April 12, 2016

Brent Fields
Secretary
U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

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

Dear Mr. Fields,

I am writing to you on behalf of ClearTrust, LLC in response to the Commission's request for comment on the above-referenced matter.

ClearTrust appreciates this thoughtful, thorough undertaking of the Commission to improve transfer agent regulations in a way that will protect investors and enhance the overall integrity of the US capital markets. As an SEC-registered stock transfer agent, we thank you for this opportunity to offer our insight and hope that our comments prove beneficial to the Commission's strategic analysis.

5. Should the Commission require any of the registration and disclosure items discussed above? If the Commission were to require transfer agents to disclose financial information, what information should be required, and why? Would requiring such information to be disclosed on Forms TA-1 and/or TA-2 be an effective and appropriate measure? What would be the benefits and costs associated with any such requirement?

The SEC states its intent in enhancing the Forms TA-1 and TA-2 is to first "[inform] the Commission's oversight and examination programs" and second "[to inform] the public about the nature and scope of transfer agents' activities."[1] It would be helpful to point out that shareholders, issuers, and other stakeholders do not typically review the Forms TA-1 and TA-2. These filings are primarily utilized by the Commission and other transfer agents. Therefore, only the SEC's first stated aim of assisting the

[1] Page 111 of Concept Release No. 34-76743

Commission's oversight (*but not the latter aim of informing the public*) can be properly addressed by enhancing these filings.

Given the primary audience of these filings (the Commission and other transfer agents), requiring financial disclosures, fee disclosures, and client lists are anti-competitive and would not achieve the SEC's stated objective. It is not clear how financial disclosures could benefit the industry. Note there is no substantive correlation between the financial wherewithal of a transfer agent and the quality of its work, as a small transfer agent with proper knowledge and infrastructure can deliver services to issuers that are equal to or exceed larger agents, in spite of their smaller financial capacity. Disclosure of fees would not only be anti-competitive, but would also be virtually impossible as there are no consistent fee structures across transfer agents, and many agents frequently negotiate varying fees across clients based on the size, scope and complexity of the work involved. Finally, disclosure of client lists is not only anti-competitive, but would be overly burdensome for transfer agents because issuers, especially smaller issuers, may change transfer agents frequently.

On this point, if the SEC's intention in proposing client disclosures is so that the public is informed of who the transfer agent is for a given issuer, there is a much simpler solution that will ensure accurate disclosure *at no cost or burden to the industry*. The Commission should require issuers who engage a transfer agent to disclose the name of their transfer agent on their corporate website. This would allow investors and other stakeholders to access up to date information for any given issuer by a simple internet search.

6. Should the Commission consider amending the registration process to allow for the issuance of an order approving a transfer agent's TA-1 application before that application becomes effective, rather than having such applications become effective automatically after 30 days? Should the Commission consider making certain findings before approving a transfer agent's application? If so, what should those findings be? Should the Commission impose threshold requirements that transfer agents must satisfy before their applications can become effective? If so, what would they be?

The process to become a transfer agent should be enhanced in a way that protects the interests of investors but does not drain the limited resources of the Commission. A preferred solution would be an enhanced TA-1 filing that contains:

1. A certification by the transfer agent confirming the following provisions are in place:
    - Written policies and procedures that will allow it to operate within the Rules;
    - Appropriate insurance coverage based on the scope of the services to be offered; and
    - A written Disaster Recovery Plan and Business Continuity Plan
2. Disclosure of the name of the transfer agent's compliance officer

3. A listing of the broad category of services the transfer agent will perform (such listing of potential service categories to be provided by the Commission on the Form in a standardized list, allowing the transfer agent to check the types of services it will offer).

Such filing requirements would cause prospective, unqualified transfer agents to self-select out, and provide assurance to industry stakeholders that SEC-registered transfer agents are indeed qualified to operate within the Rules, without requiring extensive resources of the Commission.

7. The Commission intends to propose to require transfer agents to submit annual financial statements. Should these statements be required to be audited? Why or why not?

Requiring audited financial statements would be overly burdensome to small transfer agents and would not create any benefit to the industry that could possibly justify the cost.

The Commission should be aware that increasing the compliance burden of transfer agents will lead to an increase in costs to issuers and shareholders. When contemplating this and other proposed changes described in the Concept Release, we respectfully request the Commission complete a thorough cost-benefit analysis, and consider the negative effects that higher costs would have on all industry stakeholders.

9. Should the Commission ban certain conflicts 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?

The risks associated with a broker dealer/transfer agent affiliation are concentrated to those serving micro-cap securities. Such relationships create an environment conducive to skirting FINRA Rule 5250, front-running, and market manipulation. However, we concede that there could exist established, reputable firms with broker dealer/transfer agent affiliations operating outside the microcap space, whose offerings serve the interests of investors well. The existence of such reputable establishments should preclude the Commission from prohibiting the affiliation altogether. In lieu of a total ban, the Commission should consider requiring disclosure of these relationships to the issuers served by broker dealer-affiliated transfer agents, including a detailed description of the potential conflicts of interests[2]. Such disclosure should be delivered to the issuer simultaneous with the proposed issuer-transfer agent agreement, or incorporated therein, allowing the issuer to make an informed decision on the outset.

[2] To ensure an adequate disclosure of risks, the Commission could consider drafting a standard disclosure to be used, outlining all risks and potential conflicts of interests the Commission believes an issuer or shareholders would be exposed to as a result of the broker dealer/transfer agent affiliation.

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 fee disclosures be standardized to facilitate comparison? Should fees charged to both issuers and directly to shareholders be required to be disclosed?

See comment on item 5, above. It is important for the Commission to appreciate that there are issuers with varying levels of complexity and a myriad of service needs, based on several moving factors. There is absolutely no way to standardize fees across the industry in a way that would be fair to all stakeholders. Any attempt to standardize and disclose fees would be accomplished only at the expense of the nuanced, tailored relationships that exist between issuers and their transfer agents today.

14. Should the Commission require that any arrangement for transfer agent services between a registered transfer agent and an issuer be set forth in a written agreement? Why or why not? If the Commission were to require a written agreement, should it cover certain topics? If so, what topics?

We support that transfer agents should have a written agreement in place governing the services it performs for its issuers, the context and scope of which should be determined by the transfer agent and issuer.

15. How are fees set out in transfer agent agreements today? Do issuers find it difficult to fully understand the fee structures offered by transfer agents, and how do those fee structures work in practice? Should the Commission require that all fee arrangements between an issuer and a transfer agent be set forth and specified in a written agreement? Why or why not? Should the Commission require that transfer agents disclose their fee arrangements in their filings with the Commission? If so, should transfer agents be required to utilize a standardized framework or terminology when disclosing their fee structures? Should the Commission exempt fees which may be negotiated on a case-by-case basis, such as corporate action fees? Why or why not? Would requiring disclosure of fees affect competition, or the form of competition, among transfer agents or between transfer agents and other entities?

See response to item 10, above.

There are a variety of fee structures across transfer agents based on the specific scope of work involved with any given issuer, and it would be neither possible nor beneficial to the industry to attempt to standardize those schedules and services. Further, such a suggestion to standardize schedules and services incorrectly presupposes that the needs of all issuers are identical and can be better met through standardization. Finally, in addition to lacking any measurable benefit to issuers or the industry as a whole, disclosure of fees is anti-competitive and runs contrary to the capitalistic spirit that has made our country's markets flourish.

16. 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? Would 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?

It is no secret to the industry that a select few transfer agents assess disagreeable termination fees. They are the exception, and not the rule.

Termination fees should be clearly stated and mutually agreed upon between the issuer and agent. *All fees* that must be paid to terminate a relationship[3] must be disclosed clearly in the written issuer-transfer agent agreement, and the process by which a transfer agent might increase those fees from time to time should also be clearly outlined in the agreement. This should stem any potential problems and better protect issuers and investors.

28. If the Commission were to require transfer agents to disclose information pertaining to residual or unclaimed funds, what type of information and level of detail should be required, and how frequently should it be required to be reported? What would be the cost, burdens or benefits, if any, of such disclosure for issuers or transfer agents?

There is no benefit to the industry to require disclosure of residual/unclaimed funds held by the transfer agent. However, it could serve the interests of the Commission to require disclosure on the Form TA-2 of the *total* amount of funds held by the transfer agent on behalf of its issuers.

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… (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)?

It is imperative to note that the role of the transfer agent is ministerial and administrative in nature, and the design of the agency function is intended to remove subjective discretion from processing. The Commission's current consideration of imposing due diligence standards on transfer agents to investigate multiple stakeholders in a given transaction is inconsistent with the truly limited role of the transfer agent, as it assumes the transfer agent has authority and resources which it does not, and such a requirement is open to subjective interpretations. Attempting to standardize a due diligence process would also fail to contemplate the multitude of nuanced scenarios and transfer requests a transfer agent encounters on a regular basis.

[3] Regardless of whether or not the fee is described as a "Termination Fee" in the agreement. To remove any doubt, consider requiring a disclosure in the agreement that specifically tabulates and states the total cost of moving the business.

While we strongly support the concept that transfer agents must collect sufficient documentation satisfactory to it to determine that a legend removal request has been submitted in good form, we note that supporting documentation can vary substantially based on the transaction, exemption, and perceived level of risk, and further confirm that reputable transfer agents already perform these functions as standard practice.

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

In cases where the transfer agent is not the original agent for the issuer, it may or may not possess the history of the securities, depending on the level of information provided by a predecessor transfer agent during the file conversion process. However, even if a transfer agent *is* in possession of historical data concerning any given security, it would violate existing federal privacy regulations to release such detailed information to intermediaries or any party[4]. While we understand the good intentions in making this suggestion, we oppose because the suggestion is inconsistent with existing privacy regulations.

Questions 34-37, concerning the processing of legend removal requests.

ClearTrust supports the Commission's intention to clarify legend removal processes in a way that will benefit the industry as a whole.

However, it appears that Questions 34-37 imply that the transfer agent has a fiduciary, rather than administrative, responsibility. The suggested requirements, if all were to be made into rule, would open Pandora's Box of subjective research, and would be overly burdensome and cost-prohibitive, if not altogether impossible to achieve. The transfer agent does not have the resources, authority or investigative means to gather such information, and the Commission has indicated no practical guidance, authority, or protection[5] that would allow a transfer agent to analyze or treat such information even if it *were* collected, the impracticability of which we strongly sustain.

[4] In the case where securities were held by other securityholder(s) prior to the current securityholder, the transfer agent cannot even release such information to the existing securityholder without violating federal privacy regulations.

[5] Specifically, transfer agents (acting on behalf of issuers) have the obligation to process a transfer request that is presented in good form. Refusal to process a "good form transfer request" based on a transfer agent's perception of a "red flag" would expose the transfer agent to shareholder action under UCC Article 8. The Commission must offer protection to transfer agents from this undue liability. ***No such protection currently exists.***

In addition, mandating such requirements as described in Questions 34-37 would force transfer agents to increase fees substantially. The Commission has rightfully expressed concern throughout the Concept Release in the costs incurred by issuers and shareholders, and should consider how these extraordinary investigative obligations would burden issuers and shareholders.

56. What are the current industry best practices for protecting issuer or investor information or data in physical or printable records? What minimum standards, if any, should the Commission require for the safeguarding of such information or data?

ClearTrust supports the Commission offering broad guidelines as described in subsections (i) and (ii) on page 141 of the Concept Release, bearing in mind that such guidelines should be designed so as to be tailored to the size and scope of each transfer agent. Because the data maintained by larger transfer agents differs from the data maintained by small transfer agents, and the scope and breadth of services, particularly the automation capacities of those services, are considerably limited at small agents, an effective "one size fits all" set of regulations would be impossible. Broad guidelines would be most appropriate.

58. Should the Commission impose specific cybersecurity standards for transfer agents?

Similar to data security and disaster recovery planning discussed in the previous section, a broad set of guidelines that is sensitive to the various degrees of complexity and size of transfer agents, that also takes into account the rapidly changing nature of cybersecurity, would be most appropriate.

66. Do the current processes and requirements for signature guarantees apply adequately in an electronic environment?

Even as the industry dematerializes, the signature guarantee process remains unchanged for all transfers, whether book entry, DRS, or certificated. Because a paper stock power with signature guarantee is presented to effectuate a transfer,[6] the current signature guarantee process does indeed provide adequate protection in an electronic environment.[7]

68. Should the Commission prohibit indemnification of transfer agents by issuers for liability for losses due to the agents' cybersecurity weaknesses?

[6] With the exception of a DRS PROFILE deposit, which is embedded with an electronic surety, effectively replacing the need for a paper Medallion Guaranteed stock power in this instance.

[7] Assuming "electronic environment" is defined as book entry or DRS securities.

It is not understood how the Commission's contemplated prohibition of indemnification could benefit the industry. Further, the details of any provisions in an agreement between an issuer and transfer agent should be negotiated directly between the issuer and agent.

73. Should the Commission eliminate or amend any of the definitions in the transfer agent rules? If so, which ones and why?

The term "Item" should be calculated as the number of shareholder accounts of a single issue being debited in a given presentment. This would provide much-needed clarity and also properly reflect the scope of the work being done in a presentment.

80. Are the different record retention requirements in Rules 17Ad-7 (record retentions), 17Ad-10 (prompt posting of certificate detail, etc.), 17Ad-11 (aged record differences), and 17Ad-16 (notice of assumption and termination) still appropriate in light of transfer agents' operational and technological capabilities?

Concerning Rule 17Ad-7, there is an apparent or perceived inconsistency between subparagraphs (c) and (h) in the existing rule, related to how long an agent must retain records required by § 240.17Ad-6(a) (9) and (10) and (b). The Commission should consider clarifying or reconciling these rules. See below excerpt:

> *17Ad-7(c) The records required by § 240.17Ad-6(a) (8), (9) and (10) and (b) shall be maintained in an easily accessible place during the continuance of the transfer agency and* ***shall be maintained for one year after termination*** *of the transfer agency.*
>
> *17Ad-7(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad-7 to retain the records required to be made and kept current under § 240.17Ad-6(a) (1), (6), (9), (10) and (11), (b) and (c)* ***shall end upon the delivery of such records to the successor transfer agent.***

96. Given that most securityholders no longer receive paper certificates evidencing their holdings, should the Commission require transfer agents to provide securityholders with an account statement with specific details for each transaction that occurred with respect to each securityholder's account? If so, how and how often should such statements be provided and what information should be included?

Existing state regulation requires transfer agents, acting on behalf of issuers, to provide a statement or advice when book entry shares are issued to a securityholder. In addition, shareholders are able to request a statement of their holdings at any time from transfer agents, or access this information securely online

from most agents. There are no known problems shareholders are experiencing with documenting or verifying their account holdings regardless of the dematerialization trend away from paper certificates.

There is no clear industry need at this time to enhance the existing obligations to mail statements. Any potential rule of the Commission imposing additional obligations on transfer agents to mail statements could be redundant alongside state regulations, unduly burdensome, and/or cost-prohibitive to small businesses[8] while accomplishing no real benefit to investors, particularly in the absence of an actual industry problem.

138. What fees are being charged today by transfer agents directly to investors or indirectly to investors (such as through transaction fees in connection with Plan Administration activities that are comparable to broker commissions or dealer markups)? Should the Commission require transfer agents to clearly and concisely disclose fees charged to the investor? Do fees charged to investors by transfer agents or by sub-transfer agents encourage or deter investor decisions regarding their form of ownership (e.g. the investor decision to hold in DRS, the investor decision to request a certificate, or the investor decision to hold in registered versus street name)?

As an industry observation, there are several fees charged for reinvestment or plan purchases. These fees may be charged to the plan participant or paid by the Issuer. There may be a service fee and transaction fee, which could be a fixed amount or a percentage of the investment. In addition, broker/dealer commissions may be netted or applied to each investment.

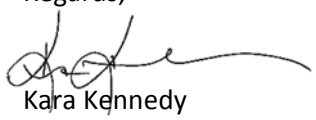
Although fees are properly disclosed in plan material, the costs of plan administration varies significantly between agents. We feel that the plan administrator has a fiduciary responsibility to the Issuer in leveraging fees and broker/dealer commissions.

With regards to fees influencing an investor's form of ownership, the Commission should be aware that disincentive fees are charged by DTC, some brokers and most clearing firms to certificate shares. This is part of the industry's efforts to dematerialize, and are outside the control of transfer agents. There could easily exist a misunderstanding that all fees an investor pays to move from the street to the register are born of the transfer agent, but this is clearly not the case.

[8] The cost to mail statements would negatively impact both small issuers and small agents. In the case of issuers that cannot or will not pay for statements to be mailed to their investors, the transfer agent would be left with a potentially massive out of pocket expense it cannot recuperate from its client. This would be particularly damaging to small players. The Commission should further consider that, if such a federal requirement were to exist to mail statements to all shareholders, it should be an obligation of the issuer, not the transfer agent.

We wish to thank the Commission for the time and consideration given this letter. ClearTrust fully supports the Commission's efforts to protect investors by modernizing the transfer agent rules. We hope this insight and commentary will prove useful to the Commission in this endeavor.

Regards,



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