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Via first class mail

RE: **Release № 34-76743**
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Gentlepersons:

This firm is counsel to small transfer agents, and has been for the last 10 years. I am deeply concerned concerning the future of small transfer agents in conjunction with these proposed regulations. If enacted, most small transfer agents will have difficulty maintaining operations or cease business activities. Its effect could be a liquidation of an entire business sector. The proposed regulations, in effect, would have a discriminatory effect of eliminating small businesses, as large transfer agents would be able to afford implementation. This comes at a time when the creeping realization manifests that bigger business is not always better.

Small businesses are the chief employer in our beloved country, and this proposed regulations, no matter how well intentioned, will put these small businesses squarely in harms way. In times when regulatory agencies and the executive branch have come to the realization that institutions that are too big to fail, too systemically entrenched to fail, these regulations seek to create the next generation of market participants too big and systemically entrenched to fail. Stress tests and living wills for market juggernauts seek to alleviate an existing problem; these regulations cull out small businesses and will drive the business flow to the new systemically entrenched too big to fail market participants replicating the problem.

Free markets work with low barriers to entry and existence, as when one business becomes too overreaching and or becomes overburdened, there are other market participants to immediately take their place. This process creates robust and efficient markets. The culling of the smaller business is akin to getting rid of farm teams; without farm teams, you cannot hope to develop homegrown talent.

Smart regulations fix problems; either current or future. These regulations aims to codify industry standards across industries. One cannot treat transfer agents, particularly small ones, like broker-dealers. To those who know the securities markets, and no one knows them better than the Commission, broker-dealers and transfer agents are vastly different species although they both live in the same environment. To regulate transfer agents to mandate focus reports and investigative due diligence is literally trying to put a square peg in a round hole.

If there are identified problems, then it is respectfully suggested that the Commission implement gauged and guided regulations to stop any contemplated problems.

The securities markets are an ecosystem. By eliminating an entire subclass of market participants, the ecosystem will change. Choices become smaller, innovation is stymied, pools of talent disappear, regulations become onerous, and ultimately market participants take their business elsewhere as we have seen in the financial sector.

Question 7. *The Commission intends to propose to require Transfer Agents to submit annual financial statements. Should the statements be required to be audited? Why or why not (page 113)*

It is respectfully asserted to the Commission that Transfer Agents should not be required to submit annual audited financial statements, or even annual financial statements.

Financial statements are submitted by public companies for current and potential investors to assess the strengths and weaknesses of a potential investments' financial position. It can be argued that broker-dealers submit financial statements, or focus reports, because current or potential investors would like to know the financial stability of the financial institution in into which they are placing their capital. Transfer Agents do not deal with the investors and are not taking any at risk capital or investments, therefore there really is no need to submit financial statements for Transfer Agents.

Moreover, requiring Transfer Agents to submit audited financial statements is to put an undue burden on smaller Transfer Agents. Small Transfer Agents do not require an audit in the complexity of their internal financial transactions because generally speaking, they are not complex, the dollar volume of the smaller Transfer Agents would not necessitate audited financial statements, and the cost associated with the audited financial statements would be overly burdensome to the smaller Transfer Agents in both the direct audit expense and the indirect additional compliance and record-keeping expenses.

Question 9. *Does the receipt of securities as payment for services create conflicts of interest for Transfer Agents, and if so, should the Commission require that such payments be disclosed? The Commission intends to propose to amend forms TA-1 and/or TA-2 to require Transfer Agents to disclose all actual and potential conflicts of interest. Should it do so? Why or why not? Should the Commission provide any guidance as to what constitutes a conflict of interest? Why or why not? As the perforation of the types of services offered by Transfer Agents in recent years created new conflict of interest? How might Transfer Agents conflicts of interest differ depending upon whether the Transfer Agent is paid by the issuer, shareholder, or some combination thereof? Is disclosure of conflicts of interest , a sufficient safeguard for investors?*

Should the Commission banned certain conflict of interest entirely? For example, should the Commission prohibit Transfer Agents from having certain affiliations with issuers or broker-dealers, or from providing certain services if they have such affiliations? Please provide a full explanation. (Page 113)

Is respectfully asserted to the Commission, Transfer Agents should not be prohibited from taking securities as payments for services and does not create a conflict of interest. Transfer Agents receiving securities from issuers does not create an inherent conflict of interest because Transfer Agents are obligated to perform the transfer and related services, regardless of their position in the issuer. Moreover, Transfer Agents are not prohibited from holding positions in the issuers that they represent, nor should they be prohibited from holding positions in the issuers that they represent. If a Transfer Agent holds securities of an issuer that should not affect the Transfer Agents processing any proffered transfers of that issuer, because the Transfer Agent already has an affirmative obligation pursuant to state UCC obligations to any entitlement holder proffering a lawful entitlement order. Simply put, Transfer Agent locked in to their activities regardless of their position in the issuer. Moreover, even if the Transfer Agent had a position in their clients' securities, it would be a very difficult scenario to imagine how the Transfer Agent's position in the issuer securities would affect any transfer moving forward, any record-keeping requirements, any gatekeeping requirements, or other requirements of the Transfer Agent. With all due respect, it is implementing a Chinese wall when there is no need for the wall to begin with. Avoiding conflicts of interest is a good thing, however, in this instance it is respectfully asserted that the number of conflicts of interest are so infinitesimally small that people would be hard-pressed to provide a material amount of scenarios, or smaller amount of scenarios representing a material dollar volume, where the conflict of interest scenario would be relevant and not simply regulation for the sake of uniformity.

Assuming arguendo, that there was a conflict of interest, where would the Transfer Agent disclose the hypothetical conflict of interest. The Transfer Agent cannot file an 8K for the issuer, and if the Transfer Agent was even filed an 8K type of periodic filing on its own TA 2/A, all but the most sophisticated and diligent investors would completely miss it.

Question 10. *Should the Commission amend forms TA-1 and/or TA-2 to require Transfer Agents to disclose information regarding the fees imposed or charged by the Transfer Agent for various services or activities? If so, what type of information or level of detail should be required? Should the Commission require that the fee disclosures be standardized to facilitate*

comparison? Should fees charged to both issuers and directly to shareholders be required to be disclosed? Please provide a full explanation. (Page 113).

See also-question 15 (page 118)

Is respectfully asserted that the need for the disclosure of fees is not needed, except in very limited circumstances.

Disclosure of the relationships that the Transfer Agents have with and between different issuers and financial institutions could adversely affect other relationships. Different Issuers and financial institutions each have different characteristics, such as the duration of the relationship, the alacrity of payments, the differing levels of complexity of the transactions, the volume of transactions, etc. The management of these relationships with their differing characteristics can be reflected in fees. Disclosure of fees can upset the management of these relationships, which will in turn cause issuers and financial institutions to start moving about try and secure the lowest pricing, regardless of the different characteristics of the issuer or financial institution, and that will ultimately either disrupt or weaken orderly markets.

However, in the case of new issuances, mandated change pieces, and other such events that affect a class of securities holders that are mandated to utilize the services of the Transfer Agent, those fees should be disclosed so as not to surprise the Transfer Agent.

Question 11. *To increase the ability of the Commission to monitor trends, gather data and address emerging regulatory issues, should Commission require, registered Transfer Agents to file material contracts with the Commission as exhibits to form TA-2? What costs, benefits and burdens, if any, with his create for the issuers are Transfer Agents? Should the Commission establish a materiality threshold or provide guidance on materiality word to propose such a rule? Please provide a full explanation. (Page 113)*

Is respectfully asserted to the Commission that there is no need for the Transfer Agents to file material contracts on EDGAR because it would interfere with existing relationships, pricing, and ultimately diminish orderly markets, as aforementioned in response to question 10, and the Commission already has examiners in the field that could report much less obfuscated trends and emerging regulatory issues to the Commission without the requisite data mining and analysis.

Is respectfully asserted that the uniformity of regulations and requirements for capital markets participants and service providers, while theoretically making sense, may not work out

in practice. The provision of too much immaterial information simply clutters the marketplace with more data that potential investors have to sort through and digest. Thus, this provides no fungible material benefit to any potential investor, while simultaneously potentially disrupting orderly markets by creating transient issuers looking for competitive pricing and disrupting long-standing relationships, and quite possibly hindering long-term relationships from forming.

Question 16. *Currently, Transfer Agents are not required by rule pass-through specified records to success for Transfer Agents. Or issuers or Transfer Agents aware of instances where records have not been passed from one Transfer Agent to the next, or agents have not done so in a prompt manner? Are commenters aware of disputes between Transfer Agents and their issuer clients or successor Transfer Agents with respect to the transfer of records to a successor Transfer Agent? How was the situation resolved? Have Transfer Agents demanded previously undisclosed, termination fees, or fees inconsistent with what those parties previously agreed to, in exchange for turning over records to a successor? With the anticipated proposed rules described above help avoid or resolve any disputes between Transfer Agents and issuers or successor-Transfer Agents with respect to the transfer of records? Please provide a full explanation and supporting evidence. (Page 118)*

It is respectfully asserted to the Commission that there have been multiple instances of prior Transfer Agents not passing along books and records to successor Transfer Agents for a variety of reasons. The aforementioned proposed regulations, while theoretically sound and beneficial, may not provide a curative solution and only compound matters for the worse.

The writer has represented small Transfer Agents for approximately 15 years. In that time, a variety of instances have arose where a prior Transfer Agent has not transferred records to successor Transfer Agents. Such instances, precipitating the failure of transfer include, but are not limited to, death of the owner, the dissolution of business, monies being owed to the prior Transfer Agent, and most importantly the dispute of exit fees. The latter two, monies being owed to the prior Transfer Agent and the dispute of exit fees, have been in the writer's experience the lion's share of the failure to deliver the books and records of the issuer changing Transfer Agents.

In most instances, in the writer's experience, negotiations have taken place and the relevant parties come to an agreement, often begrudgingly, settle, and the relevant books and records are sent. Less frequently, records are re-created through secondary and tertiary sources. In rare instances, there is a resultant very cantankerous litigation.

It is respectfully suggested that the Commission implement a rule mandating the transfer of all books and records if all outstanding fees incurred in the regular course of business have been paid, specifically excluding exit fees and attorney's fees owed through contractual agreement and indemnification, respectively, which are more properly collected through the court system. This would provide a fairness to the Transfer Agents and the issuers for services actually rendered without the hostagetaking of the books and records, thus disrupting orderly markets.

Questions 18-22. (Pages 124-125) These questions concerning Transfer Agents acting as DWAC and payment agents should be bifurcated into DWAC and payment agents and not joined together under the same rules. Moreover, Transfer Agent should be able to opt out if it is affirmatively disclose that they are not engaging as DWAC or payment agents. DWAC requires separate controls and procedures, an audit trail, then payment agents. These are two materially different functions.

Question 23. *Should the Commission require Transfer Agents to file certain additional reports prepared by an independent public accountant on the Transfer Agents compliance and internal controls? Why or why not? In connection with any such requirement, should the Commission require Transfer Agents to allow representatives of the Commission or other ARA to review the documentation associated with certain reports of the Transfer Agent's independent public accountant and to allow the accountant to discuss with representatives of the Commission or ARA the accounts findings associated with those reports when requested in connection with an examination of the Transfer Agent? Why or why not? Please provide a full explanation. (Page 126)*

Is respectfully asserted to the Commission that the requiring of Transfer Agents, particularly smaller Transfer Agents, to have audited financials and controls and procedures is simply unduly burdensome, with no material benefit, and duplicative of the Commissioners examiners in the field. Moreover, mandating and legislatively enforcing that the government be allowed to independently contact and question and independent entities accountant raises grave concerns of government invasion of privacy, raises grave concerns regarding the governments dissemination of said information, and may indeed be contrary to common law, civil law, and possibly constitutional law.

Question 31. *Is there a need for Commission rules, clarifying Transfer Agent liability for participating in or facilitating an unlawful distribution of securities in violation of section 5 of the securities act? Why or why not? If so, what rules should be considered?*

It is respectfully suggested to the Commission that the Commission should put forth rules clarifying Transfer Agent liability, and specifically and reliably state what would constitute an unlawful distribution of securities in violation of section 5 of the securities act.

In the writer's experience, small Transfer Agents are eager to comply with definitive laws rules and regulations. However, the Commission habitually puts the onus on Transfer Agents, and other industry participants, to act as gatekeepers and forestall any issuance that could be construed as a red flag. This occasionally places Transfer Agents in the no man's land in between what the Commission construes as a red flag, without any substantive definition and are moving goalposts, and whatever the entitlement holder is trying to do, without any reliable law, rule, or regulation to act as guidance through the process, and forces the Transfer Agents to dismiss common sense, and weigh the harm between the entitlement holder and the Commission. This is not a process of orderly markets, it is the choice of the lesser of two evils and often causes counterintuitive results that prove contrary to orderly and efficient markets.

The Commission would like small Transfer Agents to act as gatekeepers, which in the vast majority of instances, they are more than too happy to do, but they also expect the Transfer Agents to act as enforcement personnel without the support of the Commission, only fear of punishment for noncompliance. In a generalization of many specific instances, the Commission expects that a Transfer Agent will indefinitely forestall the transfer of any securities upon any "red flag." The term "red flag" only in the rarest instances is very clear-cut, and what should be a "red flag" according to the Commission constantly changes. There is no definition of red flag or outlining of what a red flag should be. For instance: a red flag would be fact driven points of data, or situation giving rise to a founded belief that the violation of a specific law, rule, or regulation is being committed or about to be committed, specifically excluding staff interpretations and case law which change over time and applicableability. After the reliable and repeatable establishment of what a "red flag" actually is, it is respectfully suggested that the Commission implement a process that the Transfer Agents can actually do something about it other than "forestall the transaction indefinitely." It is respectfully suggested that the Commission set up a hotline, web portal, or even email, where the Transfer Agents can report the perceived red flags and the Commission can then do its job of enforcing the law from there. As it stands right now, Transfer Agents are forced to call the Commission's public tip line to report red flags. This missing process, once implemented, would give the Commission much more of a hands-on experience in defining what red flags are and how to handle them, increase the efficiency and efficacy of the enforcement division, and simultaneously support the Transfer Agents who are in a position where they know that there is a red flag but they are powerless to do anything about it because they are compelled by state law to process lawful entitlement orders.

As an aside, the Commission may want to re-examine its position regarding violations of securities laws in conjunction with any applicable UCC. The direct violation of the securities law would federally preempt any applicable state UCC. However, with the Commission is actually discussing is the forestalling of a transaction upon the appearance of a red flag. A red flag, and particularly the interpretation of a red flag and what constitutes a red flag, does not necessarily entail a direct and reliable violation of securities laws. Forestalling a transaction based upon a violation of securities laws is completely supportable in state courts. Forestalling a transaction based upon the appearance of a red flag is completely unsupportable in state courts. A violation of securities laws and the appearance of a red flag are completely different standards. Transfer Agents are liable for wrongful refusal to transfer, or often pled as a conversion. The appearance or perception of a violation of a securities law often proves a more than adequate defense. Forestalling a transaction based upon a red flag is not a sufficient defense to wrongful refusal to transfer or conversion and exposes Transfer Agents to liability.

Question 32. *Currently, there are no specific Commission rules regarding the placement or removal of restrictive legends by transfer agents. Is there a need for commission rules governing the role of transfer agents in placing or removing restrictive legends? Why or why not? If so, what are the specific issues that should be addressed by commission rulemaking?*

It is respectfully asserted that the Commission put forth regulations guiding the removal of restrictive legends.

Once the Commission puts forth regulation on lefgend removal, then there is no further consternation on who is aiding and abetting Section 5 violations, or other common-law claims against transfer agents. Clear and concise regulations make for orderly markets.

Question 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 record-keeping 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?*

It is standard industry practice that legend removal requires an opinion from counsel.

However, gaining consent of the issuer is not strictly necessary pursuant to the current regulatory and legal schematics. Moreover, issuers may have other motives for not freeing up legended securities, and it is respectfully suggested that issuers consent not be required. By necessitating issuer consent, the Commission is opening up transfer agents to liability and diminishing orderly markets to piques and quarrels, business disagreements, float management, and other concerns of the issuer that transfer agents seek to not become involved in. Moreover, prudent issuers issue a nonobjection letter, as opposed to a consent. There are other factors that may be outside of the issuer's knowledge that come into play, and that is how prudent issuers sidestep the liability.

Evidence of applicable registration statements or exemptions from registration are typically found in opinion of counsel, upon which the transfer agents rely.

Transfer agents core competency and functionality are not research on issuers and counsel. The opinions issued by counsel are the responsibility of that counsel. That counselors licensed to practice law, or practice before the commission, may rise and fall upon the validity of their own opinion.

Question 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 the shareholders to the issuer, officers or each other?*

Is respectfully suggested that the commission currently has in place standards for restrictive legend removal in rule 144, and the appropriate level of due diligence rests with the opining counsel, whose license rises and falls with said opinions. Moreover, Transfer agents perform transfer functions and do not have the core competency to perform the investigative services that would ultimately be required to satisfy the commission in any sort of objective criteria.

Question 35. *To transfer agents currently possess detailed and accurate information regarding the ownership history of the securities they process? For example, to 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 provided to other market intermediaries, such as broker-dealers and securities depositories? If not, should transfer agents be required to do so? Has the inability of broker-dealers and other market intermediaries to obtain detailed and accurate securities ownership information facilitated the unlawful distribution of securities? Has it impaired secondary market liquidity, such as by making other market intermediaries unwilling or less willing to handle certain securities? If so, how can the commission address these issues?

It is respectfully suggested to the commission that even if the transfer agent did possess all the requisite necessary information, data mining, amalgamating, and providing the information in a digestible format would not be cost efficient for any transfer agent, regardless of size, and be of only nominal utility.

Each certificate corresponds with the information the transfer agent has on file with the corresponding shareholder. That information may or may not be complete and or up to date. The burden of investigation to make sure that information is up-to-date and accurate rest with the opining counsel. Even assuming that the information is up-to-date and accurate, any resulting certificate would not bear the prior shareholders information; the software only denotes the prior certificate number. Transfer agents would have to either create new software, which would be of dubious value because any of the prior data fields would have to be populated in the 1st instance, or manually review all prior certificates. Lastly, a certificate held in Street name by Cede or a broker-dealer would be subject to information market wash.

Question 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 attorneys 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 upon representations of the issuer or 3rd parties without the attorneys review of relevant documentation are independent verification of the representations?*

It is respectfully suggested that transfer agents must be able to rely upon opinions of counsel, as the opining counsel are supposed to know the specifics of law, rule, regulation, or specifically exemption, and which facts come into play, need to be opined upon to satisfy the elements of the regulations, and attested to, or independently verified via documentation, and have their law license at issue.

Transfer agents must be able to rely upon the opinion of counsel in any and all circumstances they deem advisable. Oftentimes, transfer agents rely upon their own counsel to review the opinions of opining counsel seeking legend removal or other such activities. It is the

responsibility and the burden of the opining counsel satisfy themselves that the fact that they are attesting to are accurate, and they do so at their own hazard.

Counsel cannot independently investigate every representation made as it would make every opinion letter to expensive to be of use. Therefore, counsel uses representations. Counsel relies upon these representations, and if the affiant of those representations is making misrepresentations or malrepresentations, then that affiant is subject to the liability of their own actions.

Question 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 authorized to give issuance or cancellation instructions, together with any documents 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 principles? Why or why not?*

It is respectfully suggested to the commission that transfer agents are not private investigators.

Although some of the information contained in question 37 is already maintained by the transfer agents, names and signature specimens for authorized persons, documents establishing such authorization, names, addresses, citizenships, and other such information required by 17Ad and operational requirements, such other information is simply out of the core competency, responsibility, and regulatory framework of transfer agents. For example, if a random shareholder has poor credit or a criminal background, does that deny them to access to capital markets? This obviously subject to rule 506 bad boy provisions, and the discretion of authorized personnel on the buy side or sell side regarding credit checks of the key people in a given transaction.

Even if the existence of poor credit and/or criminal backgrounds is substantiated, what does anyone have the right to do after that without incurring liability? Transfer agents are lawfully obligated to the entitlement holder issuing legitimate entitlement orders pursuant to state law.

Question 40. *The commission is aware that industry participants have suggested that the commission provide a safe harbor for transfer agents from direct liability or secondary liability (e.g., aiding and abetting), and connection with an unregistered distribution of securities. If the transfer agent follows the procedures set out in the safe harbor concerning legend removal.*

Should the commission impose such a safe harbor? Why or why not? If so, what should be the specific conditions of the safe harbor?

It is respectfully suggest to the commission, that the commission should put out a safe harbor provision that is less onerous than the provisions of rule 144, which is itself a safe harbor provision from section 5 distribution requirements, and also explicitly acknowledges that secondary liability cannot be attached to any party operating by mandate of law, regardless of the interplay in between federal and state laws.

If you have any questions, comments, or concerns, please feel free to contact me at your earliest convenience. Thank you for your time and kind attention.

Yours, etc.,

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