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April 14, 2016

Submitted electronically
Mr. Brent J. Fields, Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

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

Dear Mr. Fields:

Vanguard appreciates the opportunity to comment on the Securities and Exchange Commission's (the "Commission") Advance Notice of Proposed Rulemaking ("ANPR") and Concept Release ("Concept Release") relating to transfer agent regulations.[1] Vanguard commends the Commission for its efforts to modernize the regulations governing transfer agent activities, which have not been significantly updated since the first rules were adopted four decades ago. Vanguard supports the Commission's efforts in this area and is pleased to submit this letter to comment on various aspects of the Release. As one of the largest mutual fund transfer agents, our comments primarily address issues and regulatory matters relating to mutual fund transfer agents.

I. Transfer Agent Rules Should Be Modernized

A. Background

As the Commission noted in the Release, transfer agents play an important role in the settlement of securities.[2] Over the last several decades, there have been numerous changes to the technology and regulatory environment in which markets operate and securities ownership is transferred. The transfer agent world has moved from a manual environment to one that is highly automated with book-entry securities and electronic recordkeeping rather than share certificates, handwritten inquiries and telephone responses. We agree with the Commission that it is time to review and update the rules to reflect the changes that have occurred since the first transfer agent rules were adopted in the 1970s.[3]

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[1] *See* Transfer Agent Regulations, Exchange Act Release No. 34-76743 (December 22, 2015) ("Release").
[2] *See* Release, pp. 6-7.
[3] For example, Exchange Act Rule 17Ad-18, 17 C.F.R. § 240.17Ad-18, relating to Year 2000 Reports to be made by certain transfer agents, is obsolete.

B. Considerations in rulemaking

As we discuss later in this letter, we support the creation of a separate set of rules for mutual fund transfer agents. If instead, the Commission limits its rulemaking to updating the existing transfer agent rules, it should recognize the specialized services mutual fund transfer agents provide and the regulatory environment in which they operate when doing so. Therefore, in updating the transfer agent rules, we urge the Commission to ensure that any new rules or rule amendments do not duplicate requirements that already apply to mutual fund transfer agent activities.

Further, we suggest that the Commission make new rules or amendments flexible enough to work in a variety of business models and accommodate rapidly changing technology and new methods of doing business. In our view, rigid or prescriptive rules that mandate specific methods of complying with requirements would be counterproductive and could necessitate frequent, costly and time-consuming rule and operational adjustments for technical, rather than substantive, reasons.

For example, in the ANPR, one of the Commission's areas of focus is on enhancements to safeguarding funds and securities. Currently, Rule 17Ad-12 requires transfer agents with custody or possession of funds or securities to assure, in light of all facts and circumstances, that (i) securities are held in safekeeping and are handled in a manner reasonably free from risk of theft, loss or destruction, and (ii) funds are protected against misuse. It is up to the transfer agent to determine which safeguards and procedures should be utilized and would be most effective based on its operations and business model. In the mutual fund transfer agent context, this flexible approach to an overarching goal has worked well for many years. However, in the Release, the Commission states that it intends to propose new rules or amend Rule 17Ad-12 to specify minimum best practices relating to safeguarding funds and securities, including prescriptive requirements such as maintaining secure vaults and installing theft and fire alarms. In our view, with respect to Rule 17Ad-12 or any other proposals or amendments, such detailed and rigid requirements may not be appropriate, or even effective, depending on the activities of any particular transfer agent. Instead, we believe the Commission should maintain its flexible approach to such requirements, which allow transfer agents to tailor their methods of compliance to their own operations. A prescriptive approach to rulemaking, in general, makes it more likely that requirements will become quickly outdated as technology and business methods continue to evolve.

Additionally, the Commission should consider whether current rules already address the area in which potential rules will be proposed and, therefore, whether additional rules are even necessary. Furthermore, if additional rules are necessary, those rules should be tailored to the relationship transfer agents have with issuers. As an example, the Commission states that it intends to propose new transfer agent rules that are similar to recently adopted amendments to annual reporting requirements for broker-dealers, which were designed to heighten broker-dealers' focus on compliance and internal controls.[4]

[4] *See* Release, p. 124.

The Commission has preliminarily concluded that it should propose annual reporting rules requiring transfer agents to prepare and file financial reports, including a statement of financial condition, a statement of income, a statement of cash flows and other financial information. Similar to broker-dealer requirements, it seeks comment on whether a new rule should require transfer agents to file additional reports prepared by an independent public accountant on the transfer agent's compliance and internal controls.[5] However, registered transfer agents that maintain master securityholder files with at least 1000 accounts are already subject to Rule 17Ad-13, which requires those transfer agents to have an independent accountant audit its controls and prepare a report on the efficacy of the controls relating to the transfer of record ownership and the safeguarding of securities and funds. Rule 17Ad-13 requires the transfer agent to file the report with the Commission. If the Commission has determined that the rule is not effective in assuring that transfer agents have appropriate internal controls, we suggest that the Commission amend Rule 17Ad-13 to remedy whatever gap may exist.[6] Imposing completely new requirements on transfer agents based on a broker-dealer rule set that was designed to address entirely different activities, and an entirely different relationship dynamic (that is, the broker-dealer rules address the relationship between a broker-dealer and its customers, and not a relationship between an issuer and its agents) seems inappropriate and more burdensome than beneficial.

II. Mutual Fund Transfer Agents

The Concept Release notes the important role mutual funds play in the U.S. economy, often serving as the primary financial vehicle to help retail investors meet retirement, higher education and other financial goals. Vanguard is one of the world's largest mutual fund transfer agents, providing transfer agent services to hundreds of Vanguard funds. Vanguard also acts as administrative and dividend paying agent to the funds.

A. Separate Rules for Mutual Fund Transfer Agents

We urge the Commission to consider a separate set of rules to govern the specialized services mutual fund transfer agents provide, the regulatory environment in which they operate, and the lack of history of fraud and abuse by mutual fund transfer agents. Transfer agents that specialize in providing services to mutual fund issuers do perform many of the same activities as transfer agents to operating companies, which include maintaining records of ownership, transferring ownership, and acting as dividend paying agent. Mutual fund transfer agents, however, do not issue and transfer restricted securities, or affix, track and remove restrictive legends, which can be important tasks performed by operating company transfer agents. In performing these tasks, operating company transfer agents can help prevent securities distributions that violate Section 5 of the Securities Act of 1933, particularly in the microcap securities market where there is significant potential for fraud and abuse. Preventing such fraud and abuse is a significant focus of the areas for potential rulemaking outlined in the ANPR, yet this focus is not directed at activities conducted by mutual fund transfer agents. As the Concept

[5] *See* Release, p. 126, question 23.
[6] We urge the Commission to determine that a gap truly exists rather than amend the rule for the sake of adding more requirements without evidence of the need to close a regulatory gap.

Release discusses, mutual fund transfer agents process redeemable securities of investment companies registered under Section 8 of the Investment Company Act rather than restricted securities or securities traded on the secondary markets.[7] The same entities that provide mutual fund transfer agent activities also may be responsible for administrative functions that operating company transfer agents do not perform, such as (i) assisting with pricing issues, (ii) ensuring that purchasing and redeeming shareholders receive the correct net asset value, (iii) processing exchange transactions, and (iv) enforcing compliance with fund policies set forth in the prospectus. Given these differences in activities performed by mutual fund transfer agents and operating company transfer agents, we would support a separate set of rules tailored to the functions performed by mutual fund transfer agents for the issuers which have engaged them.

The regulatory environment in which mutual fund transfer agents act is as important, if not more so, than the differences in activities performed. Unlike operating companies, mutual funds are highly regulated and generally do not have employees. Therefore, fund service providers, such as transfer agents, often assist mutual funds in complying with the funds' regulatory requirements. For example, mutual funds are required to have comprehensive anti-money laundering, customer identification, suspicious activity reporting and customer due diligence programs in place.[8] Other examples of regulatory requirements imposed on funds include business continuity plans, disclosure of material conflicts, and protection of shareholder non-public personal information. Finally, Investment Company Act rules require that fund boards of directors or trustees approve service provider contracts, including transfer agent contracts, and appoint a chief compliance officer.

Beyond these specific examples set forth above, Investment Company Act Rule 38a-1 requires a mutual fund to adopt written policies and procedures reasonably designed to prevent a violation of the federal securities laws. Additionally, a fund's policies and procedures must provide for the oversight of compliance by the fund's transfer agent, with the adequacy and effectiveness of those policies and procedures assessed annually. Therefore, a fund transfer agent must have written policies and procedures that apply to the work it performs on behalf of the fund, and those policies and procedures must be tested each year. This comprehensive compliance requirement imposed on funds, and thus on their transfer agents, further supports the appropriateness of one set of rules for mutual fund transfer agents, and another set of rules for operating company transfer agents.

B. Avoid Duplicative, Inconsistent and Burdensome Requirements

If the Commission does adopt a separate set of mutual fund transfer agent rules, such rules should not subject mutual fund transfer agents to duplicative and possibly inconsistent rules. We urge the Commission to exempt or exclude mutual fund transfer agents from rules contemplated by the ANPR to which they are already subject by virtue of their provision of services to a highly regulated issuer. As stated above, these include rules related to cybersecurity, business continuity, written compliance policies and procedures and the appointment of a chief compliance officer.

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[7] *See* Investment Company Act of 1940 Section 8, 15 U.S.C. § 80a-8 (2000).
[8] 31 C.F.R, Subtitle B, Chapter X, § 1024.210, 1024.220, 1024.320, 1024.610 and 1024.620, respectively.

We also would be concerned if the Commission subjected mutual fund transfer agents to disclosure requirements that provide little, if any, value, are burdensome, and overlap with mutual fund board oversight responsibilities. The ANPR states that the Commission intends to impose numerous requirements to disclose on Forms TA-1 or TA-2 (i) transfer agent clients, (ii) direct and indirect conflicts of interest, (iii) relationships between a transfer agent's officers and directors and any issuer to which it provides services and any affiliated broker-dealer, (iv) transfer agent fees, and (v) transfer agent financial statements.

We do not believe such disclosure requirements are aligned with the roles or interests of issuers, fund investors and mutual fund boards of directors or trustees. Forms TA-1 and TA-2 are, respectively, the forms transfer agents use to register with the Commission and make annual reports to the Commission on statistical transfer agent activity data. While we support the Commission's intent to update these forms so that these filings provide the Commission with meaningful data, we oppose a requirement that would result in a public disclosure of confidential and competitive business information.

Mutual fund boards are responsible for overseeing negotiations with, and engagements of, service providers for the funds, and for overseeing potential conflicts of interest and affiliations with those service providers. Further, a mutual fund's board is responsible for reviewing the services provided and, as necessary, terminating the service contract. Moreover, investors choose the fund in which they wish to invest based on criteria related to the fund, such as investment objective, portfolio holdings and expense ratio, not because of who the board chose as the fund's transfer agent. We doubt seriously that an investor will reference TA-1 or TA-2 filings when deciding whether to invest in a fund or that they will find the additional disclosed information useful in any way. And we note that to the extent the Commission is concerned about potential risks or regulatory issues posed by a registered transfer agent, it can request information from that transfer agent without requiring public disclosure. Therefore, we see no investor protection value in the Commission's intended sweeping public disclosure requirements.

III. Other Transfer Agent Issues

In the Concept Release, the Commission requests comment on additional regulatory, policy and other issues beyond those discussed in the ANPR to identify possible future regulatory actions. We are focusing our comments on two specific topics: (i) the characteristics and regulation of transfer agents to mutual funds and (ii) services provided by third-party administrators to retirement plans. We have provided comments on some aspects of services provided by mutual fund transfer agents in Section II above and have further comments and recommendations set forth below.

A. Omnibus Account Issues

In discussing characteristics of mutual fund transfer agents, the Concept Release notes that many securities intermediaries, such as broker-dealers, perform recordkeeping and processing services ("sub-accounting services") for customers who are beneficial owners of

mutual fund securities. As the mutual fund industry has evolved over the last several decades, many intermediaries may have made arrangements with, and receive compensation from, mutual funds or their service providers (such as transfer agents) to perform sub-accounting services for beneficial owners of the fund. Additionally, the Concept Release notes that the shift to omnibus account arrangements has resulted in a lack of transparency of beneficial owner records and activities. The Commission raises questions about, and requests comment on, issues or concerns that a transfer agent acting on behalf of a fund may have resulting from this lack of visibility.

We believe that the issues associated with any lack of transparency into omnibus account arrangements relate to the ability of mutual funds to oversee, where required, the sub-accounting services provided by intermediaries rather than the omnibus structure of the accounts. We recognize and have previously pointed out the value presented by intermediary use of omnibus accounts, which from a fund's perspective increase economies of scale and reduce costs, thus facilitating investment in mutual funds to the benefit of all shareholders. We continue to believe a better approach to the lack of transparency issue is to ensure that activity in omnibus accounts can be monitored appropriately.[9]

We support the ability of mutual funds to obtain information that would enable them to oversee the activities of intermediary customers who hold shares through omnibus accounts. Today, there are various means through which mutual funds may obtain information that promotes appropriate transparency, including information obtained through negotiated contractual provisions, and automated platforms such as The Depository Trust & Clearing Corporation's Omni/SERV through which client level information is available in a standardized format. However, we would be very concerned if the Commission required intermediaries to pass through to mutual fund transfer agents all data relating to beneficial owners, including the identity of such beneficial owners.[10] Transfer agent recordkeeping systems are not configured to receive such volumes of data, and forcing transfer agents to create what are, essentially, "shadow recordkeeping" systems to index, sort and store the data from numerous intermediary sources on a daily basis would result in significant new costs. This would drastically undercut the efficiencies of omnibus accounts with no clear benefit.[11]

Recordkeeping issues aside, the concept of passing all beneficial owner data to transfer agents raises questions about whether the transmission, retention and use of the data could be

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[9] *See* comment letter of The Vanguard Group, Inc. dated June 1, 2005, relating to the implementation of Rule 22c-2 under the Investment Company Act of 1940. *See also* comment letter of the Investment Company Institute dated March 10, 2016 on the Release at pp. 49-52.

[10] *See* Release, p. 159. In question 99, the Commission references the increased obligation under federal law for certain issuers to ascertain the identity of beneficial owners. We do not believe this applies in the context of mutual fund transfer agents, as the current Customer Identification Program rule for mutual funds defines the customer as the omnibus account owner. See Section II, Exchange Act Release No. IC-26031 (June 9, 2003), (". . . with respect to an omnibus account established by an intermediary, a mutual fund generally is not required to look through the intermediary to the underlying beneficial owners").

[11] We also would be concerned that a transfer agent acting on behalf of a fund could be deemed to be on notice about every piece of information contained within the overwhelming amount of data, even if there was no expectation or need for a fund or transfer agent to review the entirety of such data.

accomplished without changes to the existing legal landscape.[12] For example, Regulation S-P as well as other federal, state and international regulations may impact or limit a transfer agent's use or even receipt of such data. And apart from these regulatory issues, the Commission should consider an intermediary's customers' expectations about the protection and sharing of data about them and their investments.

B. Third Party Administrator Regulation

The Concept Release also discusses the role and activities of third party administrators ("TPAs") that provide services to retirement plans. While the Concept Release states that the majority of these TPAs do not perform statutorily defined transfer agent functions[13] and are not registered with the Commission as transfer agents, the Commission requests comment on whether new rules would be appropriate to bring consistency and clarity to the activities performed by entities registered with the Commission as transfer agents and those that are not registered in any capacity.

In determining whether and, if so, how the Commission should regulate TPAs that provide services to retirement plans under the federal securities laws, we urge the Commission to consider the regulatory framework of retirement plans, including the regulation of service providers under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") and the oversight provided by the Department of Labor ("DOL") and other applicable federal or state regulators. To the extent the Commission concludes that TPAs which are not already regulated as transfer agents should be subject to additional or new regulations, such regulations should take into account the oversight performed by the DOL under ERISA of retirement plan fiduciaries and the third parties to whom such fiduciaries have delegated responsibilities.

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Vanguard supports the Commission's efforts to modernize transfer agent rules and appreciates the opportunity to comment on the Release. If you would like to discuss these comments further

[12] Question 100 of the Release asks for comment about whether the use of securityholder information regarding beneficial owners should be limited to a transfer agent's legal/compliance purposes, or permitted to be used for other purposes such as shareholder communications. While not directly related to the transfer agent rules, we urge the Commission to prioritize reform of the U.S proxy system. We believe reforms are needed to (i) facilitate mutual fund issuer communications with shareholders who purchase fund shares through intermediaries, (ii) reduce the cost of such communications, and (iii) increase competition. *See* also question 164 of the Release that requests comment on the role transfer agents play in the proxy process.

[13] Nevertheless, the Concept Release states that TPAs may provide "sub-transfer agent" services for plans that offer investments in mutual fund shares, describing these TPAs as "sub-transfer agents to the plan." *See* Concept Release, page 192. We do not agree that TPAs that provide recordkeeping services to retirement plans in these circumstances are sub-transfer agents to the plan, as retirement plans do not issue mutual fund securities. As defined in Securities Exchange Act of 1934, Section 3(a)(25), a transfer agent "is any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities . . ."

or if we can provide assistance with your efforts, please do not hesitate to contact Sandra Burke at (202) [redacted].

Very truly yours,

/s/ Tammy Virnig

Tammy Virnig
Principal

cc: The Honorable Mary Jo White, Chair
The Honorable Kara M. Stein, Commissioner
The Honorable Michael S. Piwowar, Commissioner
Stephen Luparello, Director, Division of Trading and Markets
David Grim, Director, Division of Investment Management