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Invested in America

April 14, 2016

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

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

Dear Mr. Fields:

The Securities Industry and Financial Markets Association ("SIFMA")[1] greatly appreciates the opportunity to comment on the above-referenced Securities and Exchange Commission ("SEC" or the "Commission") Advance Notice of Proposed Rulemaking, Concept Release and Request for Comment on Transfer Agent Regulations (the "TA Concept Release").

In preparing its comment, SIFMA has organized a large working group of members (the "Committee") with diverse business models to analyze the broad-ranging questions and complex issues contained within the TA Concept Release; this letter is the product of that Committee.

On February 1, 2016, SIFMA submitted a request for the extension of the comment period. On February 18, 2016, the Commission published Release No. 34-77172, providing an extension of the comment period to April 14, 2016.

Consistent with SIFMA's longstanding support of transparency and supervision, SIFMA supports the SEC's efforts to make the regulatory framework applicable to transfer agents more robust and up-to-date. SIFMA submits this comment letter to discuss some of the potential rulemaking the SEC is considering regarding transfer agents as well as additional regulatory, policy and other issues associated with transfer agents raised in the TA Concept Release. Where not otherwise defined, capitalized terms have the meanings ascribed to them in the TA Concept Release.

[1] SIFMA is the voice of the U.S. securities industry. We represent the broker-dealers, banks and asset managers whose nearly 1 million employees provide access to the capital markets, raising over $2.5 trillion for businesses and municipalities in the U.S., serving clients with over $20 trillion in assets and managing more than $67 trillion in assets for individual and institutional clients including mutual funds and retirement plans. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

I. Executive Summary

Given the passage of time since the Commission's last review of transfer agent regulation and changes in the marketplace, the Committee generally supports the Commission's review of transfer agent regulation; discussion of additional regulatory, policy, and other issues associated with transfer agents; and, request for comment on what might constitute appropriate regulatory actions to address identified issues. To assist the Commission in its review, the Committee recommends that the Commission:

- Respect existing regulation, and avoid duplicative regulation of entities, such as broker-dealers, that are already heavily regulated with respect to sub-accounting functions that affect the securities transfer process;
- Ensure that transfer agents are held to financial industry standards of fairness and transparency with respect to their interactions with broker-dealers, clients, and the shareholding public;
- Bring certain aspects of transfer agent regulation, such as cybersecurity and business continuity planning, in line with financial industry standards; and
- Consider the comments of the Committee with respect to certain additional issues surrounding transfer agent activities, such as escheatment reporting and proxy processing activities.

Specifically, the Committee suggests that certain transfer agent activities warrant greater SEC attention than others. In particular, the Committee recommends that the Commission consider the greater customer protection risks associated with operating company transfer agents, as opposed to mutual fund transfer agents, and direct limited regulatory resources to the former. This issue is described in more detail below.

II. Potential Changes to Transfer Agent Regulation Should Respect Existing Regulatory Structures

The Committee acknowledges and agrees that the shareholder servicing, record keeping, and transfer process has evolved to include the participation of the broker-dealer community, through outsourced functions such as sub-accounting. However, the Committee does not believe that these activities pose regulatory issues or reveal regulatory gaps that warrant additional regulatory actions. As further described at Section IV below, it is appropriate for the Commission to bring certain aspects of transfer agent regulation into line with financial industry standards, and the Committee supports corresponding regulatory changes. In making these changes, however, the Committee respectfully requests that the Commission accommodate and account for the heavy regulation that it has already imposed on broker-dealers, particularly with respect to the functions underlying sub-accounting.

2.1 Broker-Dealers Performing Sub-Accounting Activities

In the TA Concept Release,[2] the Commission discusses additional regulatory, policy and other issues associated with transfer agents and request for comment to identify, where appropriate, possible regulatory actions to address those issues.

Among the issues noted in the TA Concept Release, the SEC stated that "some industry participants may refer to the recordkeeping and transfer services provided to beneficial owners by brokers and banks discussed herein as "sub-accounting" or "sub-transfer agent" services."[3] The Commission further notes that such services include (i) maintaining accountholder information details, (ii) processing transfers and other changes in customer accounts, (iii) providing securityholder services such as call center support, and (iv) providing account statements showing ownership positions for their beneficial owner customers (collectively, the "sub-accounting activities").[4]

The Commission states that the transfer and recordkeeping services banks and broker-dealers provide to customers are similar to the recordkeeping and transfer services registered transfer agents provided to registered owners. Also, the Commission observes that broker-dealers typically enter into arrangements with mutual funds to perform certain custodial and recordkeeping services for brokerage customers' mutual fund positions which are peculiar to the mutual fund industry as opposed to operating companies.[5]

The SEC further notes that under the current framework banks and broker-dealers are not required to register as transfer agents with the Commission, and not required to comply with the Commission's transfer agent rules, including the specific securities recordkeeping, processing, transfer, and other investor protection requirements imposed by those rules, since the services provided by such intermediaries relate to "securities entitlements" under the UCC rather than to "Qualifying Securities"[6] under the Exchange Act that would trigger transfer agent registration.

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[2] TA Concept Release, at Question 97.

[3] TA Concept Release, at Section VII.B. Note that for the reasons described in this letter, the Committee discourages the use of the term "sub-transfer agent" to describe such activities because the Committee does not believe that such activities are, in fact, transfer agent activities. Instead, they are (regulated) broker-dealer activities that are rightly carried out by broker-dealers.

[4] *Id.*

[5] TA Concept Release, at Section VII.C.4. Examples of these services include (i) communicating with their customers about their fund holdings; (ii) maintaining their financial records; (iii) processing changes in customer accounts and trade orders; (iv) recordkeeping for customers; (v) answering customer inquiries regarding account status and the procedures for the purchase and redemption of fund shares; (vi) providing account balances and providing account statements, tax documents, and confirmations of transactions in a customer's account; (vii) transmitting proxy statements. As described in this letter, the Committee notes that mutual fund transfer agent and recordkeeping services are highly automated and involve routine provision of robust and voluminous information to mutual fund issuers.

[6] "Qualifying Securities" are for this purpose defined as any security registered pursuant to Section 12 of the Exchange Act or with respect to any security which would be required to be registered but for the exemptions contained in subsection (g)(2)(B) or (g)(2)(G) of Exchange Act Section 12.

In this regard, the SEC asks whether there are any regulatory discrepancies resulting from this structure and, if so, whether such regulatory gaps should be closed by requiring intermediaries such as banks and broker-dealers to also register as transfer agents. The Commission has asked, for example, whether it should regulate transfer agent processing of registered owner securities held in book-entry positions differently than bank and broker processing of street name positions held in book-entry form.[7]

2.1.1 Broker-Dealers do not Perform Functions that Warrant Regulation as Transfer Agents

With respect to broker-dealers, the Committee believes that there are no regulatory gaps as a result of broker-dealers holding securities in "street name"[8] and providing recordkeeping and sub-accounting services, even though not subject to the SEC's transfer agent rules. As the Commission itself noted, intermediaries performing sub-accounting activities and transfer agents performing transfer agent services are subject to different bodies of regulations. Such established regulatory distinction finds its root in the peculiar nature of the services provided by banks and broker-dealers as security intermediaries. Specifically, "in the ordinary course of its business a bank or a broker-dealer maintains securities accounts for others and is acting in that capacity."[9]

Separately, section 17A(c)(1) of the Exchange Act requires registration of transfer agents performing certain functions with respect to Qualified Securities. Section 3(a)(25) of the Exchange Act defines a "transfer agent" by the activities it performs for an issuer, that is, any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in:

- countersigning securities upon issuance;
- monitoring the issuance of securities with a view to preventing unauthorized issuance;
- registering the transfer of securities;
- exchanging or converting securities; or
- transferring record ownership of securities by bookkeeping entry without the physical issuance of securities certificates.

Although similar in nature, there is a fundamental difference between the services transfer agents provide and the sub-accounting activities banks and broker-dealers performed as securities intermediaries. When performing sub-accounting activities, broker-dealers act as securities intermediaries and perform activities in a broker-dealer capacity, not a transfer agent capacity. Also, a broker-dealer performs such sub-accounting activities on behalf of its customers and entitlement holders, not on behalf of issuers, as required by the definition of "transfer agent"

[7] TA Concept Release, at Question 98.

[8] As the SEC itself notes in the TA Release, the registration of securities into the name of a nominee rather than the name of the investor is commonly referred to as "street name" registration (see TA Release, at note 45).

[9] See U.C.C. 8-102(a)(14) for the definition of "securities intermediary".

under the Exchange Act.[10] As much as transfer agents are not acting as security intermediaries, broker-dealers are not acting as transfer agents. Accordingly, broker-dealers should not be required to register as transfer agents or be subject to any additional regulatory requirements.

2.1.2 Broker-Dealer Sub-Accounting Functions are Heavily Regulated

In addition, the Committee notes that broker-dealers are currently subject to extensive reporting and recordkeeping requirements, principally pursuant to Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). These rules, together with Exchange Act Rule 17a-5, Self Regulatory Organization (SRO) rules (including both Financial Industry Regulatory Authority ("FINRA") and Depository Trust Company ("DTC") rules), and SEC and FINRA interpretive guidance, create a comprehensive recordkeeping regime. More particularly, however, broker-dealers are required to comply with significant recordkeeping requirements that apply specifically to broker-dealer sub-accounting functions, including in relation to:

- purchase and sale documents;
- customer records;
- records relating to the activities, identity and history of associated persons;
- customer complaint records;
- manner of recordkeeping, including with respect to minimum electronic recordkeeping standards; and
- back-up and access requirements.

Underlying this point, Exchange Act Rule 17a-3 and Rule 17a-4 impose broader and more detailed recordkeeping requirements than those set forth by Exchange Act Rule 17Ad-6 and 17Ad-7 for transfer agents. In fact, broker-dealers are required to maintain an extensive volume of records and books that pertain not only to transfer and ownership information, but also cover virtually every aspect of the activities carried out in relation to the customer's account, including (i) itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), (ii) all receipts and disbursements of cash and all other debits and credits, (iii) ledgers reflecting all assets and liabilities, income and expense and capital accounts, (iv) securities transferred, loaned or borrowed, and (v) a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. In addition, the broker-dealer is required to keep numerous records, including records of every associated person, copies of all reports on missing or stolen securities on Form X-17F-1A, and records of complaints received.

In addition, Exchange Act Rule 15c3-3 requires a broker-dealer to promptly obtain and maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker-dealer for the account of customers and prepare and maintain a current and detailed description of the procedures which it utilizes to comply with such possession or control requirements. The possession and control requirements include substantial recordkeeping

[10] Securities Exchange Act of 1934, Sec. 3.(a)(25).

requirements for securities held with custodians, and for fund securities. Also, Exchange Act Rule 15c3-3 provides detailed description of the requirements to which the broker-dealer is subject in relation to security-based lending activities and repurchase agreements and sets forth certain disclosures and recordkeeping requirements for broker-dealer engaged in foreign exchange activities.

Moreover, the custody and sub-accounting activities of broker-dealers benefit from significant existing regulatory safeguards imposed on broker-dealers with respect to capital requirements, business-continuity planning, and cybersecurity.

Finally, the Committee notes that broker-dealers' SEC Office of Compliance Inspections and Examinations (OCIE) and SRO examinations with respect to sub-accounting are detailed, comprehensive, and specific to a broker-dealer's sub-accounting activities. For example, FINRA's Risk Oversight and Operational Regulation Department examines custodian broker-dealers on a regular basis, with the largest custodian broker-dealers examined on a yearly basis.

2.1.3 Duplicative Regulation Would be Costly and Provide no Investor Benefit

Imposing requirements that broker-dealers register as transfer agents, or alternatively amending broker-dealer regulation to require additional, duplicative regulation would impose a duplicative regulatory framework on broker-dealers without additional investor benefit in terms of enhancing oversight and transparency. Further, the Committee, having consulted its member firms, believes that the costs of implementing such redundant, and in some cases parallel, systems would be enormous, both in terms of the financial cost and—of equal concern—in terms of the drain on and diversion of management, legal, compliance and operations personnel. If the SEC ultimately determines that rulemaking on this topic is required, the Committee strongly recommends a thorough cost-benefit analysis of any such rule proposals. Specifically, if the Commission determines that there are regulatory discrepancies resulting from broker-dealers holding securities in "street name" and providing recordkeeping and sub-accounting services, without being subject to the transfer agent rules that warrant additional regulation of broker-dealers, the Committee respectfully requests that the Commission specifically outline the regulatory discrepancies involved and why they are not, or cannot, be addressed through the existing broker-dealer regulatory regime.

2.2 Requirements for Operating Company Transfer Agents and Mutual Fund Transfer Agents

The TA Concept Release observes that certain transfer agents have specialized in mutual fund transfer agent activity, and that these "mutual fund transfer agents" are exempt from certain requirements (including key turnaround, processing, performance and recordkeeping requirements) applicable to transfer agents for operating companies. The TA Concept Release also noted the increased complexity and additional responsibilities pertaining to specialized

mutual fund transfer agents compared to operating company transfer agents,[11] and that mutual fund-related activities involve specialized features and tasks for transfer agents.[12]

The Committee's view is that mutual fund transfer agents, and, as described above, broker-dealers involved in mutual fund-related sub-accounting activities should not be subject to additional regulatory requirements for two principal reasons: (a) as noted above, broker-dealers involved in mutual fund transfer activities, including sub-accounting activities, are highly regulated and routinely thoroughly examined by multiple regulators, and (b) mutual funds and their investment advisers are similarly highly regulated and mutual funds boards already oversee contracts between mutual funds and their transfer agents and sub-accounting providers.[13] Given this high degree of existing regulation and oversight, the Committee does not believe that further regulation and oversight is warranted.

In contrast to the highly sophisticated and regulated world of mutual funds and their transfer agents, and described in section IV below, the Committee is generally of the view that operating company transfer agents often perform certain activities that resemble broker and dealer activities, as those terms are defined for purposes of Section 3 of the Exchange Act, without being subject to the same stringent regulatory framework that governs similar activities when performed by broker-dealers. The Committee supports increased customer protection rules, including potential licensing, specialized recordkeeping, and regulatory reporting for certain functions performed by operating company transfer agents.

2.3 Beneficial Owner Information

The Commission requested comments on whether brokers, banks, or other intermediaries who provide transfer and recordkeeping services to "beneficial owners", a term which refers in the TA Concept Release and in this letter to persons that hold securities through intermediaries

[11] TA Concept Release, at Section VII.C.2.

[12] TA Concept Release, at Section VII.C.1.

[13] Moreover, the Committee notes that the mutual fund industry has already adopted certain tools that help ensure transparency, automation, and reliability of sub-accounting functions. For example, DTCC's Omni/SERV provides a streamlined communication platform that enables participating trading partners to share and keep track of sub-account information in a transparent and automated way. Moreover, the Financial Intermediary Controls and Compliance Assessment (FICCA) provides the mutual fund industry with a standardized and efficient way to assess the effectiveness of the intermediary's control functions and to review the adequacy and effectiveness of an intermediary's compliance controls. FICCA reports focus on a wide range of areas, including document retention and recordkeeping, transaction processing, shareholder communications, privacy protection, and anti-money laundering. Notably, in the past 3 – 5 years, adoption by firms of the new standard FICCA has been positive. The Committee has been informed that a significant number of firms now make their third-party FICCA report available upon request to fund management companies, and also, upon request, available to any fund with which they have an agreement, regardless of firm size, agreement terms, or business processing models. As noted below, many funds require broker-dealers with which they do business to provide such information, or to make such information available on request.

rather than directly,[14] should be required to "pass through" securityholder information to transfer agents.[15]

2.3.1 Transmitting Beneficial Owner Information to Transfer Agents is Unnecessary and Would Pose Significant Risk to Customers

The Committee believes that requiring broker-dealers to transmit securityholder information regarding beneficial owners to transfer agents would pose unnecessary risk to those underlying customers. The current framework provides appropriate safeguards to adequately protect beneficial owner information while providing mechanisms for issuers to receive appropriate information on beneficial owners to help promote transparency. For example, the current regulatory framework of Exchange Act Rule 14b-1, provides for the disclosure of beneficial ownership information regarding non-objecting beneficial owners (NOBOs) and allows beneficial owners that object to this disclosure (OBOs) to opt out of sharing their identity with the issuer.[16] To stress, the rationale behind the current Rule 14b-1 framework is to provide transparency and accountability to the issuer. Transfer agents should not have access to such information unless the issuer has expressly authorized the transfer agent to this extent. By imposing additional disclosure requirements, broker-dealers would lose control over the information provided by their customers and would be unable to effectively protect customer information. The current framework allows issuers to request a listing of street-name shareholders which broker-dealers provide to the issuer or its designee for non-objecting shareholders. However, broker-dealers have a duty to protect their clients' identity if they object to disclosure. Passing OBO client information to a transfer agent would violate a client request, and pose privacy and security risks to the underlying clients.

[14] TA Concept Release, at Section III.A.2. ("The vast majority of securityholders in the U.S. are beneficial owners rather than registered owners. Beneficial owners do not own the securities directly but generally have purchased them through an intermediary, such as a broker or a bank, and determined to hold them in street name through a book-entry account with that intermediary." (footnotes omitted)).

[15] TA Concept Release, at Question 99.

[16] In this respect, the Committee notes that the current rules relating to disclosure and non-disclosure of investor names (the "NOBO-OBO rules") were carefully designed to protect confidential information at multiple stages of the disclosure process. The NOBO-OBO rules were intended, in part, to protect the privacy of the investing public after robust analysis by SEC and NYSE advisory committees. The Committee believes that changes to that process warrant a similar and similarly robust process. Further, the Committee notes that NOBO information is sent to issuers through an intermediary so that the identity of the brokers themselves is also protected. Having brokers transmit that information directly to transfer agents would eliminate that protection and frustrate the purposes of the NOBO rules. As SIFMA pointed out in prior comment letters to the Commission, SIFMA believes that, under the current system, issuers can communicate efficiently and effectively not only with these shareholders, but also with their OBOs, although communications with OBOs must be made through a broker's agent. According to Broadridge Financial Solutions, Inc. ("Broadridge"), which maintains the NOBO/OBO database, only about 13% of shares outstanding held by OBOs are held in retail accounts. The remaining 87% are held in institutional accounts. Most issuers are well aware of the identities of their major institutional shareholders, including through filings on Form 13F, 13D, and 13G (see SIFMA Comment Letter dated as of September 30, 2010 in connection with the Commission's Release No. 34-62495; IA-3052; IC-29340: File No. S7-14-10 ("Concept Release on the U.S. Proxy System"), at 2).

2.3.2 Transparency for Mutual Fund Issuers

Further, the Committee notes that, with respect to mutual fund sub-accounting, many funds already have a contractual right to request identifying information regarding securityholders from broker-dealers and other financial intermediaries pursuant to Rule 22c-2 under the Investment Company Act of 1940. The Committee therefore believes that the benefits of requiring intermediaries to pass through beneficial ownership information to transfer agents are slight, if any, and would raise additional significant data security and privacy concerns.[17] In particular, the Committee believes that, by virtue of the difference in activities transfer agents and broker-dealers perform, as discussed above, transfer agents do not require equivalent access to information that broker-dealers and other intermediaries maintain.

As it relates to mutual funds, modern intermediaries today continue to meet each fund complex's needs for shareholder transparency. Omnibus dealer firms generally provide reporting or tools that allow funds to see through the netted or aggregated (or bulked) trading. On a daily basis many intermediaries transmit data to funds that details individual shareholder trading activity and transfer of asset transactions. Additionally, on a regular basis, as determined by the fund and firm, periodic full position files are also shared with the funds.[18] The Commission should also take into account that issuers already have direct contact information for most of their retail shareholders, who are registered holders or NOBOs.

In 2010, the practice of sharing information between broker-dealer intermediaries and mutual fund issuers became such a prevalent process among firms that a utility was developed by DTCC (namely, OMNISERV) to enable firms to transmit and share the client data to fund management companies in a standard format using the secure data lines supported by DTCC to secure client information. In almost every case, firms in omnibus models today are providing greater detail than ever before, even compared to the standards established in the Networking level 3 model (e.g. account types, program trading, unique transactions, breakpoints, NAV reasons, State of Sale, introducing firm or Advisor details in the case of the clearing firms, etc.).

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[17] In this respect, the Committee would like to refer to comments provided in the SIFMA Comment Letter dated as of September 30, 2010 on the Concept Release on the U.S. Proxy System. SIFMA has highlighted how the privacy right of retail investors in their personal records should be a priority in setting policy. See also, SIFMA Press Release on Prudent and Balanced Enhancements to Current Shareholder Communications System, June 11, 2010, available at http://www.sifma.org/news/news.aspx?id=17302.

[18] The Committee separately notes that SIFMA is aware of recent Commission Staff guidance related to "Mutual Fund Distribution and Sub-Accounting Fees" in which the Staff reminds mutual fund advisors and fund boards of their obligations to carefully review the sub-accounting services provided by and fees paid to financial intermediaries. However, the Committee concurs with Commission Staff that the appropriate forum in which to require such a review, and in which to evaluate whether such service providers should offer additional transparency with respect to those services, is to address the fund issuers directly. Proposed rules relating to, for example, the transparency of such services should be left to that context. See SEC Division of Investment Management, *Mutual Fund Distribution and Sub-Accounting Fees*, available at https://www.sec.gov/investment/im-guidance-2016-01.pdf.

2.3.1 Significant Technology Costs without Benefit

Finally, the Committee notes that the regulation of safe and secure transfer of vast amounts of identifying data would, depending on the specific terms of the applicable rule, require significant technology design and development costs in connection with identifying and supplying information to transfer agents. The Committee does not believe that SEC rulemaking is necessary on this topic. If the SEC ultimately determines that rulemaking on this topic is necessary, the Committee requests both a substantial, thorough, and data-driven cost-benefit analysis of any such requirement(s) and of the significant privacy and cybersecurity concerns such a proposal raises.

III. Operating Company Transfer Agents Should be Held to Financial Industry Standards of Fairness and Transparency in Respect of their Interactions with Broker-Dealers, Clients, and the Shareholding Public

The passage of time since the Commission has substantively reviewed transfer agent regulation has created an environment in which certain standards of fairness and transparency imposed on other SEC registrants do not apply to SEC registered operating company transfer agents. The Committee generally supports those aspects of the TA Concept Release that would impose certain standards of fairness and transparency on operating company transfer agent activities. In this regard, the Committee brings the following to the attention of the Commission.

3.1 Unilateral Imposition of DRS Fees on Broker-Dealers by Transfer Agents

In the TA Concept Release, the Commission specifically questioned the fees transfer agents assess when processing DRS instructions and whether the Commission should consider regulating these fees to some extent. The Commission also requested comment on whether the Commission should require any such fees to be fair and reasonable and whether competition among transfer agents has the effect of constraining the same.[19] In its discussions, the Committee identified this issue as significant and invokes action by the Commission.

3.1.1 Direct Registration System Background

The Direct Registration System ("DRS") is a DTC service which allows investors to maintain securities in registered form directly on the master securityholder file of an issuer's transfer agent.[20] Further, DRS facilitates security record ownership transfer from a customer's name to 'street name' and vice versa via a bookkeeping entry without the physical issuance of securities certificates.[21] DRS transfers are most frequently transfers of securities from the customer's name to 'street name' in the name of a nominee custodian, such as a broker-dealer who keeps record of the beneficial owner of the securities. Generally, broker-dealers make such requests on the

[19] TA Concept Release, at Questions 157 and 158.

[20] See TA Concept Release, at Section II.C.2. See Securities Exchange Act Release No. 37931 (Nov. 7, 1996), 61 FR 58600 (Nov. 15, 1996) (File No. SR-DTC-96-15) (approving establishment of DRS).

[21] See *supra* note 8.

customer's behalf to (a) provide the customer a statement that includes all customer assets and associated values, (b) provide a customer with a global view of his or her assets, and advice consistent with the customer's total asset mix, and (c) more efficiently service a customer's security that was once registered and held directly with the transfer agent, including the use of the security for margin purposes, certain options strategies (e.g., writing 'covered call' options), or to more efficiently liquidate a security at the customer's request. The DRS transfer automated what would otherwise be a manual, paper-oriented process: in the absence of the DRS, a securityholder would need to engage in a manual process in order to transfer securities from the customer's name to the broker-dealer's name for the benefit of the underlying customer.

The DRS was implemented in 1996; and since its inception transfer agents and broker-dealers have paid certain fees to DTC in order to participate in the service. Transfer agents themselves are paid by issuers for all transfers, including security record ownership transfer from a customer's name to 'street name' and vice versa via a bookkeeping entry.

Recently, transfer agents have started charging fees to broker-dealers for DRS transfers.[22] In some cases, transfer agents have indicated that they will reject DRS transfers in the absence of payment, asserting that such transfers are "out of order". Because each issuer-transfer agent relationship is exclusive[23], broker-dealers have three choices: (a) pay the DRS fees; (b) decline DRS fees and risk the rejection of transfers; or (c) complete shareholder-name-to-customer-name transfers through either (i) certificated transfer or (ii) Deposit and Withdrawal At Custodian (DWAC)[24] transfer, each of which are manual processes that significantly increase costs. The Committee is aware that certain broker-dealers have commenced paying such fees, albeit in some cases under protest. Such fees are invoiced outside of DRS and are entirely separate from the utility fees the DTC charges to maintain and operate the DRS.

3.1.2 The Commission Should Examine Regulating DRS Fees

The Committee believes that DRS fees bear critical characteristics of fees that warrant close scrutiny and regulation by the Commission.

[22] The Committee would like to present certain data that highlights the magnitude and relevance of this issue for the financial services industry. In particular, during the 2015 calendar year, the monthly average of DRS deposit transactions in connection with which DRS fees were actually or potentially charged was 160,393, for a total of 1,924,718 recorded transactions during 2015.

[23] With respect to market-based solutions, DRS fees are subject to a "collective action problem", namely that they are charged in a diffuse manner to parties with whom the transfer agent has no relationship. Issuers, who pay transfer agents for prompt and accurate transfer, have an exclusive relationship with a single transfer agent, are not likely to have knowledge of the DRS fee, and/or are not likely, on an issuer-by-issuer basis, to complain, or threaten to move business as result of a single, diffuse fee.

[24] DWAC is a DTC service that allows participants to instruct DTC regarding deposit and withdrawal transactions being made directly via a FAST transfer agent. (more information available at http://www.dtcc.com/matching-settlement-and-asset-services/securities-processing/deposit-withdrawal-at-custodian).

Issues associated with DRS fees that in the view of the Committee require the Commission's consideration include, first, concerns about the structure and fairness of such fees:

- DRS fees are unilaterally imposed;
- DRS fees are unilaterally set in amount and timing;
- DRS fees are charged without any contract outlining the rights and obligations of the payers and the transfer agents;
- Because each issuer-transfer agent relationship is exclusive, there is no competitive marketplace for DRS transfers;[25]
- In the absence of competition, DRS fees are charged without assurance that the terms of such fees will not be changed, and therefore are subject to increase without notice;
- Issuers already pay transfer agents for transfer services, including DRS transfers;
- There is no evidence that transfer agents bear increased costs that justify charging broker-dealers additional fees for DRS transfers;
- There is no evidence of the relationship between the DRS fees being charged and any other factor, such as the transfer agents' costs;
- In the event that broker-dealers are unwilling to pay the DRS fees, the alternatives noted above are suboptimal, raise the associated costs, and are manual processes; and,
- While the Committee does not believe that broker-dealers are generally passing such fees on to their clients, some broker-dealers may do so, or may choose to do so in the future.

3.1.3 DRS Fees May be Inconsistent with Current Rule 17Ad-2

Also, the Committee questions whether DRS fees are consistent with current transfer agent regulations. Specifically:

- DRS fees may be viewed as creating a barrier to the prompt and accurate transfer of securities. Following the imposition of the DRS fee, an investor, issuer, and broker can each take the steps required to transfer a security, and yet the transfer can be blocked by the transfer agent on account of nonpayment of these fees. The Committee believes that, as such, DRS fees are contrary to the principal purpose of transfer agent regulation, which is to reduce barriers to prompt and accurate transfer.
- DRS fees have uncertain status under Rule 17Ad-2, which requires transfer agents to turn around routine requests, and to provide notice of delay and continuous effort in connection with delays arising from non-routine requests. The Committee asserts that there is nothing non-routine or "out of order" regarding a request for a DRS transfer. Rule 17Ad-2 provides no option for transfer agents to refuse properly-requested services, particularly when the applicable issuer has already paid for such services. In this regard, the Committee notes that the very claim that transfers can be rejected for failure to pay the applicable fee necessitates the argument that such fees are items for transfer, as each of those terms is defined in Rule 17Ad-1. Further, the Committee notes that if such fees are part of an item for transfer, then such transfers are "routine

[25] See *supra* note 23.

transfers" as that term is defined at Rule 17Ad-1(i), and such transfers would therefore be subject to the substantive regulation of 17Ad-2.

3.1.4 SIFMA Request for Commission Action on DRS Fees

Based on the forgoing, the Committee requests that the Commission review and examine the reasonableness and fairness of DRS fees generally.

Following a review of the basic reasonableness of DRS fees, the Committee recommends that the Commission examine the transparency of such fees, and that it seek to improve the relationship of such fees to underlying costs, with the primary purpose of protecting customers from increases in costs that are unrelated to increased value to the customers or increased underlying costs. In particular, the Committee recommends that consideration be given to regulation that ensures:

- The transparency of DRS fees;
- The reasonableness of the terms of DRS fees;
- The reasonable relation of DRS fees to transfer agents' related costs; and,
- That transfer agents are not charging DRS fees in relation to services for which they are already paid.

3.2 The Exemption for Small Transfer Agents under Rule 17Ad-4 Should be Eliminated

The TA Concept Release includes a request for comment on whether the Commission should eliminate the current exemption in Rule 17Ad-4 for small transfer agents.[26]

In the experience of the Committee, the exemption for small transfer agents has caused barriers and delays to prompt and accurate transfer, as small transfer agents, acting in reliance on the exemption, generally appear reluctant (a) to spend the time and money necessary to increase efficiencies and improve the level of automation of the transfer process; (b) to address levels of security (including cybersecurity) that are required in order to properly safeguard shareholder and issuer information; and (c) to address the regulatory timelines found in existing transfer agent regulation.

With the primary purpose of enhancing harmonization, setting uniform standards for shareholder and issuer protection, and ensuring high levels of automation throughout the transfer agent industry, the Committee would support a proposal that would eliminate the exemption for small transfer agents found at Exchange Act Rule 17Ad-4. While the Committee understands the exemption exists to mitigate possible barriers to entry that might prevent smaller, less well-capitalized entities from undertaking transfer agent responsibilities, the Committee believes that this accommodation to small business creates a less efficient and disharmonized transfer process, and exposes investors to potential disruption and/or harm.

[26] TA Concept Release, at Question 74.

The Committee also supports written agreements between transfer agents and the issuer. As the Commission itself noted,[27] complications have arisen, especially with smaller transfer agents, in disputes over recordkeeping and fees that have delayed the timely transfer of customer positions, as well as the turn-over of records when a relationship is terminated, creating abandoned positions directly impacting the shareholder. Introducing a requirement to have written agreements between transfer agents and the issuer would significantly limit the risks of incurring in such complications and delays.

The Committee also notes the potential for this issue to perpetuate, and even expand, in light of recent SEC JOBS Act rulemaking, including the SEC's Regulation Crowdfunding.[28] Under the regulation, issuers in equity crowdfunding offerings must rely on the services of transfer agents. Given the size of the potential offerings, we believe that smaller transfer agents are more likely to engage in equity crowdfunding offerings, giving rise to potential shareholders and issuers protection issues if the framework applicable to such small transfer agents is not harmonized to meet the higher standards of non-small transfer agents.

IV. Certain Aspects of Transfer Agent Regulation, such as Cybersecurity and Business Continuity Planning, Should be Brought in Line with Financial Industry Standards

As noted above, the Committee believes that transfer agent regulation, particularly for operating company transfer agents, has not kept pace with current regulatory requirements imposed on other SEC registrants. We take this opportunity to provide comments on a number of issues raised by the TA Concept Release on this topic.

4.1 Supervisory Control Systems

As a preliminary matter, the Committee notes that transfer agents are currently not required to implement supervisory control systems in the manner of virtually every other financial industry participant. The Committee supports the imposition of basic supervisory control system requirements on transfer agents, but only where such entities—themselves, or by virtue of the regulatory framework imposed on the issuers to whom they provide services, such as mutual funds and their advisers—are not already subject to existing industry requirements. In particular, the Committee supports the creation of requirements for transfer agents to:

- Appoint, and disclose, a chief compliance officer;
- Maintain written policies and procedures that are reasonably designed to seek compliance with applicable law and regulation;
- Create, and disseminate critical portions of, a business continuity and disaster recovery plan; and
- As more fully described below, maintain cybersecurity policies and procedures.

[27] TA Concept Release, at Section VI.B.

[28] SEC Final Rule, Crowdfunding, available at http://www.sec.gov/rules/final/2015/33-9974.pdf.

As discussed in Section II above, however, the Committee would not support the imposition of such requirements on broker-dealers that perform sub-accounting services, for the simple reason that these roles do not rise to the level of registered transfer agent functions, and broker-dealers are already and specifically regulated in each of these areas. For this reason, the Committee would not support the creation of an SRO regulating transfer agents to the extent that such SRO membership captures broker-dealers who are already extensively regulated and do not perform securities transfer activities that warrant further regulatory oversight.

4.2 Corporate Action Standardization

The TA Concept Release questions whether the Commission should propose rules requiring standardized corporate actions processing as a method to facilitate communications among market participants.[29]

The Committee supports the introduction of rules enhancing standardization with respect to the announcement and treatment of corporate actions. The Committee believes that the marketplace would benefit from a higher degree of standardization in the treatment and routing of corporate actions—for example, XBRL standardization.

The Committee supports the efforts of the XBRL Working Group[30] and believes that standardization, using XBRL, ISO or some other workable messaging standard, will provide more timely, robust data into the marketplace with common definitions and reduce complexity. Standardization will provide efficiencies, reduce costs and operational risk through the multiple layers between an issuer and the investor.

Significantly, the Committee notes that under the current framework the transfers associated with some of the most common corporate actions qualify as non-routine items under Rule 17Ad-1, including transfers "in connection with a reorganization, tender offer, exchange, redemption, or liquidation."[31]

As the definition of routine items currently excludes the most relevant corporate actions, certain requirements do not currently cover these corporate actions. For example, transfer agents who are not acting as a registrar must turnaround within three business days of receipt at least 90% of all "routine items" received by the transfer agent during any month.[32] Non-routine items such as corporate actions must instead receive "diligent and continuous attention" and must be "turned around as soon as possible."[33]

In this regard, the Committee recommends that the Commission revise the definition of "routine item" under Exchange Act Rule 17Ad to include certain corporate actions. In particular, the

[29] TA Concept Release, at Question 161.

[30] See, e.g., TA Concept Release, note 5.

[31] 17 CFR 240.17Ad-1(i).

[32] 17 CFR 240.17Ad-2(c).

[33] 17 CFR 240.17Ad-2(e).

Committee notes corporate actions should be regarded as routine items where transfer agents have the property or possession of the assets. On the contrary, where transfer agents do not have the property, it may not be appropriate to impose strict turnaround and other requirements. That said, the Committee is of the view that transfers in connection with tender offers, exchanges, and redemptions—particularly if the same are in respect of securities held in DTC—should be viewed as "routine" transfers.

4.3 Cybersecurity and Other Technology-Related Issues

The Commission asked whether it should impose specific cybersecurity standards for transfer agents and require transfer agents to demonstrate a certain level of operational capacity, such as IT governance and management, capacity planning, computer operations, development and acquisition of software and hardware, and information security.[34]

As noted elsewhere in this letter, the Committee believes that transfer agent activities pose significant cybersecurity risks. Transfer agent records would benefit from safeguards and protections similar to those required of sensitive records processed by broker-dealers. In particular, the Committee would support a rule—applicable to all transfer agents,[35] including those small transfer agents exempted from regulation pursuant to Exchange Act Rule 17Ad-4—that would create specific, minimum best practices requirements related to safeguarding funds and securities, including: (i) developing specific written procedures for access and control over securityholder accounts and information; and, (ii) enhanced recordkeeping requirements. Further, although appropriate for certain market utilities and market participants, in the view of the Committee strict rapid recovery time objectives (RTOs) would not be appropriate for transfer agents in light of their activities.

In the view of the Committee, the Commission should address cyber security standards risk-based approach, providing a consistent, minimum level of cyber security protection across transfer agents while allowing flexibility in implementation based on their size and operational model. This approach is consistent with, and recommended by, FINRA's February 2015 Report on Cybersecurity Practices.[36] In this respect, a sound cybersecurity system should include:

- A comprehensive governance framework;
- Risk assessments as the basis for cybersecurity planning;
- Technical controls contingent on firm's situation;
- Incident response plans; and
- Tools to control and manage cyber risks in connection with vendors.

[34] TA Concept Release, at Question 159.

[35] With respect to cyber security risks, transfer agents that are subject to a regulatory framework imposed on by issuers to whom they provide services, such as mutual funds and their advisers, may be subject to existing requirements on this topic that should be respected.

[36] Available at https://www.finra.org/sites/default/files/p602363%20Report%20on%20Cybersecurity%20Practices_0.pdf.

In addition, the TA Concept Release questions what features written business continuity or disaster recovery plans should have if the Commission proposes transfer agents to maintain such plans.[37] In this regard, the Committee believes that a robust business continuity plan is essential to ensure that market participants are resilient to shocks and disruptions, and are able to quickly resume operations with minimal disruption and whole safeguarding critical client information.[38]

The Committee believes that Regulation Systems, Compliance and Integrity ("Regulation SCI") is not an appropriate model for transfer agent regulations, given the role transfer agents play in the market and the fundamental differences between transfer agents and designated entities covered by Regulation SCI. Transfer agents are not core market utilities whose continuous operation is needed for fair and orderly markets. In addition, the activities which broker-dealers using transfer agents for the timing of those interactions are fundamentally different from their interactions with the entities Regulation SCI covers. This view is consistent with several other comment letters the commission received in response to the Regulation SCI proposing release.[39]

In this regard, the Committee reaffirms the comments provided in the comment letter to Regulation SCI dated as of July 8, 2013. In particular, SIFMA highlighted that BCP regulations take into account the relative degrees of risk to the markets a specific function poses and the need to calibrate relevant obligations based on the risk profiles of the firms involved. SIFMA noted Regulation SCI should not apply to entities performing functions that do not have a systemic impact on the operation of the national market system, such as transfer agents.

V. Other Issues

5.1 Escheatment Reporting

In the TA Concept Release, the Commission seeks comment on the escheatment process, in particular whether it would be appropriate to require transfer agents to disclose information pertaining to residual or unclaimed funds, focusing on the potential issues occurring when the securities remain in the transfer agent's possession or control post-payment but prior to the successful distribution to securityholders or escheatment to a state or territory.[40]

Under the current regulatory framework, transfer agents are required to report on certificated securities only when transfer agents receive notice of the loss, theft or counterfeiting of the certificated security from a non-reporting entity, or if the certificate was in its possession at the time of the loss.[41] However, current rules do not cover escheatment of the certificated securities

[37] TA Concept Release, at Question 60.

[38] In the view of the Committee, the Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System, available at https://www.sec.gov/news/studies/34-47638.htm, and FINRA's Rule 4370 *Emergency Preparedness Rule* provide sound principle and standard for the development of an effective framework for business continuity plans.

[39] See TA Concept Release, at note 413.

[40] TA Concept Release, at Question 27.

[41] 17 CFR § 240.17f-1.

under state law. Specifically, under SEC Rule 17f-1, a transfer agent is not required to report to the Securities Information Center ("SIC") the escheatment of certificated securities to any state.

The Committee acknowledges that the escheatment process is regulated by state law, but the Committee believes that the Commission should consider introducing certain additional transfer agent requirements with respect to escheatment reporting of certificated securities to promote transparency and enhance investor protection. In this regard, the Committee supports a transfer agent requirement to communicate the escheatment of certificated securities to SIC. Under the current system, broker-dealers do not receive any communications with respect to certificated securities that have been reported for escheatment, and do not have any efficient mechanism for determining whether a client's certificated security has been subject to escheat. Such a requirement would include, at a minimum, transfer agent reporting whenever the transfer agent cancels physical certificates held by broker-dealers and delivers the certificated security to the relevant state according to state escheatment procedure. Ideally, any time certificated securities are subject to escheat, transfer agents would report the status of such securities to SIC. The Committee notes that some broker-dealers perform daily checks in the SIC system for every certificated security in inventory.

Separately, given the existence of the "BrokerCheck" system,[42] we recommend that the Commission implement, or at the very least promote as a best practice, a requirement that transfer agents check the FINRA BrokerCheck system prior to escheatment of a security that appears to be in the name of a broker-dealer. While having the correct address of a broker-dealer does not impact the state law escheatment process, the correct address of a broker-dealer can facilitate the contact or successfully delivered mail that will toll the dormancy period that leads to the escheatment of a security.[43] A requirement for transfer agents to access FINRA BrokerCheck in the above scenario would avoid the escheatment of a security in broker-dealer name where the transfer agent does not have the correct address for the broker-dealer and FINRA's BrokerCheck system has a current address.

Finally, the Committee respectfully notes that Section 929D of the Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") introduces certain new reporting requirements in connection with the Lost and Stolen Securities Program ("LSSP"). In particular, in order to promote transparency and the effectiveness of the reporting system, the Committee supports the prompt implementation of Section 929D of the Dodd-Frank Act to require transfer agents to report cancelled and escheated securities certificates to the LSSP database.

5.2 Restricted Securities Processing

In the TA Concept Release, the Commission expresses its concern regarding unregistered securities distributions that violate Section 5 of the Securities Act of 1933, particularly in the microcap market, and notes the important role that transfer agents play in helping to prevent such

[42] *See* http://brokercheck.finra.org/.

[43] SIFMA White Paper, *Unclaimed Property: Compliance Obligations and Challenges for Broker Dealers*, January 2015 (available at http://www.sifma.org/issues/item.aspx?id=8589952727).

distributions.[44] In particular, the Commission notes its finding, in the context of investigating abuses in the microcap market, that the removal of restrictive legends can often be a central element contributing to such distributions.

The Commission suggests that more specificity around transfer agents' responsibilities with respect to illegal distributions may help to better protect investors, facilitate the prompt and accurate clearance and settlement of securities transactions, and combat fraud and manipulation in the microcap market. As a result, the Commission notes its intention to propose new rules or rule amendments to address the transfer agent role in facilitating transfers of securities that result in illegal distributions, including new rules that would:

- Prohibit any registered transfer agent or any of its officers, directors, or employees from taking any action to facilitate a transfer of securities if such person knows or has reason to know that an illegal distribution of securities would occur;

- Prohibit any registered transfer agent or any of its officers, directors, or employees from making any materially false statements or omissions or engaging in any other fraudulent activity in connection with the transfer agent's performance of its duties and obligations under the Exchange Act and the rules promulgated thereunder; and

- Require each registered transfer agent to adopt policies and procedures reasonably designed to achieve compliance with applicable securities laws and rules and regulations thereunder, and to designate and specifically identify to the Commission a chief compliance officer.[45]

The Committee believes that further regulation in this area should focus on microcap fraud, and that steps should be taken to ensure the efficiency of transfer processing in circumstances where probability and incidence of fraud are low. In particular, the Committee believes that investors would benefit from the implementation of specific regulatory guidelines to which transfer agents would adhere in regards to the placement and removal of restrictive legends. In this respect, the Committee recommends that the Commission explicitly outline red flags that should prompt a transfer agent to make reasonable inquiries prior to the placement or removal of a restrictive legend.

Further, except in markets where unregistered distributions of securities have been a problem, it is important that new rules in this area are appropriately targeted and carefully crafted to avoid imposing additional costs and delays.[46] In this respect, the Committee specifically recommends that any new rules accommodate procedures that do not require a legal opinion for the removal of a restrictive legend or other transfer restriction in every instance, as are currently established in markets where the probability of fraudulent unregistered distributions is low.

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[44] See TA Concept Release, at Section VI.D.

[45] 80 Fed. Reg. at 81982 (Dec. 31, 2015).

[46] In this respect, the Committee references and agrees with the comments raised in the comment letter to the TA Concept Release submitted by Sullivan & Cromwell LLP (letter submitted February 10, 2016).

Finally, the Committee notes that on December 4, 2015, President Obama signed into law the Fixing America's Surface Transportation Act, which, among other items, amended the federal securities laws to add a new registration exemption in Section 4(a)(7) of the Securities Act of 1933 for private resales of securities.[47] Proponents of the new exemption had noted concerns regarding the cost and difficulty of transferring restricted securities in the absence of clear statutory authority, and we urge the Commission to ensure that any new rules for transfer agents are consistent with the goals underlying new Section 4(a)(7) and other securities law provisions that are intended to simplify transfers of restricted and control securities.

5.3 Proxy Issues

The TA Concept Release questions what concerns might arise with respect to the role played by transfer agents in connection with proxy processing activities.[48] In this respect, the Committee would like to refer to the comments provided in the SIFMA Comment Letter dated as of September 30, 2010 in connection with Concept Release on the U.S. Proxy System. In providing comments to the Concept Release on the U.S. Proxy System, SIFMA noted the following, among other comments, that would contribute to an efficient and reliable process:

- The SEC's continued support for cooperation among market intermediaries to provide interested investors with vote confirmations from the tabulators as assurance that their votes were accepted at a meeting will add to the integrity of the voting process. Through an industry working group and recent pilot programs, the industry has demonstrated the viability of end to end confirmation for all issuers, and believes it can be achieved without significant technological investments;

- An initiative designed (i) to ensure that vote tabulators address and review alleged broker voting discrepancies in a consistent manner designed to ensure a complete and accurate voting record; and (ii) to promote improved communication between intermediaries and tabulators. In this respect, SIFMA believes that all tabulators should be required to contact the broker-dealer or bank in question to rectify any potential imbalance to ensure that all entitled votes are properly counted; and

- Enhanced privacy rights of retail investors in their personal records as a priority in setting policy, as also described in further detail in Section 2.3 above.

With respect to tabulation services, the Committee believes the transfer agents are better positioned to provide those services, as most transfer agents are generally already in possession and maintain master securityholder files listing the issuer's registered securityholders and already have a proper infrastructure in place to communicate with registered securityholders.

[47] Pub.L. 114–94, available at https://www.congress.gov/114/bills/hr22/BILLS-114hr22enr.pdf.

[48] TA Concept Release, at Question 163 and Question 164.

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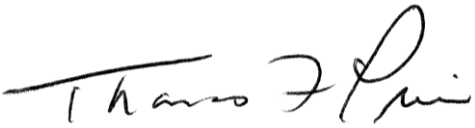
SIFMA appreciates the opportunity to comment on the TA Concept Release. SIFMA looks forward to a continuing dialogue and working together on this important regulation.

If you have any questions or require further information, please contact me at [redacted] or [redacted].

Respectfully submitted,



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