

April 14, 2016

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

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

Dear Mr. Fields:

The Independent Directors Council¹ appreciates the opportunity to comment on the Securities and Exchange Commission's advanced notice of proposed rulemaking, concept release, and request for comment concerning transfer agent regulations.² The Release discusses a large number of issues concerning transfer agent regulation, including whether mutual fund transfer agents should be regulated differently than operating company transfer agents. To provide additional background for this consideration, our letter discusses a fund board's role in overseeing mutual fund transfer agents. We also respond to questions raised in the Release relating to the movement to omnibus sub-accounting arrangements and potential disclosure or regulation of fund-transfer agent fee arrangements.

Background on Fund Board Oversight of Mutual Fund Transfer Agents

The Release discusses the key characteristics of mutual fund transfer agents and seeks comment as to whether the Commission should regulate them differently from other transfer agents.³ As

¹ IDC serves the U.S.-registered fund independent director community by advancing the education, communication, and policy positions of fund independent directors, and promoting public understanding of their role. IDC's activities are led by a Governing Council of independent directors of Investment Company Institute member funds. ICI is a leading, global association of regulated funds, including mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the U.S., and similar funds offered to investors in jurisdictions worldwide. ICI's U.S. fund members manage total assets of \$16.9 trillion and serve more than 90 million U.S. shareholders, and there are approximately 1,900 independent directors of ICI-member funds. The views expressed by IDC in this letter do not purport to reflect the views of all fund independent directors.

² Transfer Agent Regulations, Release No. 34-76743 (December 22, 2015) ("Release"); *see also* Extension of Comment Period for Advanced Notice of Proposed Rulemaking; Concept Release; Request for Comment, Release No. 34-77172 (Feb. 18, 2016).

³ *See* Release, *supra* n. 2, at 159-187.

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additional background on this point, we note that a mutual fund's board oversees the transfer agent's services as part of the board's overall oversight responsibilities on behalf of the fund's shareholders.

Although fund boards are not required to approve the fund's contract with the transfer agent, many are involved to some degree in the selection and approval process, including the approval of the transfer agent's fees.⁴ The transfer agent plays a significant role in a fund's day-to-day operations and its fees can be among the top expenses borne by the fund and, ultimately, its shareholders. A board typically relies on fund management to provide it with information it needs to understand the fund's arrangements with the transfer agent. In evaluating a fee, a fund board generally considers whether it is reasonable in light of the services to be provided and may look to a variety of resources for this assessment, including industry survey data.⁵ Boards also may inquire whether any arrangements with the transfer agent raise any potential conflicts of interest that could affect the fund.

Under the fund compliance program rule—Rule 38a-1 under the 1940 Act—the fund board is responsible for approving the transfer agent's policies and procedures, along with those of the fund's other service providers. The board also receives, at least annually, a written report from the fund's chief compliance officer that addresses the operation of the policies and procedures and any material compliance matters, including those relating to the transfer agent.

In fulfilling their oversight responsibilities, fund directors are guided by their fiduciary duties to the fund and seek to protect the interests of the fund's shareholders.

The Commission Should Address the Lack of Transparency Concerns

The Release notes that there has been a movement to omnibus sub-accounting arrangements and states that the Commission “is examining the issues or concerns that may arise in connection with the lack of visibility that [funds] and transfer agents acting on their behalf may have regarding the records maintained by intermediaries for their customers who are beneficial owners of mutual funds that are being serviced through omnibus and sub-accounting arrangements.”⁶ The Commission requests comment as to whether any concerns created by this lack of visibility could be addressed

⁴ The Investment Company Act of 1940 Act (“1940 Act”) does not require board approval of contracts with the transfer agent. In the absence of a particular federal provision, state laws govern the board's role with respect to transfer agent contracts, and, in general, state laws do not require board consideration of these contracts. *See also*, IDC Task Force Report, Board Oversight of Certain Service Providers (Jun. 2007), available at <https://www.idc.org/pdf/21229.pdf>.

⁵ An example is ICI's biennial Mutual Fund Transfer Agents Trends and Billing Practices Report, which is available only to those who participate in the survey.

⁶ Release, *supra* n. 2, at 180.

through changes to regulations within its jurisdiction or to those within the jurisdictions of other regulatory agencies, such as the Department of Labor.⁷

Fund boards play an important role in overseeing a fund's relationship with its financial intermediaries. The Division of Investment Management's recent *Guidance Update* emphasizes the importance of the board's oversight role in this regard and suggests information the board might consider in evaluating intermediary relationships.⁸ The *Guidance Update* further states that a fund's adviser and relevant service providers should provide sufficient information to inform the board of the overall distribution and servicing arrangements of the fund.

The board's oversight role has been more challenging in recent years as intermediaries' use of omnibus sub-account structures has increased. Intermediaries are under no regulatory obligation to provide information to funds on the quality of their services or the reasonableness of their fees. Oversight by a fund board and fund management of an intermediary's sub-accounting services and associated fees would be enhanced if intermediaries were required to provide meaningful information about their services. For example, the Commission could adopt a rule similar to Rule 22c-2 under the 1940 Act, which essentially requires a financial intermediary to provide certain information to a fund with which it has entered into an agreement.⁹ Or, the Commission could require intermediaries within its jurisdiction to provide funds (or the fund's adviser or relevant service provider) with information needed to evaluate their services, including the fees paid for the services. The Commission also could work with regulatory agencies with jurisdiction over other intermediaries to similarly require this enhanced transparency.

IDC Opposes Disclosure or Regulation of Fund-Transfer Agent Fee Arrangements

The Commission requests comment as to whether it should require transfer agents to disclose information regarding the fees imposed or charged by the transfer agent for various services or activities.¹⁰ It is not clear the level of detail such disclosure might include. We would oppose any disclosure that would reveal the specific fee arrangement between a fund and the transfer agent. We believe that this information is proprietary and its disclosure would interfere with funds' ability to negotiate the most advantageous terms. As discussed above, many fund boards approve the fees paid by a fund to a transfer agent, thereby providing an additional layer of oversight that serves to protect shareholders' interests. Moreover, funds already disclose some information about transfer agent

⁷ See *id.* at 187 (Question 122).

⁸ See IM Guidance Update, Mutual Fund Distribution and Sub-Accounting Fees (January 2016) ("*Guidance Update*").

⁹ Rule 22c-2 requires a fund to either: (i) enter into a shareholder information agreement with the financial intermediary, pursuant to which the intermediary must provide certain shareholder information to the fund; or (ii) prohibit the financial intermediary from purchasing in nominee name on behalf of other persons, securities issued by the fund.

¹⁰ See Release, *supra* n. 2, at 113 (Question 10).

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expenses in their financial statements,¹¹ and if a fund uses an affiliated transfer agent, it must describe in its registration statement the services provided by the transfer agent and the basis for remuneration.¹²

The Commission also asks about how mutual fund transfer agents are compensated and whether any aspects of the structures or terms of their compensation raise regulatory concerns.¹³ We do not believe that it is necessary or appropriate for the Commission to regulate these fund-transfer agent arrangements. The marketplace can set the fees and terms for such arrangements, and any potential conflicts of interest raised by any arrangements can be addressed by the fund board on behalf of the fund's shareholders.

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If you have any questions about our comments, please contact Annette Capretta, Deputy Managing Director, at [REDACTED] or me at [REDACTED]

Sincerely,



Amy B.R. Lancellotta
Managing Director
Independent Directors Council

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner

Mr. Stephen Luparello
Director, Division of Trading and Markets

Mr. David Grim
Director, Division of Investment Management

¹¹ Funds may identify these expenses under various labels, such as “shareholder expenses” or “transfer agent fees.”

¹² See Item 19(h)(4) of Form N-1A under the 1940 Act.

¹³ See Release, *supra* n. 2, at 185 (Question 111).