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February 10, 2016

Via E-mail: rule-comments@sec.gov

Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-0609.

Attention: Brent J. Fields, Secretary

Re: Transfer Agent Regulations – File No. S7-27-15

Ladies and Gentlemen:

We appreciate the opportunity to comment on the Commission's advance notice of proposed rulemaking, concept release and request for comment on Transfer Agent Regulations (the "Release").[1] Our comments will focus on the discussion in Section VI. D. of the Release, "Restricted Securities and Compliance with Federal Securities Laws." We believe that any new requirements imposed on transfer agents to police transfers of securities should be carefully designed to focus on the areas of identified enforcement need, and to address that need as efficiently, and with as little impact on other market sectors and participants, as possible. In particular, in the interest of efficiency, the Commission should incorporate into any new requirements guidance on compliance procedures that do not require the delivery of legal opinions. It is currently quite common for transfer agents to remove legends from restricted or control securities

[1] Release No. 34-76743 (December 22, 2015).

based only upon a seller's and broker's representation letters. This process has historically worked quite well, especially since the amendments to Rule 144 under the Securities Act of 1933 (the "Securities Act") to permit non-affiliates to sell restricted securities without restriction after a six-month holding period. We believe it is important that the Commission keep this in mind in connection with any proposed rule-making.

The Release states that the Commission intends to propose new rules prohibiting a transfer agent from directly or indirectly facilitating a transfer of securities if it knows or has reason to know that an illegal distribution of securities would occur in connection with such transfer, and requiring transfer agents to adopt policies and procedures reasonably designed to achieve compliance with applicable securities laws and regulations. While these requirements, when stated as high-level principles, may sound unobjectionable, they could result in substantial unjustified new costs if not implemented in a careful and focused manner. For example, it would be very disruptive to the current restricted and control stock transfer process if an opinion of counsel was required in every case. This would significantly slow down, and increase the costs of, transfers. Thus, we feel very strongly that the Commission should not simply leave it to transfer agents to determine how to comply with these general standards. We think there is a substantial likelihood that general standards like those in the Release would effectively cause transfer agents to *always* request opinions of counsel. Moreover, broker-dealers have developed their own standard forms of seller's and broker's representation letters that are currently used to remove restrictive legends or other transfer restrictions on restricted and control securities. These letters, although varying in form, in our experience are generally accepted by issuers and transfer agents without negotiation. Broad standards like those in the Release, without more, could very well result in each transfer agent creating its own forms of seller's and broker's representation letters which would further delay the transfer process, result in unnecessary negotiation

and increase the costs of transferring restricted and control securities. As a result, we suggest that the interests of effective compliance and of efficiency will both be served if the Commission accompanies any new requirements with detailed guidance, which in our view should reflect the following considerations:

- The Release notes the Commission's view that the need to police transfers is particularly acute in the microcap market. We believe that any rules in this area, and any related guidance, should reflect that focus. Particularly if the Commission adopts rules incorporating a "knows or has reason to know" standard, or a "reasonably designed to achieve compliance" standard, it should accompany those rules with detailed implementation guidance, reflecting its enforcement experience, directing transfer agents to adopt and implement risk-based procedures, and explaining how best to do that. We expect that possible risk factors might include, in addition to market capitalization, market price history and volatility, the frequency and aggregate volume of transfers, how well-known and experienced the broker-dealer effecting the transfer is, whether the transfer is by an affiliate or non-affiliate, historical transfer practices of the issuer, and the involvement of issuer's counsel in the transfer process; we assume there are other factors the Commission could add. Because there are many practical considerations to take into account, we expect that formulation of such implementation guidance would be materially assisted by the notice–and–comment process, and so suggest that it be included as part of any new rule proposals. The overall objective should be to maximize focus on the areas of concern, and minimize the impact falling on the rest of the market.

- While the Release and the related request for comment focus primarily on restricted securities, the Commission should take into account that any new rules

or practices will also affect transfers of control securities, which in our experience frequently do not have legends. Again, in our experience, the process of transferring control securities is well established and generally requires only the delivery of a seller's and broker's representation letter and a copy of the Form 144. In our view, this process also works quite well. We would expect, however, that if transfer agents begin requiring opinions of counsel or their own forms of representation letters in connection with transfers of restricted securities, this practice would also flow over to transfers of control securities. This would be very unfortunate since, in our experience, most transfers of control securities involve sales by affiliates of securities received as employee compensation and registered on Form S-8. These are very routine and straight-forward transfers that should not be encumbered by other non-substantive requirements.

- Any new requirements, and related implementation guidance, should explicitly take into account the various safe harbor exemptive rules–such as Rule 144A and Rule 904–as well as new Section 4(a)(7) of the Securities Act. These provisions were all designed to facilitate and simplify transfers of restricted and control securities; that underlying purpose would be compromised if new regulations lead transfer agents to implement compliance hurdles that slow down transfers or make them more costly to effect. We think that the Commission's implementation guidance should endorse the current certificate-only procedures typically used on Rule 144A and Rule 904 transactions. New Section 4(a)(7), at least in the case of public companies, was also clearly intended to streamline transfers of restricted and control securities. Imposing opinion requirements and extensive due diligence procedures prior to a transfer pursuant to Section 4(a)(7) would be inconsistent with this Congressional goal. We urge the Commission to make this clear in any rulemaking.

- Any implementation guidance should also confirm that transfers of securities covered by an effective registration statement may generally be processed on the basis of factual confirmations from the transferor as to registration status.

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If you would like to discuss our letter, please feel free to contact Robert E. Buckholz at [redacted], Robert W. Reeder at [redacted] or Robert W. Downes at [redacted].

Very truly yours,

Sullivan & Cromwell LLP

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