional notification to individual security holders in the event of a breach, the security holder would receive two separate notices from two different entities for the same breach, which may confuse security holders and cause them undue anxiety.

While Computershare agrees that security holders should be notified in the event of a security breach of their personal information, we believe the appropriate party to provide notification is our customer – the issuer. Notification from the issuer is appropriate in that the issuer has the direct relationship with the shareholder, and will want to be the party to send such a communication. Computershare would recommend that an exception be added to the proposed requirements, so that a transfer agent would not have

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to provide a separate notification if the issuer provides notification, or if a joint notification is sent by the transfer agent and issuer.

### **Commission Questions**

The following are Computershare's responses to certain questions presented by the Commission as part of the Proposal. The Commission's questions are in italics and bold and follow the order in which they appear in the Proposal.

#### **Revised Safeguarding Policies and Procedures**

***We request comment on the proposed specific standards for safeguarding personal information.***

- ***Would additional standards be appropriate or are certain standards unnecessary?***

Computershare does not believe any additional standards are necessary or appropriate. The existing proposed standards already set forth clear general requirements, are consistent with the banking guidelines, and provide the flexibility necessary for institutions to develop appropriate safeguards based on their particular businesses and level of risk.

- ***For example, should we require that covered institutions implement multifactor authentication, layered security, or other controls for high-risk transactions involving access to customer information or the movement to third parties?***

Computershare does not believe there should be specific requirements or controls for specific transactions. Institutions should have the flexibility to perform their own risk assessments and determine what authentication levels and controls are appropriate based on the transaction risks involved, level of risk the business is willing to assume, cost of implementing risk controls, etc.



- *Should we require that covered institutions include in their information security programs "red flag" elements that would be relevant to detecting, preventing and mitigating identify theft in connection with the opening of accounts or existing accounts, or in connection with particular types of accounts associated with a reasonably foreseeable risk of identity theft? Should we require that covered institutions adopt policies and procedures for evaluating changes of address followed closely by an account change or transaction, or for processing address discrepancy notices from consumer reporting agencies?*

Computershare does not believe information security programs should have specific "red flag" elements. Requirements for transfer agents to review new accounts or existing accounts to prevent identify theft would be a significant change in processing, would delay transfers, and add significant cost to the transfer process. In view of the nature of the transfer agent business, there is not significant risk in the account opening process or risk that there was identify theft involved with our existing 17 million shareholder accounts.

Identify verification will typically already be done by other industry participants before the account is opened with us. For example, the initial purchase of shares is not generally done through a transfer agent, but through a broker-dealer. The broker-dealer would have due diligence requirements in connection with the account opening that would likely prevent any identity theft. A new account opened with the transfer agent may typically happen as a result of a death of a shareholder, gifting of shares to family members, or as an issuance to an employee. In the event of a transfer, a medallion signature guarantee is provided by a financial institution or broker-dealer guarantor. The guarantor often has an existing customer relationship with the security holder and would require verification of identity and supporting documentation for the transfer. In the event of a stock issuance to an employee, the issuer knows the employee and has already verified identity through the employment process.

Similarly, Computershare and we believe many transfer agents, already have procedures concerning address changes and notification of such changes to account holders. Transfer agents should have the ability to develop their own procedures and controls to address the risk of particular transactions in a manner they deem appropriate. As a result, we would not support the Commission's mandating specific procedures for review of a change of address followed closely by an account change or transaction, but rather agents should have the discretion to adopt their own procedures.

- *Commenters are invited to discuss the proposed definition of “service provider.” They also are invited to discuss whether, if the proposed amendments are adopted, they should include or be accompanied by guidance on the issue of outside evaluations of third-party service providers. For example, should the Commission provide guidance similar to that provided by the FFIEC on the appropriate use of SAS 70 reports in evaluating the information safeguards of service providers?*

Computershare would support the issuance of guidance similar to that of the FFIEC on the issue of evaluating the information safeguards of its service providers, as long as it is in the form of guidance and not regulations. Computershare would appreciate the same flexibility as provided in the banking guidelines in determining the appropriate level of oversight based on the services provided and related risks.

#### **Data Security Breach Response**

- *Commenters are invited to discuss the proposed requirements for procedures for responding to incidents of unauthorized access to or use of personal information.*

Computershare supports the requirement to have procedures to assess an incident, contain and control the incident, conduct a reasonable investigation, and ensure individuals are notified. Computershare already has a designated privacy officer, a security breach incident response team, and detailed procedures in place to address a security breach incident. However, we have some concerns with certain of the documentation requirements included in the Commission’s Proposal.

The Proposal would require transfer agents to “maintain a written record of the steps you take” to contain and control the incident and “maintain a written record of your determination” of the likelihood the information has been or will be misused. Computershare objects to the requirement to maintain these records in writing, as this presents the risk of a forced waiver of the attorney-client and work-product privileges. Such determinations and steps taken will be made based on analyses and discussions among management, the privacy officer and legal counsel. Any discussions with legal counsel would be privileged communications and any analysis performed and documented may involve attorney work-product. Computershare notes that the banking guidelines do not require that these records be maintained in writing, and believes the provisions of Regulation S-P should be consistent with the guidelines.



- *We request comment on proposed Form SP-30.*

As discussed above, Computershare already has procedures in place to address security breach incidents, including notification to federal and state agencies as required. There is no specific form required under banking guidelines or by state agencies under the various state laws.

Computershare would prefer that no specific SEC form is required for notifying the Commission of security breaches. As long as the notification to the Commission includes all of the required elements, it would be more efficient for transfer agents to use one form of notification to the various state and federal government agencies. We would recommend that if a standard form is desirable, the federal and state agencies work together to develop such a form, so that institutions do not have to bear the administrative burden and cost to complete and send multiple types of notifications including the same information.

Notwithstanding, if the proposed Form SP-30 is implemented, Computershare has concerns about question number 11. This question asks for detailed loss and recovery information. This type of information is not currently required under the banking guidelines or any of the state security breach notification laws. If a security breach occurs, such information would not be readily available, may not be known for a long time after an incident occurs, and in some cases, never known. In addition, certain of the questions would be extremely difficult to quantify, such as what is the mitigation of losses due to the firm's surveillance or investigative intervention. Computershare further believes compiling and reporting the information in question 11 would be unduly burdensome. Finally, we note that certain sections in question 11 appear to apply to broker-dealers rather than transfer agents, such as changes in an account due to "pump and dump schemes" or unauthorized trading.

Computershare also has concerns about the timing of providing notice on the proposed Form SP-30. The form is to be filed "as soon as possible after you become aware of any incident." While we would assume this means that transfer agents would not provide notice until they have time to investigate a potential breach and confirm a breach requiring notification has, in fact, occurred, we would like the Commission to confirm this assumption. If transfer agents were required to notify the Commission immediately upon learning of unauthorized access to or use of personal information, without an opportunity to conduct an investigation, determine whether the access or use was intentional, and determine the risk of harm, this would lead to filings with incomplete information or filings that were not truly required.

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Computershare thanks the Commission for the opportunity to comment on the Proposal and would be glad to discuss our concerns and comments further.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin (Jay) J. McHale Jr.", written in a cursive style.

Martin (Jay) J. McHale Jr.  
President, US Equity Services  
Computershare