Shareholder Services Association

shareholderservices.org

Stay in touch. Stay informed. Always connected.

Founded 1946

April 14, 2016

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

Re: File Number S7-27-15, Release No. 34-76743 Transfer Agent Regulations

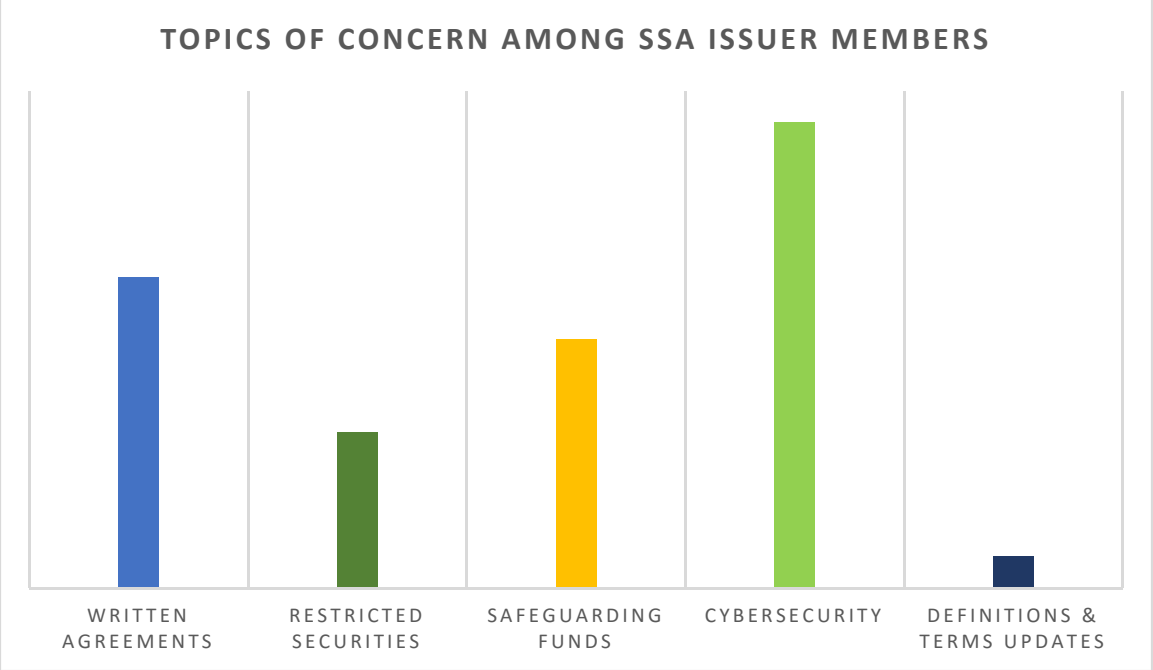
Dear Secretary Fields:

The Shareholder Services Association (SSA), a nonprofit trade association founded in 1946, supports corporate issuers in meeting their responsibilities for shareholder record keeping services. Its membership includes a multitude of public companies, as well as the professional service providers who assist them with their regulatory compliance obligations and communications with investors. Typically, each member company is represented in the SSA by the professionals at the company whose job it is to attend to the shareholders. As such, the SSA's members are concerned equally with compliance for issuers, as well as protection of shareholders. The transfer agent hired by an issuer is often the only representative of the issuer with whom a shareholder will work. The shareholder's experience with the transfer agent must be exceptional. Issuers often rely on transfer agents to accomplish regulatory compliance. Accordingly, the SSA is particularly impacted by the regulation of transfer agents, and appreciates this opportunity to comment on Release No. 34-76743.

As a general matter, the SSA is of the opinion that the current regulatory scheme meets the Commission's objectives of protecting investors, promoting the prompt and accurate clearance of securities transactions, and evaluating transfer agents' ability to perform their functions properly. The SSA supports efforts to modernize and improve transfer agent regulations, particularly in light of advances in technology, and would be willing to meet with representatives of the Commission if further dialogue on any of the issues contained

herein would be helpful. The SSA surveyed its issuer members to identify what issues concerned them on a daily basis. Some responses impact multiple areas. For example, cybersecurity is the primary concern of the responding members, due to the prevalence of risk, as well as the complexity and expense of maintaining adequate safeguards. However, this category obviously crosses over to the safeguarding funds category.

The following chart depicts the most significant issues for the SSA's members:



While the SSA members are most concerned with cybersecurity, the SSA addresses the following general concerns and certain specific questions raised by the Commission in the order presented in the Release.

Written Agreements between Transfer Agents and Issuers
Questions #14 - #17

#15 *The Commission asked whether issuers find it difficult to understand the fee structures that are offered by transfer agents; whether the Commission should require transfer agents to disclose their fee structures in filings; and whether standardized fee structures should be required.*

While the SSA agrees that all transfer agent - issuer relationships should be memorialized in contracts, some of the suggestions in the Release are overly broad. Issuers require flexibility in order to satisfy their particular needs. The SSA supports a requirement that contracts contain start date, end date, and renewal terms.

The SSA further supports contracts which clearly identify record retention standards[1] and the services to be provided, including services upon termination. For each service rendered, whether for the issuer or for a shareholder, either the exact fee or the manner of calculating the fees should be included in the contract. As will be discussed more fully in response to #16, the SSA particularly recognizes the benefit of contracts which address fees and procedures to be utilized when there will be a successor transfer agent, whether as a result of contract termination or corporate action. While the SSA's members rely on their own procurement procedures and legal counsel to obtain contracts which are satisfactory, it would be in the best interest of issuers for the Commission to establish a Rule clearly identifying the requirements regarding deconversion fees and the transmission of shareholder records.

A review of member responses to the question of whether issuers find it difficult to understand the fee structures in their transfer agent contracts revealed that most, if not all members, have no difficulty in understanding the fee structures. Not all contingencies can be predicted and no contract is perfect. However, the market will dictate fees and good relationships will allow for professionals to bargain in good faith to arrive at contracts which meet each issuer's needs and requirements for customer service.

#16 *The Commission asked about the process of transferring record keeping responsibilities from one transfer agent to another, specifically: which specific records should be required to be transmitted; whether there are any issues with a refusal to provide records, failure to provide records promptly, disputes over fees to be charged, or any other issues between a transfer agent and successor agent which could negatively impact the prompt settlement of securities transactions or diminish the protection of investors.*

Issuers are aware of a lack of cooperation between original and successor transfer agents. Many transfer agent contracts lack clearly-defined processes and fees associated with transitions. This has in some instances led to demands for exorbitant fees and delays in file transmission. Some issuers have been faced with fees which appear to be disproportionate to the monthly service fees previously charged, the effort needed to transition the records, and the actual and on-going expenses of termination and transition.

When there is a successor transfer agent, whether due to termination of the original transfer agent or to a corporate action, issuers who are faced with steep fees and delays often resort to involving counsel, as well as filing complaints with the SEC. Neither of these options promote the efficient settlement of securities transactions, nor do they serve investors well. Accordingly, as noted in response to question #15 above, the SSA favors a requirement that the issue of fees upon termination be a required element of each transfer agent contract. However, the SSA firmly believes that the Rule should provide flexibility in the manner of calculating the fees and standards for file transfer, as there is no "one size fits all" fee structure.

[1] The SSA notes that issuers and transfer agents are free to utilize either a fixed term when identifying the number of years for which records will be retained, or the contract may simply refer to compliance with the record retention standard then in effect pursuant to SEC Rule 17Ad-7. The SSA simply notes that the parties must have knowledge of what the period is and agree to it.

Safeguarding Funds and Securities
Questions #18 - #30

The Commission intends to propose new rules or amendments to existing rules which will provide specificity and robust standards against which paying agent's activities can be measured. In addition, the Commission intends to propose rules which will promulgate specific minimum best practices relating to safeguarding of securities, such as increasing physical security measures; developing written procedures for access and control over security holder accounts; enhanced record keeping; and specific unclaimed property procedures.

The SSA is in complete agreement with the concept of these proposals. The SSA believes every transfer agent should have written procedures documenting the manner in which funds and securities are safeguarded. All funds should be segregated in a manner free from risk of theft, co-mingling, loss or destruction. The handling and processing of deposits and payments should be handled in a timely and accurate manner. However, the SSA notes that funds held by transfer agents are typically held by a bank or trust company. As such, the cash is already subject to bank regulation and a new set of Rules from the Commission will compete with and possibly conflict with the banking regulations to which the transfer agents are already subject. This could lead to inefficiency and raise costs for issuers. Therefore, the SSA suggests that the Commission's proposals focus on minimum best practices, with reference to the stringent state and federal banking laws and consumer protection laws that currently apply.

The SSA notes that Rule 17Ad-13 requires an external audit each year of the transfer agents' procedures and internal controls. This reporting could be strengthened and the focus on dividend processing, including payment, balancing and reconciling should continue to be a main focus of the audits. The SSA further supports the requirement for written procedures for processing, balancing and reconciling funds and securities, whether in certificated or book entry form. As the transfer agents' issuer clients are impacted by the agent's audit results, any relevant findings and plans to rectify areas of concern which have been identified in the audit should be shared with issuers as a best practice.

Finally, the SSA strongly supports the promulgation of a rule mandating annual communication to investors. Rule 17Ad-17 has played a significant role in reducing the number of lost shareholders whose shares would be escheated and liquidated by the states. The Dodd-Frank amendment requiring notices to unresponsive payees have similarly allowed transfer agents to keep investors engaged and deemed active so that their shares are protected from escheatment. An additional area of focus could be one requiring annual communication, particularly to shareholders of non-dividend payers or to shareholders enrolled in dividend reinvestment plans, as these shareholder accounts are the most susceptible to being escheated by the states due to a perceived "lack of activity." There are a number of states which currently demand the escheatment of shares whose owners are not lost simply because the shareholder has not "generated activity." A Commission requirement to communicate annually with all shareholders regardless of whether they receive dividend payments will protect all investors by demonstrating their on-going

knowledge of their underlying shares. This communication will in turn prevent escheatment and liquidation of shares by the states.

In summary, the SSA supports minimum standards, increased investor communication and strengthening of securities safeguarding, but cautions that regulation by the Commission of the maintenance of funds could be duplicative of banking regulations.

Restricted Securities and Compliance with Federal Securities Laws
Questions #31 - #49

The Commission intends to promulgate new rules relating to Restricted Securities which will: prohibit transfer agents from facilitating the transfer of securities that would result in illegal distributions; and require the adoption of policies and procedures reasonably designed to achieve compliance with securities law.

#32 *Is there a need for Commission rules governing the role of transfer agents in placing or removing restrictive legends? If so, what are the specific issues that should be addressed by Commission rulemaking?*

Yes, the SSA supports the adoption of rules which will provide clarification regarding the transfer of Restricted Securities and Removal of restrictive legends, as clear guidance will facilitate the efficient settlement of securities and protect investors. The SSA is aware that the Securities Transfer Association ("STA") adopted best practices for the handling and transfer of restricted shares in 2001 to ensure the secure, safe and timely transfer of Restricted Securities. The SSA believes the STA's guidelines are appropriate for handling these transactions and provides them below for the Commission's consideration. The guidelines are as follows:

- Requests to transfer Restricted Securities must be presented in "good transfer" form.
- Good transfer means that all required documents are submitted with the transfer request. The minimum required documents are: an appropriate endorsement with Medallion signature guarantee; where applicable, a corporate resolution including the officer's title, signed by an officer other than the one executing the resolution; opinion letter from counsel, addressed to the transfer agent, covering the specific transfer (if a blanket opinion covering multiple transfers is relied upon, a specific opinion referencing the blanket opinion is required); a certification of sale executed by the presenting broker.
- Transfers submitted in good order should be completed within the timeframe required by Rule 17Ad-2. If the request is deficient, notification should be made within the same timeframe.
- The transfer requests and opinion letters submitted to the transfer agent must comply with Commission Rule 144.

It should be noted that the Medallion Guarantee process has a scarcity of providers. As such, the process can be challenging for shareholders due to the difficulty in obtaining a guarantee. For the convenience and protection of investors, the SSA recommends that the Commission address the shortage of available providers so as not to impede the flow of

securities transactions. In addition, the SSA would like the new Rule to clarify the definition of "restricted", specifically addressing both owners of the stock who are restricted from trading shares based on specific Commission rules, as well as when physical shares themselves should carry a restricted legend. Guidelines on what is required to place a restrictive legend on an actual certificate or account on the books of the transfer agent would be beneficial for the issuer. Furthermore, rules should include granting only issuers the authority for placing or removing restrictive legends. Broker-dealers should have no authority to place or remove a restrictive legend from a stock certificate or shares represented in book-entry form.

#33 *Should the Commission provide specific guidelines and requirements for registered transfer agents in connection with removing a restrictive legend and in connection with issuing any security without a restrictive legend, such as:*

(1) obtaining an attorney opinion letter; (2) obtaining approval of the issuer; (3) requiring evidence of an applicable registration statement or evidence of an exemption; and/or (4) conducting some level of minimum due diligence (with respect to the issuer of the securities, the shareholder and/or the attorney providing a legal opinion)? Why or why not? Should the Commission also consider specific recordkeeping and retention requirements related to the issuance of share certificates without restrictive legends? Why or why not? How should book-entry securities be addressed? Are there other guidelines or requirements the Commission should consider with respect to the issuance of share certificates or book-entry securities without restrictive legends?

The SSA believes that best practices adopted by the STA as described in question #32 will address the issuance and removal of legends. The attorney opinion letter is addressed in response to question #36. Book entry shares are addressed in response to question #42.

The SSA would like the Commission to consider adopting specific record keeping and retention requirements related to the issuance of share certificates without restrictive legends for research and consistency purposes. This will provide consistency for issuers and transfer agents with regards to accurate share histories, ultimately producing accurate cost basis reporting.

#34 *If the Commission were to issue any standards for restrictive legend removal, what would be an appropriate level of due diligence? Should any due diligence requirements be compatible with current state law governing the issuance and transfer of securities? Should the Commission consider specific guidelines and requirements for the review of representations that a shareholder is not an affiliate of the issuer or is not acting in coordination with other shareholders? Why or why not? If so, what guidelines or requirements should be considered? Should the Commission consider specific guidelines and requirements regarding transfer agents' obligations to review or determine the ultimate beneficial ownership of shares, identification of control persons of the shareholders, and relationship of shareholders to the issuer, officers or each other?*

Due diligence requirements should be mandated for transfer agents and made compatible with current state law governing the issuance and transfer of securities.

It is the responsibility of the issuer to provide the transfer agent with the list of affiliates and insiders for record keeping, restrictive trading and other restricted stock purposes. This should occur upon conversion and the "as of" date. In addition, the issuer

should conduct an annual review of current affiliates and insiders in order to guarantee accuracy and completeness of the information being provided to the transfer agent. While guidelines for the timeframe within which the transfer agent must update the records once received by the agent would be beneficial, the responsibility of notifying the transfer agent of the insiders falls on the issuer. The SSA recommends that the transfer agent update the records within five (5) business days of notification.

#35 *Do transfer agents currently possess detailed and accurate information regarding the ownership history of the securities they process? For example, do transfer agents know whether the securities they process were ever owned by a control person or other affiliate of the issuer, and for how long? If so, how do they know this? If transfer agents possess such information, do they provide it to other market intermediaries, such as broker-dealers and securities depositories? If not, should transfer agents be required to do so?*

Transfer agents only have access to full ownership history if the stock was purchased through a company's direct stock purchase plan or issued through a company award plan administered by the transfer agent. Anything purchased and held through a broker-dealer by an affiliate or insider would not be accessible by the transfer agent. This is also the case if a third party, such as a plan administrator for a company's stock option plan is used by the company instead of the transfer agent. It is the SSA's opinion that transfer agents should not be required to provide such information to broker-dealers.

#36 *Should transfer agents be permitted to rely on the written legal opinion of an attorney under certain circumstances? If so, what should those circumstances be? For example, should there be requirements regarding the attorney's qualifications or the attorney's relation to the issuer or investor? Is it appropriate for transfer agents to rely on attorney opinion letters to the extent the letters are based on representations of the issuer or third parties without the attorney's review of relevant documentation or independent verification of the representations?*

Unless a process and/or directory for attorneys qualified to provide legal opinions was created, similar to how the medallion guarantee program works, the burden should not be placed on the transfer agent to verify that the attorney is qualified to provide the opinion. Further, the SSA does not recommend the creation of a database of eligible attorneys. The SSA does recommend that the attorney providing the opinion letter be required to disclose in the opinion letter the existence or absence of any relationship to the issuer or the shareholder.[2] Additionally, the attorney should disclose whether any review has been conducted by the attorney or indicate a particular area of expertise which qualifies the attorney to render the opinion. If an attorney does not demonstrate sufficient knowledge leading to the conclusion that the restrictions can be removed, the transfer agent should not be compelled to rely on the opinion.

#37 *Should the Commission obligate transfer agents to:*

(i) confirm the existence and legitimacy of an issuer's business (for example by reviewing leases for corporate offices, etc.); (ii) obtain names and signature specimens for persons the issuer authorizes to give issuance or cancellation instructions, together with any documents

[2] This disclosure could be a simple footnote, similar to the United States Supreme Court's requirement that any attorney filing an *amicus curiae* brief disclose any relationship to the parties in the matter pending before the Court. See, Rules of the Supreme Court 37.6.

establishing such authorization; (iii) conduct credit and criminal background checks for issuers' officers and directors and shareholders requesting legend removal; (iv) obtain and confirm identifying information for shareholders requesting legend removal (e.g., legal name, address, citizenship); and/or (v) obtain and review publicly-available news articles or information on issuers or principals? Why or why not?

Transfer agents should be able to rely on the fact that the issuer has been accepted as a registered security and should not be required to confirm the existence or legitimacy of an issuer's business. The SSA agrees with items (ii) and (iv). For items (iii) and (v), issuers should take the responsibility to provide pertinent public information to the transfer agent. While the SSA does not necessarily think that this is an area that requires extensive regulation, our members are appreciative of the transfer agents who proactively educate themselves about the issuers they serve. The SSA is aware of transfer agents who as a best practice have adopted a culture of "know your client," internally requiring knowledge of the issuers. This can be accomplished fairly easily, for example by subscribing to an issuer's RSS feed, or signing up for alerts regarding the issuer. These best practices could alert the transfer agent to legitimate concerns, particularly at smaller companies. This awareness is in the market's best interest. It is useful for transfer agents to be aware of public information about their issuers, but as transfer agents are not the regulators, extensive regulation of transfer agents is inappropriate in this area.

#41 *Other than ensuring that the removal of restrictive legends is appropriate and not a means to sidestepping registration requirements, what requirements or prohibitions, if any, should the Commission consider as additional protections against the unlawful distribution of unregistered securities? For example, should transfer agents be required to deliver securities certificates directly to registered security holders or be prohibited from delivering securities certificates to third parties that are not registered as owners of the certificates on the transfer agents' books? Why or why not?*

The SSA requests greater clarification from the SEC for question #41 to be answered thoroughly. There are no rules in place currently governing the distribution of unregistered securities if the shares are gifted. In such a situation the certificates could be mailed to the gifting owner or the individual receiving the shares. Amongst issuers, certificates can be returned to third parties who instructed the issuance which are supported by documented evidence. Without further clarification, the SSA does not believe it is the transfer agent's responsibility to police the distribution of the securities if the issuer approves the request.

#42 *In what form (e.g. certificate form or book-entry form) are restricted securities held and issued today?*

Issuers use both the transfer agent and third party providers, such as broker-dealers, to maintain restricted stock records granted by the issuer that have specific restrictions based on performance and/or time.

Please provide specific data and examples and, where available, breakdowns by asset class. To what extent, if any, do holders of restricted securities own those securities in street name today? To the extent restricted securities are held in book-entry form, what practices are used in the marketplace today with respect to sending security holders account statements generally and, specifically, sending account statements bearing restrictive legends? Are any special issues created by intermediation, such as by broker dealers, of any restricted securities held in street name?

As noted above, the SSA requests further clarification regarding whether the individual is prohibited from trading securities, or is it the stock itself which is restricted, or potentially both. The SSA is not aware of broker-dealers holding restricted securities in book entry.

Should the Commission consider rules governing the display of legends on account statements of shareholders who hold restricted securities in book-entry form? If the restricted stock is held at the transfer agent in book-entry form the placement of the restricted legend would be beneficial to the owner.

The SSA supports a requirement that restrictive legends be placed on account statements and finds it would be beneficial to the shareholder and the transfer agent and to the broker if there is one involved. Consistent with the Industry's Direct Registration System ("DRS") Guidelines, the restrictive legend should be included on the statement when the shares are first issued with restrictions, with instructions to keep the advice for details of the restrictions. Subsequent statements should simply indicate the number of restricted shares in the account.

#45 *Should the Commission require transfer agents to maintain, implement, and enforce written compliance and/or supervisory policies and procedures, similar to those required of broker-dealers? Why or why not? If so, what policies and procedures should be required? Should the Commission require transfer agents to disseminate written policies and procedures to all employees of the transfer agent on an annual or semi-annual basis? Why or why not? Please explain.*

The Commission should require transfer agents to maintain and enforce written compliance procedures. These written policies and procedures should be disseminated annually to all employees, and to any new employees upon hire. Any changes should also be disseminated at the time of changes, rather than waiting for the annual update.

#47 *Should the Commission require transfer agents to undertake security checks or confirm regulatory and employment history for employees, certain third-party service providers, and associated persons, and to require certain employees of registered transfer agents to register with the Commission? Why or why not? What would be the costs, benefits, and burdens associated with such a requirement? What challenges does the trend toward the outsourcing and offshoring of certain aspects of transfer agents' functions pose for ensuring compliance with such a requirement?*

As is discussed more thoroughly in the next section on cybersecurity, the SSA does believe that there are certain standards which must be met when hiring employees for transfer agents. With respect to outsourcing and offshoring certain aspects of the transfer agents' functions, the SSA recognizes that this is desirable for many reasons for transfer agents. Not all issuers are comfortable with outsourcing for security and cybersecurity reasons, however. As such, transfer agents should be required to disclose which elements of their operations are outsourced and/or offshored so that issuers can perform appropriate due diligence before working with that transfer agent. On an on-going basis transfer agents should inform their issuer clients of any changes in outsourcing or offshoring.

#48 *Should the Commission require transfer agents to obtain certain information concerning their issuer clients, clients' security holders and their accounts, and securities transactions? Why or why not? Please explain and provide supporting evidence where applicable. Should transfer agents be required to perform a form of due diligence on their*

clients and the transactions they are asked to facilitate, similar to the know-your-customer requirements applicable to broker-dealers? Should transfer agents be required to obtain a list of all affiliates of their issuer clients—including current and former control persons, promoters, and employees—and to take special precautionary steps whenever they are asked to process transactions for these affiliates?

The SSA is of the opinion that these responsibilities should remain with the issuer.

#49 *Should the Commission require transfer agents to maintain originals of all communications received and copies of all communications sent (including both paper and electronic communications) to or from the transfer agent related to its business? Why or why not? Please explain.*

As the industry moves toward dematerialization, electronic communications should be acceptable and sufficient for communications and documentation. The SSA recommends that paper originals are scanned and kept in a format which is readily researchable and retrievable. We are comfortable with the current industry practice of destroying originals within 72 hours.

Cybersecurity, Information Technology and Related Issues
Questions #50 - #71

The Commission is contemplating the promulgation of rules relating to cybersecurity, and poses many questions relating to operational best practices, multi-jurisdictional compliance, insurance, risks and the benefits of further regulation in this area.

Cybersecurity is the number one concern of the SSA's issuer members. As a best practice, the SSA recognizes the need to maintain a written business continuity and disaster recovery plan. As technology and the associated risks evolve so frequently, the SSA is of the opinion that the plan must be flexible and tested frequently. Accordingly, the recommendation is that the plan be documented, reviewed annually and tested annually. Transfer agents should certify each year that the plan has been tested and is deemed to be adequate. As will be discussed more thoroughly below, consistent with the International Organization for Standardization's ("ISO") conclusions, the SSA does not believe that promulgation of a rule with specific requirements is feasible. However, the SSA strongly supports the Commission's issuance of guidance on best practices for all entities that the Commission oversees.

In promulgating its guidance, the SSA recommends that the Commission refer to ISO/IEC 27002, which is an informational security standard published by ISO and by the International Electrotechnical Commission ("IEC"). ISO and IEC together form the specialized system for worldwide standardization. National bodies that are members of ISO or IEC participate in the development of international standards through technical committees established by the respective organization to deal with particular fields of technical activity. ISO and IEC technical committees collaborate in fields of mutual interest. Other governmental and non-governmental international organizations also take part in the work.

ISO/IEC 27002 provides guidelines and best practices for organizational information

security standards and information security management practices including: the selection, implementation, and management of controls while taking into consideration the organization's information security risk environment(s). Rather than providing a specific security mandate, control objectives are outlined. Control objectives relate to the confidentiality, integrity, and availability of data. Each user organization is expected to undertake a structured information security risk assessment process to determine its specific requirements *before* selecting the appropriate controls.

The nature of the standard highlights the impossibility of listing all conceivable controls in a general purpose "one size fits all" standard. Instead, the risk assessment must take into account the organization's overall strategy and objectives in order to identify threats adequately, the likelihood of a security breach, and the potential impact of such a breach. Also considered in the risk assessment are the legal, statutory, regulatory, and contractual requirements that an organization, its trading partners, contractors, and service providers must satisfy. This ultimately results in a security mechanism uniquely tailored to the specific context of each user organization. Most significantly, the use of guidelines and best practices as opposed to a mandate helps to keep the standard relevant despite the evolving and dynamic nature of information security threats.

The Sarbanes-Oxley Act similarly avoids a mandate for implementing specific informational security controls relevant to achieving the goals of the Act. It is emphasized that compliance with ISO/IEC 27002, for example, must be evaluated as it relates to achievement of the internal control objectives for financial reporting. It is also noted that compliance alone does not guarantee the sufficiency of nor supplant the need for a risk evaluation that considers assertions germane to effective internal control over financial reporting. As with the international standard then, this approach to cyber security highlights the ineffectiveness of a blanket standard or inflexible regulation.

For the reasons stated above, the SSA recognizes inflexible regulation will not be effective in meeting the needs of issuers or the Commission. However, certain minimum standards must be met. The SSA recommends that the guidance address the following three areas: physical and environmental security; human resource security; and access control. Each area is discussed in more detail below.

The transfer agent's physical space must be protected at all times, by trained personnel and appropriate security systems. This should include monitoring and restriction of the premises to prevent, detect and minimize the effects of unauthorized access and tampering. The list of people authorized to access secure areas must be reviewed and approved periodically. Photography and other recording should be forbidden in restricted areas without prior permission from the designated authority. Surveillance video should be used at all entrances, exits and restricted areas of the premises, with said video kept for one month. Employees and visitors should wear identifying valid name badges, and only access secure areas via the use of access cards. Visitors should be escorted within the premises and a control log should be kept indicating date, time of entry and exit, and purposes of all visits.

The individuals who are employed at transfer agents are the first line of defense. Therefore, all employees should be screened prior to employment, with employees in trusted positions being subject to additional scrutiny. All employees should enter into binding contracts in which they acknowledge that the information provided to or created by them is proprietary and should not be disclosed outside of their employer. Internal controls must be in place which require the human resources coordinator to inform finance, administration and operations heads of new hires, transfers, suspensions, leaves or terminations. Firms should have documented procedures addressing the process when an employee leaves employment, including administration should immediately update the access of any employee in accordance with a change in employment status, including promptly deactivating access cards. Transfer agents must insure that all employees return access cards or other means of entry, IT equipment and other valuable corporate assets on or before the last day of employment.

Access to the transfer agents' systems themselves must be strictly monitored. User access must be limited to what is needed for the user's role. Generic access or IDs should not be enabled unless needed for a specific, controlled use. After a certain number of unsuccessful log in attempts, security log entries and alerts must be generated, with the user locked out until an authorized manager reestablished entitlement to access. Passwords must be lengthy and complex, and protected from discovery. Authentication information must be adequately secured against unauthorized access. At least twice a year[3] the transfer agent should review which individuals have privileged access rights enabling the administration, configuration, security and monitoring of the IT systems, and determine if all such access is appropriate. Users should never leave their computers unlocked or unattended without a password lock. Password protected screensavers should be enabled automatically after inactivity of no more than ten (10) minutes. Finally, write access to removable media must be disabled on all desktops and laptops unless specifically authorized for legitimate business reasons.

Best practices dictate that each of the measures described above be included in any plan designed to address cybersecurity in order for it to be effective. The manner in which any transfer agent achieves compliance with these goals, however, will be specific to that transfer agent. As noted above, the plan must be reviewed and tested each year in order to confirm its continued effectiveness. The SSA recommends that transfer agents include their issuer clients in the formulation of the plan to insure proactive measures are adopted which reduce cybersecurity risks for shareholders, issuers and transfer agents alike.

Definitions, Application and Scope of Current Rules

Questions #72 - #87

#72 *The Commission asked whether there are any current transfer agent rules that are outdated or obsolete, causing confusion or inefficiency.*

[3] The SSA recognizes that most larger companies require this review four times per year. The SSA supports those efforts, but recognizes that for smaller transfer agents, twice per year is likely sufficient.

The SSA suggests that five regulations be repealed or amended as they are outdated and no longer necessary. Specifically, Rules 17Ad-18 and 17Ad-21T are no longer useful as they relate to Y2K issues.

Rule 17Ad-14 is no longer necessary, as it was promulgated during a time when there were many depositories. As DTCC is the only depository, the Rule no longer reflects the current environment and can be repealed.

Rule 17Ad-20 was needed to address historical short selling issues. These issues leading to the promulgation of the Rule have since been more adequately addressed by the Commission in 2003 via the promulgation of SR-DTC-2003-03.

Further, Rule 17Ad-5 should be updated to reflect common forms of communication such as email, chats and online tools. Issuers demand that transfer agents make information accessible twenty-four hours a day, seven days a week and on-line applications save money for issuers. Therefore, updating the Rule to address the prevalence of electronic communication will eliminate confusion and improve issuers' ability to measure the performance of the transfer agents.

Finally, adding cancelled securities certificates to the list of required reports and inquiries under Rule 17f-1 would have the additional benefit of allowing the Commission to eliminate parts of the requirements of Rule 17Ad-19, which in its current form imposes burdens on all transfer agents. The Rule requires transfer agents to maintain, among other things, all cancelled, destroyed and otherwise disposed of certificates, indexed and retrievable by CUSIP and certificate number. In addition to the CUSIP and certificate numbers, these records must contain the denomination, registration, issue date and cancellation date of the securities. This information and effort are redundant, as it is identical to the information collected and maintained on cancelled certificates in the Commission's Lost and Stolen Securities Program ("LSSP") database.

Also addressing question #4 regarding the Commission's priorities in addressing the matters included herein, this change would allow the Commission to implement the Dodd-Frank amendment to the LSPP. Congress' decision to designate cancelled securities certificates as a mandatory reporting category under §17(f)(1), and the industry's history of voluntary reports in this category effectively establish both the need and the feasibility of this modest change. Increasing the volume of cancelled certificates reported to the LSSP will benefit individual investors, issuers and intermediaries who deal with physical certificates by deterring fraud, expediting settlements and reducing the failed trade charges that broker-dealers incur when they unwittingly buy or sell certificates whose transferability has been compromised.

#75 *The Commission asked whether the detailed information specified in Rule 17Ad-5 accurately depicts the information necessary to permit a transfer agent to respond timely, and what further information would allow the transfer agent to identify the subject of the inquiry and respond timely.*

In addition to the certificate number, number of shares and name in which the certificates were originally issued, the SSA suggests that the social security number or tax

identification number of the shareowner be provided before a transfer agent is required to respond within a specified time period. Additionally, the requestor should demonstrate that the requestor has legal authority to receive information regarding the certificates. For example, the requestor is either the shareowner, or closely affiliated with the shareowner, such as a family member, personal representative, or estate representative. In addition, the tax identification number will expedite processing which may be in the instructions, as many actions will trigger the need for tax reporting.

#77 *The Commission asked whether Rule 17Ad-6 should be updated to expand the categories and types of records required to be maintained by transfer agents.*

The SSA reviewed the categories and types of records required to be maintained by transfer agents and believes that Rule 17Ad-6 adequately addresses the needs of issuers' operations. If the Commission chooses to update the Rule, the SSA suggests that the Commission clarify what is a routine item versus a non-routine item, or at a minimum provide Staff guidance on this issue. While Rule 17Ad-1(i) obviously includes a definition of routine, which by default then provides what is non-routine, the distinction between the two is not clear, particularly in the context of reviewing book-entry shares, DRS, completing the TA-2 and plan shares versus certificate shares. This lack of clarity leads to inconsistency in registrant reporting. The SSA requests Commission guidance on this issue, particularly with completing the TA-2 correctly. A Frequently Asked Questions "FAQ" section on the Commission's website would be very beneficial.

#81 *The Commission asked whether the current definition of certificate detail in Rule 17Ad-9 reflects current processes, and whether the definition should be amended to include additional information.*

The SSA notes that the current definition reflects the minimum amount of information that transfer agents attempt to collect in order to facilitate identification of securities and the investors who own them. In fact, transfer agents and issuers expend significant time and money collecting additional information such as emails and phone numbers in order to facilitate the location of and communication with the investor. Therefore, the SSA supports amending the definition to require additional information which will allow transfer agents to conduct their operations more efficiently, for example when searching for a shareholder, communicating with the shareholder, or converting certificated shares into book entry.

Specifically, the SSA would like to mandate the inclusion of the CUSIP number of the specific security for any certificate.[4] This addition will ensure that the particular class of stock is reflected properly, thus facilitating research. In addition, the SSA would like the investor to be required to provide a phone number, an email address, date of birth and a tax identification number. While not all shareholders will have or provide all of the requested elements, this additional information will facilitate maintaining on-going communication with shareholders and identity verification should a Rule 17Ad-17 search be required. In particular, the ease of locating and communicating with shareholders will prevent the

[4] If the issuer is not public and there is a unique certificate number available, the unique identifier should be required just as the CUSIP should be required for a public company's shares.

unnecessary escheatment of securities, which is a significant concern to issuers. Due to the prevalence of electronic communication, this information should be the norm in today's environment. Including this information in essential certificate detail will generate a tremendous benefit for the proxy voting process, general shareholder communications and will prevent escheatment and subsequent liquidation of the shares by state unclaimed property administrators. In short, requiring the collection of a few additional commonly-provided data elements will promote increased investor engagement and protections.

#82 *With respect to whether Rule 17Ad-11, relating to aged record differences, the Commission asked whether transfer agents should be required to provide issuers with information about all aged differences, rather than just differences that lead to over issuances. The Commission also asked whether the current dollar and share thresholds reflected in the Rule are appropriate indicators of impending problems.*

The SSA's members consider the reporting of over issuances as a valuable tool to provide useful insight to issuers and the Commission regarding transfer agent controls and performance. The current dollar and share thresholds are appropriate on both an issuer-specific and aggregate basis. Record differences typically occur via routine processing, frequently as a result of timing differences or delay between the parties. Such record differences are not likely indicators of any impending problems. As such, additional reporting would not be useful. Therefore, the SSA supports leaving the existing thresholds intact.

#85 *The Commission asked whether Rule 17Ad-16 should be amended; whether the required information is already provided; and whether there is a standard for electronic communications of these changes.*

The SSA supports amending Rule 17Ad-16 to change the time period within which the transfer agent is required to notify DTCC of an effective date. The Rule currently requires notification to DTCC, "on or before the later of ten calendar days prior to the effective date of such change or the day the transfer agent is notified of the effective date of such changes in status." However, an issuer may give notice to a transfer agent on a holiday or other non-business day, making the current standard challenging to meet. The SSA proposes amending the notification requirement to, "shall send written notice of such to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such change in status or within one business day of when the transfer agent is notified of the effective date of such changes in status." A transfer agent should be deemed to be in compliance with the Rule's requirements if such changes are accomplished within the Rule's timelines 95% of the time.

In addition, the Rule should be clarified to indicate that it is only applicable to notices of assumption of record keeping responsibilities for DTCC eligible issues. Transfer agents serve some private companies. These companies are not DTCC eligible and such notification is unnecessary. Further, other types of entities responsible for record-keeping for private companies, such as law firms, are not required to provide any notification of a change in record keeper.

Bank and Broker-Dealer Recordkeeping for Beneficial Owners
Questions #97 - #100

#99 In light of increased obligations under federal law for certain issuers to ascertain their security holders' identities and the barriers to doing so created by the street name system, as discussed above in Section III.B, should the Commission require entities that are regulated by the Commission, including brokers, banks, or others who provide transfer and recordkeeping services to beneficial owners, to provide or "pass through" security holder information to transfer agents? If so, what type of information should be provided and how should it be transmitted? What would be the effect on the actions and choices of affected parties, including transfer agents, banks and brokers, issuers, registered owners, and beneficial owners? Please provide a full explanation.

#100 If the Commission were to require certain registrants to pass through security holder information regarding beneficial owners to transfer agents, should the Commission prohibit transfer agents from using such information for other than certain prescribed purposes? If so, for what purposes should such information be allowed to be used, and why? For example, should the information be used solely for the transfer agent's legal/compliance purposes, or should it be permitted to be used for other purposes, such as security holder communications? Should transfer agents' ability to share information be limited, particularly where information is shared in return for compensation or where information sharing is not fully disclosed to parties such as the issuer or the security holder? Why or why not? Should such information be permitted to be shared only with the security holder's consent? Please provide a full explanation.

The SSA's members have expressed their concern regarding the full disclosure of beneficial owners' identities. The SSA will address its' members' concern to the Commission within the prepared response to the Commission's Proxy Concept Release.

On behalf of the members of the SSA, thank you for the opportunity to contribute insight to the concerns that issuers face while representing their shareholders in an environment that is of necessity highly-regulated. The SSA and the Commission are perfectly aligned in their goals of protecting investors. We would be pleased to continue this dialogue as the Commission's rule making progresses and are always available to assist the Commission in its efforts to improve and safeguard our industry.

Sincerely,

Alvin Santiago
President
Shareholder Services Association

Bernadette V. Maffei
Vice President
Shareholder Services Association

CC: Stephen Luparello, Director
Christian Sabell, Associate Director
Moshe Rothman, Branch Chief
Eric Garvey, Senior Special Counsel
Thomas Etter, Senior Special Counsel
Catherine Whiting, Senior Special Counsel
Mark Saltzburg, Senior Special Counsel
Elizabeth de Boyrie, Counsel