Abbeville, LA—Abbeville Municipal, VOR/DME-B, Orig.
Eunice, LA—Eunice, VOR/DME-A, Amdt. 4, Cancelled
Eunice, LA—Eunice, VOR/DME-A, Orig.
Lafayette, LA—Lafayette Regional, VOR RWY 4R, Orig.
Lafayette, LA—Lafayette Regional, VOR/DME RWY 11, Orig.
Lafayette, LA—Lafayette Regional, NDB RWY 10, Amdt. 3, Cancelled
Lafayette, LA—Lafayette Regional, NDB RWY 22L, Amdt. 4
Lafayette, LA—Lafayette Regional, NDB RWY 28, Amdt. 6, Cancelled
Lafayette, LA—Lafayette Regional, ILS RWY 22L, Amdt. 4
Lafayette, LA—Lafayette Regional, RADAR-1, Amdt. 8
Lafayette, LA—Lafayette Regional, RNAV RWY 3R, Amdt. 3, Cancelled
Lafayette, LA—Lafayette Regional, RNAV RWY 10, Amdt. 2, Cancelled
New Iberia, LA—Acadiana Regional, VOR RWY 16, Amdt. 8, Cancelled
New Iberia, LA—Acadiana Regional, VOR/DME OR TACAN RWY 16, Orig.
New Iberia, LA—Acadiana Regional, VOR/DME RWY 34, Amdt. 5, Cancelled
New Iberia, LA—Acadiana Regional, VOR/DME RWY 34, Orig.
New Iberia, LA—Acadiana Regional, LOC RWY 34. Amdt. 7
New Iberia, LA—Acadiana Regional, NDB RWY 16, Amdt. 1, Cancelled
New Iberia, LA—Acadiana Regional, NDB RWY 34, Amdt. 7
Opelousas, LA—St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig., Cancelled
Opelousas, LA—St Landry Parish-Ahart Field, VOR/DME RWY 35, Orig.
Opelousas, LA—St Landry Parish-Ahart Field, NDB RWY 17, Amdt. 1
Patterson, LA—Harry P Williams Memorial, VOR/DME-A, Amdt. 8
Patterson, LA—Harry P Williams Memorial, LOC/DME RWY 23, Amdt. 2
Patterson, LA—Harry P Williams Memorial, NDB RWY 5, Amdt. 8

Effective December 12, 1991

Columbia, SC—Columbia Metropolitan, RADAR-1, Amdt. 9

[FR Doc. 92-601 Filed 1-9-92; 8:45 am]
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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-30146; File No. S7-27-91]

RIN 3235-AE19

Acceptance of Signature Guarantees From Eligible Guarantor Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Final rulemaking.

SUMMARY: The Securities and Exchange Commission today is adopting new Rule 17Ad-15 (17 CFR 240.17Ad-15) under the Securities Exchange Act of 1934 designed to: Provide for the protection of investors; facilitate the equitable treatment of financial institutions which guarantee signatures of endorsers of securities; increase the efficiency of the security transfer process; and, reduce the risk associated with a signature guarantor's inability to meet its obligations. The rule will: (1) Prohibit inequitable treatment of eligible guarantor institutions, (2) require transfer agents to establish written standards for the acceptance of signature guarantees, and (3) enable transfer agents to reject a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program. The rule implements section 17A(d)(5) of the Act, as amended by section 206 of the securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Enforcement Act"). Section 206 of the Enforcement Act clarifies the Commission's rulemaking authority to implement rules to facilitate the equitable treatment of financial institutions which issue signature guarantees.

EFFECTIVE DATE: February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Anthony Bosch, Attorney, Branch of Transfer Agent Regulation, at 202/272-2775, Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is adopting new Rule 17Ad-15 (17 CFR 240.17Ad-15) under the Securities Exchange Act of 1934 ("Exchange Act") that amends title 17 of chapter II, part 240 of the Code of Federal Regulations. The rule requires, among other things, that registered transfer agents treat all financial institutions in the acceptance of signature guarantees on an equitable basis. The rule implements section 17A(d)(5) of the Exchange Act, as amended by section 206 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Enforcement Act").[1]

I. Introduction and Summary

In Securities Exchange Act Release No. 29663 ("Proposing Release"),[2] the Commission published for comment Rule 17Ad-15 pursuant to section 17A(d)(5) of the Exchange Act to implement section 206 of the Enforcement Act. The rule is designed to facilitate the equitable treatment of financial institutions which issue signature guarantees and other guarantees related to the transfer of securities. In general, the rule prohibits inequitable treatment of eligible guarantor institutions and requires transfer agents to establish written standards for the acceptance of signature guarantees.

A total of eighty commentators provided comments relating to the proposed rule.[3] Forty-three commentators favored the proposed rule (twenty-three of whom provided additional comments on specific sections of the proposed rule). Additionally, twenty-five commentators offered observations or suggestions without explicitly supporting the proposed rule. Twelve commentators objected to the proposed rule. The views of the commentators are discussed in detail below.

The Commission has modified Rule 17Ad-15 to account for many commentator suggestions and concerns. The Commission has rejected some suggestions offered by commentators and these are also discussed below. Finally, for the reasons discussed in the Proposing Release and below the Commission is adopting Rule 17Ad-15 as revised.

II. List of Commentators

The following commentators submitted comments relating to Rule 17Ad-15.

Federal Regulatory Authorities

National Credit Union Administration ("NCUA")
Office of Thrift Supervision ("OTS")

Self-Regulatory Organizations

The Depository Trust Company ("DTC")

[1] 15 U.S.C. 78q-9(d)(5) as amended by Pub. L. No. 101-429, Section 206, 104 Stat. 941 (1990).

[2] Securities Exchange Act Release No. 29663 (September 9, 1991), 56 FR 46748.

[3] A summary of these comments has been prepared and a copy of the summary has been placed in the public file.

Industry Organizations

Alaska Credit Union League ("Alaska League")
American Bankers Association, Trust and Securities ("ABA")
Corporate Transfer Agents Association ("CTAA")
Credit Union National Association, Inc. ("CUNA")
Hawaii Credit Union League ("Hawaii League")
Indiana Credit Union League ("Indiana League")
Investment Company Institute ("ICI")
National Association of Federal Credit Unions ("NAFCU")
New Jersey Savings League ("New Jersey League")
New York League of Savings Institutions ("New York League")
North Carolina Alliance Community Financial Institutions ("Alliance")
Securities Industry Association ("SIA")
Texas Credit Union League and Affiliates ("TCUL")
The Cashiers Association of Wall Street, Inc. ("Cashiers")
The Midwest Securities Transfer Association, Inc. ("MWSTA")
The Securities Transfer Association, Inc. ("STA")
The Southwest Securities Transfer Association, Inc. ("SWSTA")
United States League of Savings Institutions ("U.S. League")
Western Securities Transfer Association, Inc. ("WSTA")

Credits Unions

AEDC Federal Credit Union
Educational Employees Credit Union
First Educators Credit Union
Homestead Air Force Base Federal Credit Union
Honolulu City & County Employees Federal Credit Union
IBM Endicott/Owego Employees Federal Credit Union
Langley Federal Credit Union ("Langley")
Long Beach School Employees Federal Credit Union
Melrose Credit Union
Navy Federal Credit Union
NBC Employees Federal Credit Union
Orange County Federal Credit Union
Pacific IBM Federal Credit Union (submitted two comment letters)
Pentagon Federal Credit Union
Professional Federal Credit Union
San Antonio Teachers Credit Union
TRW Systems Federal Credit Union ("TRW")
United BN Credit Union
Wisconsin Corporate Central Credit Union

Banks, Savings Banks, and Savings and Loan Associations

Badger Bank S.S.B.
Family Bank of Hallandale
Fiduciary Trust Company International ("FTC")
Harbor Federal
Household Bank
First Northern Savings Bank (submitted two comment letters)
Loyola Federal Savings and Loan Association
Marshfield Savings Bank, S.A.
Roma Federal Savings Bank
Sharon Savings Bank
The First, F.A.
Virginia First Savings Bank

Transfer Agents and Corporations

AmeriCorp Securities Services, Inc. ("Ameritrust")
CILCORP
DQE
First Chicago Trust Company of New York ("First Chicago")
Gulf States Utilities Company ("Gulf States")
Harris Trust and Savings Bank ("Harris Bank")
Manufacturers Hanover
Mellon Financial Services ("Mellon")
Meridian Point
Otter Tail Power Company ("Otter Tail")
Registrar and Transfer Company ("Registrar and Transfer")
The Procter & Gamble Company ("Procter & Gamble")
T. Rowe Price Associates, Inc. ("T. Rowe Price")
Union Electric
United States Trust Company of New York ("U.S. Trust")
USX Corporation ("USX")
Washington Water Power
Wisconsin Energy Corporation ("Wisconsin Energy")
WPL Holdings, Inc. ("WPL Holdings")

Brokers and Dealers

Bear, Stearns & Co., Inc. ("Bear Stearns")
Merrill Lynch ("Merrill")
Shearson Lehman Brothers ("Shearson")
Smith Barney Harris Upham & Co., Inc. ("Smith Barney")

Lawyers, Law Firms, and Professors

Professors Egon Guttman, Washington College of Law, The American University ("Professor Guttman")

Insurance Companies

CUNA Mutual Insurance Group, CUMIS Insurance Society, Inc. ("CUNA Mutual")

Other

Financial Data Resources, Inc. ("FDR")
Kemark Financial Services, Inc. ("Kemark")

III. Basis and Purpose

The Proposing Release set forth three reasons why adoption of Rule 17Ad–15 might be viewed as necessary or appropriate. First, Rule 17Ad–15 would facilitate the equitable treatment of signature guarantors. Second, it would improve the signature guarantee process. Third, it would carry out the Congressional expectation, implicit in the grant of rulemaking authority, that the Commission adopt rules prohibiting, among other things, disparate treatment of various financial institutions in the acceptance of signature guarantees.[4]

A substantial majority of the commentators expressed support for the proposed rule. The supporting commentator noted their approval of the proposed rule's requirement that registered securities transfer agents treat all financial institutions that guarantee signatures on an equitable basis. For example, OTS stated that transfer agents have not treated thrifts on an equitable basis with commercial banks and other financial institutions as signature guarantors and the proposed rule should "level the playing field" for various financial institutions. CUNA stated its support for the proposed rule and noted that "many years of effort of trying to achieve a self-regulatory solution proved fruitless." CUNA commented that many credit unions must still send their members "down the street" to a commercial bank or broker to guarantee the signature on securities, a service credit unions want to provide in order to "serve as a full service financial institution."

Many commentators expressed concern about the costs they will incur as a result of adoption of the proposed rule either in their capacity as transfer agents or signature guarantors. Commentators representing organizations whose signature guarantees generally are now accepted urged that the way they currently guarantee signatures and related expenses should remain the same. These commentators also opposed any action that would result in such change,[5] and

[4] See Proposing Release, *supra* note 2, 56 FR at 46748.

[5] But see letter from ABA. The ABA commented that it has no objection to the intent of the proposed rule to ensure the equitable treatment of guarantor institutions.

even suggested that the matter required further study.[6] Commentators representing organizations whose signature guarantees are not generally accepted by transfer agents overwhelmingly supported the proposed rule. These commentators expressed concerns, however, that the cost of getting authorization cards to transfer agents and of implementing system changes necessary to accommodate a larger universe of guarantors not fall exclusively on them.

Transfer agents commented that the cost of the proposed rule, including the cost to assess the creditworthiness of an expanded universe of guarantor institutions, would outweigh the benefits.[7] Commentators representing transfer agents also objected to the proposed rule because it would force them to accept guarantees from a larger universe of guarantors without, at the same time, clearly allowing them to establish efficient authorization card systems for all guarantors. These commentators objected to the proposed rule but stated their support for either a transfer agent or Commission mandated signature guarantee program.[8]

As explained in the Proposing Release and below, accepting signature guarantees requires transfer agents to make credit decisions on the responsibility of the guarantor institution. Thus, transfer agents must be given flexibility in exercising credit judgments as to whether guarantors are responsible, provided those credit judgments are reasonable. In addition, transfer agents' written standards, with respect to responsibility, cannot be manifestly unreasonable. This is the standard set forth in state commercial laws and this is the standard the Commission is seeking to adopt and enforce.

The Commission is rejecting commentator suggestions that the Commission defer adoption of the proposed rule pending further study. More than seven years ago the Commission advised transfer agents that relying solely on the type of institution in determining whether or not to accept that institution's signature guarantee is inconsistent with appropriate state commercial law. For the past seven years, the Commission sought, to no avail, to resolve this matter through study and discussion with banking, brokerage and other interested industry representatives.[9]

The Commission believes that the rule achieves the appropriate balance between facilitating the equitable treatment of guarantor institutions and the need for a transfer agent to protect itself from risks associated with the acceptance of signature guarantees. Rule 17Ad–15 requires reasonable credit decisions, prohibits inequitable treatment of guarantor institutions, and provides a framework for the timely flow of necessary information between guarantors, transfer agents and presentors about transfer agent acceptance standards and rejections. Additionally, Rule 17Ad–15 provides a basis for more effective control by each transfer agent of its credit decisions and its signature guarantee procedures. The Commission will continue to take an active role in monitoring the signature guarantee process, enforcing Rule 17Ad–15, and will take further action, if necessary, to address inequities or other problems that may arise.

IV. Rule 17Ad–15(a): Definitions

Rule 17Ad–15(a) defines certain terms used in the rule, such as "eligible guarantor institutions" and "signature guarantee." Commentators addressed only a few of the proposed defined terms in the rule, including "eligible guarantor institution" and "guarantee." Accordingly, these terms are discussed below. Other defined terms that were not addressed by the commentators have not been revised and are being adopted as proposed.

A. Definition of Eligible Guarantor Institution

Rule 17Ad–15(a)(2) as adopted defines "eligible guarantor institutions" to include banks, brokers, dealers, municipal securities dealers, municipal securities brokers, government securities dealers, government securities brokers, credit unions, national securities exchanges, registered securities associations, clearing agencies and savings associations. The rule defines the eligible guarantor institutions that would be protected by the rule. The rule has been adopted substantively as proposed, except with a modification to the term "credit union" as that term relates to the definition of "eligible guarantor institution."

As proposed, rule 17Ad–15(a)(2)(iii) would have defined as eligible guarantor institutions credit unions that are "insured credit unions" as that term is defined in section 101(7) of the Federal Credit Union Act [12 U.S.C. 1752(7)]. This would include all federally insured credit unions—in essence, all federally chartered credit unions as well as most state chartered credit unions. The Commission's intent in using this definition was to include all guarantor institutions authorized to provide signature guarantee services.

Eleven commentators addressed the proposed definition of eligible guarantor institution.[10] Five commentators requested that the definition of "eligible guarantor institution" be amended to include privately insured credit unions as well as federally insured credit unions.[11] for example, CUNA urged the Commission to expand the definition of "eligible guarantor institution" to include credit unions that are not federally insured. CUNA noted that approximately 800 credit unions in the United States today are not federally insured, but rather are privately insured by companies chartered under state law. CUNA requests a broader definition of eligible guarantor institution to include credit unions as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act [12 U.S.C. 461(b)]. CUNA also noted that the authority of state chartered credit unions to provide guarantees will be a question of state law and regulatory interpretation. Although there exists no across-the-board ruling that can be cited for state chartered credit

[6] See letter from SIA. The SIA commented that the proposed rule be studied by the Securities and Exchange Commission's Market Transactions Advisory Committee.

[7] For example, USX stated that the Commission "seriously understates the cost to transfer agents of compliance with the proposed rule" and "leaps to the conclusion that 'the benefits of proposed [R]ule 17Ad–15 would outweigh the costs incurred by transfer agents in complying with the proposed rule.'"

Proctor & Gamble stated that the proposed rule would increase costs without meaningfully improving the signature guarantee process and that transfer agents would be unable to closely monitor the expanded universe of guarantor institutions.

[8] For example, STA stated that it "strongly believes that the Commission's goals of ensuring the equitable treatment of eligible guarantor institutions and providing a more efficient security transfer process cannot be met unless the Commission requires guarantor participation in a particular signature guarantee program or permits transfer agents to accept guarantees only from guarantors participating in an acceptable program." The STA indicated that it stands ready to cooperate with the Commission in connection with the further development of proposed Rule 17Ad–15. Nevertheless, the STA stated that except for "the attention which the Rule pays to signature guarantee programs, the STA regards the proposed rule as essentially misguided."

[9] See Proposing Release, Securities Exchange Act Release No. 29663, *supra* note 2, 56 FR at 46749–50.

[10] FDR, CTAA, CUNA, Educational Employees Credit Union, Indiana League, NAFCU, NCUA, Navy Federal Credit Union, Pacific IBM Federal Credit Union, STA, and TCUL.

[11] CUNA, Educational Employees Credit Union, Indiana League, Pacific IBM Federal Credit, and TCUL.

unions. CUNA believes that state credit union authorities, if they have not already done so, will interpret their state laws to allow such guarantees as an "incidental power" or "goodwill service." CUNA thus believes that all credit unions should be eligible guarantor institutions, unless a specific state interpretation to the contrary governs.[12]

In response to these commentators, the Commission has revised the definition of "eligible guarantor institution" to include credit unions as that term is defined in section 19(b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]. The Commission revised the definition so that all guarantor institutions, including non-federally insured credit unions, that are authorized to provide signature guarantees are included in the definition of eligible guarantor institution.

In revising and adopting this definition, however, the Commission is not authorizing eligible guarantor institutions to issue signature guarantees because it is not within the Commission's authority to do so. The authority to issue signature guarantees for state chartered credit unions may be found in state law and state commercial codes, and state regulatory authorities.[13] Accordingly, transfer agents may require assurance that the guarantor institution is authorized to issue signature guarantees, to the extent it is not a matter of general knowledge that such institutions have signature guarantee authority.[14] Nevertheless, transfer agents making such a request should remember that an issuer or its transfer agent is liable to the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.[15]

Two commentators, FDR and CTAA urged further clarification of the types of financial institutions that are included within "eligible guarantor institutions." For example, FDR commented that the reference in the rule to "clearing agency" should explicitly note that clearing agencies include securities depositories, and that the reference to "savings association" includes "savings and loan associations." CTAA also requested that the definition of savings association specify "savings and loan association."

The Commission is not making these changes because it believes the changes are unnecessary. The definition of "clearing agency" under section 3(a)(23) of the Exchange Act [15 U.S.C. 78c(a)(23)] includes, among other things, securities depositories. In addition, the definition of "savings association," as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)] includes, among other things, any savings and loan association which is organized and operating according to the laws of the state in which it is chartered or organized.

B. Definition of Guarantee

In response to commentators, as discussed below, the Commission has revised the definition of "guarantee" by deleting references made to "'guarantees of erasures, alterations, or similar changes material to the certificate," and guarantees of "endorsements on the certificate." As revised, the term "guarantee" means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security, or instructions concerning transfer of securities.

Three commentators [16] stated that the proposed definition of "guarantee" is too broad because it includes endorsement guarantees. One of these commentators noted that reference in the rule to include "guarantee of endorsers" would require signature guarantors to become a guarantor of endorsement which would change state law. This commentator explained that the accepted doctrine, as embodied in the U.C.C., does not allow the issuer to demand a guarantee other than the signature guarantee and suggested that "guarantee" only include the traditional "signature guarantee" without reference to "guarantee of endorsers." [17]

Bear Stearns objected to the broad definition of guarantees and the inclusion of erasure guarantees. Bear Stearns believes that the act of guaranteeing the authenticity of an endorser's signature should not include an erasure guarantee which could extend a broker-dealer's liability to alterations that are not within the broker-dealer's control. Bear Stearns further explained that liability currently attaches to the firm that erases or otherwise alters a certificate by requiring that firm to affix its own specific erasure guarantee.

In proposing the definition of "guarantee," the Commission intended to define "guarantee" broadly to protect the various types of guarantees used by the financial community from inequitable treatment of transfer agents. The Commission did not and does not intend to extend what an issuer or its transfer agent may require from presentors of certificates or instructions or to change existing guarantee or warranty liabilities.[18]

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[12] Similarly, TCUL noted that a significant number of state chartered credit unions are not federally insured. TCUL provided an example of specific authority granted to credit unions chartered in Texas, under Texas law, [article 2461-4.01(a)25 V.A.T.S.]. TCUL also commented that virtually all state credit union acts have incidental power provisions that would provide state credit unions authority to provide signature guarantees since incidental provisions give credit unions the right to exercise such powers as may be necessary to accomplish the purposes for which credit unions are authorized. TCUL also suggested that federal statutes, as they have been applied in the past, may be applied to state credit unions by making them applicable not only to those which are actually federally insured but to those which are eligible to apply for such insurance.

[13] NCUA offered clarification of a reference in the Proposing Release concerning credit union authority to issue signature guarantees. NCUA noted that the 1986 NCUA General Counsel Opinion Letter cited in the Proposing Release only addressed the authority of federal credit unions because the NCUA only has authority to interpret the powers of federal credit unions. NCUA also noted that the authority for state chartered credit unions to offer signature guarantee services would have to come from the appropriate state enabling act, state regulations or the state supervisory authority.

[14] For example, a citation to specific statutory authority or an opinion of general counsel of the state regulatory authority should be sufficient.

[15] U.S.C. 8-401(2).

[16] Professor Guttman, FDR, and STA.

[17] The STA and FDR expressed similar views. See letters from the STA and FDR. FDR also requested that the proposed definition of guarantee be expanded to include "one-and-the-same" guarantees, which are different in nature from "guarantees of erasures, alterations, or similar changes."

[18] Under section 8-402(1) of the U.C.C., an issuer or its transfer agent may require assurance that each necessary endorsement of a certificated security or each instruction is genuine and effective. This assurance may include, in all cases, a guarantee of the signature (section 8-312(1) or 8-312(2)) of the person endorsing a certificated security or originating an instruction. Section 8-312(1) states that any person guaranteeing a signature of an endorser of a certificated security warrants that at the time of signing: (a) The signature was genuine; (b) The signer was an appropriate person to endorse (Section 8-308); and (c) The signer had legal capacity to sign. Section 8-312(2) states that any person guaranteeing a signature of the originator of an instruction warrants that at the time of signing: (a) The signature was genuine; (b) The signer was an appropriate person to originate the instruction (section 8-308) if the person specified in the instruction as the registered owner or registered pledgee of the uncertificated security was, in fact, the registered owner or registered pledgee of the security, as to which fact the signature guarantor makes no warranty; (c) The signer had legal capacity to sign; and (d) The taxpayer identification number, if any, appearing on the instruction as that of the registered owner or registered pledgee was the taxpayer identification number of the signer or of the owner or pledgee for whom the signer was acting.

Accordingly, in response to these comments and to avoid any confusion, the Commission revised the definition of guarantee to delete references to "guarantees of erasures, alterations, or similar changes material to the certificate," and guarantees of "endorsements on the certificate."

Four commentators requested clarification of the proposed definition of guarantee to the extent the definition relates to investment companies.[19] U.S. League commented that the proposal does not make reference to the abuses of investment companies in their requirements for signature guarantees for various aspects of their operations. (*i.e.*, for check-writing privileges, many investment companies require a customer to have his or her signature guaranteed by a bank). U.S. League recommends that the definition of guarantee be expanded to include guarantees required by investment companies. Professional Federal Credit Union also urged that the definition of guarantees include modification of ownership or liquidation of shares in a mutual fund.

ICI and T. Rowe Price commented that the definition of guarantee does not contemplate that the vast majority of mutual fund shares outstanding that are not in certificated form and the vast majority of transactions in mutual fund shares do not involve transfers of ownership. These commentators noted that mutual fund transfer agents accept signature guarantees on several instructions that do not have immediate financial consequences (such as changes in the bank or bank account to which proceeds are to be sent in the event a future redemption instruction is sent by the registered owner) and those "transactions" should not be lumped in automatically with certificate transfers in determining signature guarantee requirements.[20]

The ICI and T. Rowe Price also commented that, to the extent the proposed rule applies to mutual fund transfer agents, the proposed rule would be extremely burdensome, add significantly to processing time, and create significant delays in the completion of transactions. These commentators explained that mutual funds continuously sell and redeem their shares directly to investors and are required by the Investment Company Act of 1940 to honor purchase and redemption orders on the day of receipt at the next computed price per share.[21] Thus, mutual fund transfer agents must pay out large amounts of cash directly from the mutual fund on a daily basis to satisfy the redemption orders of fund shareholders. These commentators believe that mutual funds would be unable to obtain sufficient and reliable current information about potential guarantors and thus, the proposed rule would expose funds and their transfer agents to significant potential liability to shareholders whose redemption requests are delayed. Further, they believe that the proposed rule would add significantly to the cost for transfer agent services, which is a typical mutual fund's single largest expense item after portfolio management.

The Commission agrees with the U.S. League that transfer agent guarantee acceptance practices in connection with mutual fund transactions should be subject to Rule 17Ad–15. The definition in Rule 17Ad–15 of "guarantee" includes guarantees required by "closed end" investment companies and "open end" mutual funds to transfer or "redeem" these securities.[22]

To clarify that all mutual fund transactions are covered by the rule, including instructions that do not have immediate financial consequences (*i.e.*, instructions to change standing instructions about wiring mutual fund proceeds to a designated bank account), the definition of "guarantee" includes "instructions concerning the transfer of securities." The Commission believes that if a mutual fund or its transfer agent chooses to rely on signature guarantees as its safeguard against forged or unauthorized signatures, the mutual fund or its transfer agent must accept signature guarantees on an equitable basis.[23]

The Commission cannot accept the ICI's views and suggestions. The ICI raises many of the same objections to the proposed rule that transfer agents handling other types of securities have raised, which are the subject of discussion elsewhere in this release. The ICI correctly notes that mutual funds are required to act on shareholder instructions, including redemption instructions, within specific timeframes. Those obligations do not require action, however, unless the mutual fund is satisfied that the shareholder authorized to redeem shares has in fact issued that instruction. Indeed, mutual funds often require redemption instructions to include a signature guarantee from an acceptable guarantor institution to protect themselves against potential financial risk.[24] Moreover, because mutual funds often limit acceptable guarantors to commercial banks or broker-dealers who are members of a national securities exchange or association,[25] it cannot be said that these transfer agents do not already have standards for acceptance of guarantors and internal procedures to carry out those standards. Accordingly, the Commission is not aware of any reason why transfer agents that process mutual fund transactions should not be included within the scope of Rule 17Ad–15.

V. Rule 17Ad–15(b): Acceptance of Signature Guarantees

Rule 17Ad–15(b) is adopted with one clarifying change.[26] As clarified, Rule 17Ad–15(b) prohibits a registered transfer agent from engaging in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution, or a class of institutions. Rule 17Ad–15(b) implements section 17A(d)(5) of the Exchange Act as amended by section 206 of the Enforcement Act. No commentators directly addressed Rule 17Ad–15(b).

[19] ICI, Professional Federal Credit Union, T. Rowe Price, and U.S. League.

[20] The ICI argues that mutual funds often require signature guarantees when a shareholder changes information on file, such as where the proceeds of a redemption should be sent. The ICI argues that these "instructions" do not involve immediately identifying values and do not involve transfer of ownership.

[21] The Commission is not aware of any circumstances under which mutual funds or their transfer agents request signature guarantees as a condition to processing a purchase order from customers. That may not be the case, however, where a sale order precedes or accompanies a purchase order. Nevertheless, this should be considered a sale followed by a purchase.

[22] The Commission's rules concerning transfer agents treat redemptions of mutual funds as transfers of securities. See Securities Exchange Act Rule 17Ad–4 which exempts redeemable securities from rules concerning the turnaround of items presented for transfer (*e.g.*, Rule 17Ad–2) and Securities Exchange Act Rule 17Ad–9(a)(7) which defines "certificate detail" with respect to redeemable securities.

[23] For example, if a mutual fund transfer agent requires a signature guarantee to authorize the mutual fund to deposit proceeds from the sale of securities, then it must accept such guarantees from all qualified guarantor instructions on an equitable basis.

[24] These signature guarantees are the same signature guarantees that any issuer or transfer agent may require under state law.

[25] These limitations are usually included in the mutual fund's prospectus. Accordingly, it seems difficult to argue that mutual fund transfer agents currently do not have signature guarantee standards and procedures for implementing the same, although those standards do not comply with the requirements of Rule 17Ad–15.

[26] The Commission has modified the rule to clarify that practices that result in the inequitable treatment of a class of eligible guarantor institutions also would be prohibited.

VI. Rule 17Ad-15(c): Written Standards and Procedures

As proposed, Rule 17Ad-15(c) requires transfer agents to establish written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions and written procedures, including written guidelines where appropriate, to ensure that those standards are used by the transfer agent in determining whether to accept or reject guarantees from eligible guarantor institutions. In proposing Rule 17Ad-15(c), the Commission intended transfer agents to establish and follow written standards, in accepting or rejecting signature guarantees, that will facilitate the equitable treatment of eligible guarantor institutions as required by Rule 17Ad-15(b). Rule 17Ad-15(c) also will facilitate monitoring transfer agent compliance with the rule and will help ensure that the criteria a transfer agent uses to determine whether to accept a guarantee from any particular financial institution are not manifestly unreasonable and do not, as written or applied, treat different classes of eligible guarantor institutions inequitably.

Thirty-two commentators addressed proposed Rule 17Ad-15(c).[27] Four of these commentators supported the proposal without change.[28] The remainder expressed objections either to the proposed requirements as drafted or to the approach underlying these requirements—mandating that each transfer agent be responsible for establishing, maintaining and administering independent standards for acceptance of guarantees. Sixteen of the thirty-two commentators urged that the Commission revise its regulatory approach to ensure that transfer agents' written standards and procedures are consistent and uniform.[29] For example, the Alliance commented that the Commission cannot effectively ensure equitable treatment among signature guarantors without uniform specific standards applicable to all transfer agents. The Alliance noted that the rule as proposed would place a tremendous burden on transfer agents to develop standards on an individual basis. Additionally, guarantors would be faced with many different standards and procedures, and would have the costly and time-consuming burden of determining what those standards are for a particular transfer agent.

Eight of the sixteen commentators requested direct Commission involvement in writing, approving, or reviewing transfer agents' standards and procedures.[30] For example, the NAFCU supported established written standards and procedures, subject to Commission review to ensure consistency and compliance. TRW suggested that the Commission establish minimum guidelines that would lend some degree of uniformity to the transfer agents' standards.

Five of the thirty-two commentators commented that written standards and procedures would not ensure the equitable treatment of guarantor institutions.[31] The STA commented that written standards and procedures would not ensure equitable treatment of guarantors on an across-the-board basis, because there would necessarily be variations among the standards of individual transfer agents. The STA noted that the rule as proposed would require examination of a guarantor's creditworthiness in individual instances and the necessary fact-finding and related recordkeeping with regard to rejected guarantees which would not only be exceedingly costly and burdensome but would also introduce heretofore unknown inefficiencies into the security transfer process.

Similarly, the U.S. League commented that the use of written standards in isolation would not accomplish the desired results of eliminating inequities and improving efficiency in handling guarantees and transfers. The U.S. League urged the Commission to be more directly involved in the establishment of a centrally administered program. The U.S. League noted that the rule as proposed would leave guarantors with no reasonable means of knowing the idiosyncratic standards of those stock transfer agents, and thus, guarantors would be unable to act on behalf of their customers with the assurance that their guarantees would be accepted. The U.S. League commented that the proposed rule would require transfer agents to develop and administer elaborate standards and would require guarantors to establish a means of determining whether or not each guarantee transaction actually met a guarantor's standards. The U.S. League also noted that standards based on capital would lead to confusion since capital is defined in many ways and would be hard to interpret.

Several commentators objected to Rule 17Ad-15(c) because they believe that the costs of assessing the creditworthiness of the increased number of guarantor institutions would outweigh the benefits of the proposed rule. The views of these commentators are explained below, in section VII, Proposed Rule 17Ad-15(d).

The Commission is adopting Rule 17Ad-15(c) as proposed. The Commission believes that the proposed rule is the best approach to ensure that the criteria used by transfer agents in accepting or rejecting signature guarantees treats all eligible guarantor institutions equitably.

First, the Commission does not believe it should make credit decisions for third parties. Establishing minimum or uniform standards would require the Commission to do just that.

Second, this approach—not adopting minimum standards for transfer agents—is more consistent with state law than an approach where the Commission adopted uniform standards for transfer agents. Under state commercial law, transfer agents may require a guarantee of the signature signed on behalf of a person reasonably believed by the issuer, or its transfer agent, to be responsible.[32] State commerical law does not require transfer agents to establish particular standards and, for that matter, neither does Rule 17Ad-15(c). State commercial law also allows the issuer or its transfer agent to adopt standards with respect to responsibility if they are not manifestly unreasonable.[33] Similarly, Rule 17Ad-15(c) would require transfer agents to adopt standards, in writing, and to have procedures to apply those standards consistent with equitable treatment of eligible guarantors.

Third, the Commission's approach is consistent with industry practice and could be sufficient to address current practices that result in inequitable

[27] ABA, Alliance, Bear Stearns, CTAA, CUNA, Educational Employees Credit Union, FDR, Hawaii League, Harbor Federal, IBM Endicott/Owego Employees Federal Credit Union, ICI, Indiana League, Langley Federal Credit Union, Manufacturers Hanover, Mellon, Merrill, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, OTS, Pacific IBM Federal Credit Union, Professional Federal Credit Union, Professor Guttman, Shearson, SIA, STA; TCUL, TRW, U.S. League, USX, and Wisconsin Energy.

[28] Indiana League, Langley Federal Credit Union, Orange County Federal Credit Union, and OTS.

[29] Alliance, Educational Employees Credit Union, Harbor Federal, IBM/Endicott/Owego Employees Federal Credit Union, Mellon, Merrill, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, Pacific IBM Federal Credit Union, SIA, STA, TCUL, TRW, and Wisconsin Energy Corp.

[30] Alliance, Educational Employees Credit Union, NAFCU, New Jersey League, New York League, Pacific IBM Federal Credit Union, SIA, and TRW.

[31] CTAA, FDR, Manufacturers Hanover, STA, and U.S. League.

[32] U.C.C. 8-402.

[33] *Id.*

treatment of eligible guarantor institutions. Issuers and their transfer agents have made these credit determinations with respect to the guarantor's responsibility for many years. Many transfer agents now have policies that exclude guarantor institutions based solely on the type of institution, which the Commission has advised is contrary to state law. Rule 17Ad-15, analogous to state commercial law, requires transfer agents to adopt written standards and procedures that do not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type of eligible guarantor institution.

VII. Rule 17Ad-15(d): Rejection of Items Presented for Transfer

Rule 17Ad-15(d) is adopted with modifications, as discussed below, to require a transfer agent to provide notice to guarantors and presentors of a determination to reject a transfer if the guarantor does not satisfy the transfer agent's written standards or procedures. As adopted and as proposed, Rule 17Ad-15(d) requires a transfer agent to make certain determinations before rejecting a transfer request because of the signature guarantor. In particular, Rule 17Ad-15(d) requires the transfer agent to make a determination that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

Three commentators stated that the cost of establishing written standards and procedures and assessing whether a guarantor institution's creditworthiness satisfies those standards would outweigh the benefits of the proposed rule.[34] The CTAA commented that the cost of establishing and maintaining such standards would far exceed current expenditures to maintain and review signature cards. Further, the CTAA noted that the proposed standards would require continued monitoring, either annually or quarterly, when interim financial results are published. The CTAA believes that it would be difficult, if not impossible, to establish purely objective guidelines to enable transfer agents to eliminate possible inequitable treatment.

USX commented that the cost of complying with the proposed rule would be substantially more than the Commission indicates. USX stated that it believes that the cost to assess the creditworthiness of guarantor institutions through commercial vendors or government agencies would be up to $3.5 million per year. USX also noted that transfer agents could not afford to hire the necessary number of employees with the specialized skills to do in-house analysis of every guarantor (*i.e.*, it requires twenty to thirty USX employees to perform credit analyses of its steel customers alone). Therefore, USX believes that the proposed rule would be impracticable to administer and would make it more difficult to meet turnaround deadlines as required by Rule 17Ad-2.[35]

Several commentators noted that transfer agents will require additional time to process transfers and that the Commission should consider extending the current timeframes for turnaround of routine items under Rule 17Ad-2 or otherwise adjusting current regulatory requirements related to processing ownership transfers. For example, FDR commented that the cost of looking up credit information for each guarantor would likely exceed the cost of checking signatures against signature cards as is done under the present system, would significantly delay the transfer process, and, for that reason, the Commission should define such transfers as non-routine under Rule 17Ad-1(i)(4) "supporting documentation."[36]

Two commentators, the Alliance and the U.S. League, requested the Commission to require transfer agents to notify guarantors in a timely manner of the specific reason for any signature guarantee rejection and to specify in writing the specific standard or procedure on which the rejection was based. The Alliance also requested the transfer agents notify any guarantor whose guarantee was rejected within a certain number of days of rejection.

The Commission is adopting Rule 17Ad-15(d) with a modification to require a transfer agent to provide notice to guarantors and presentors of a determination to reject a transfer if the guarantor does not satisfy the transfer agent's written standards or procedures. As amended; Rule 17Ad-15(d) requires registered transfer agents to notify the guarantor and the presentor of the rejection and the reasons for such rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. A transfer agent may satisfy the two-day notification requirement to the presentor by returning the rejected item to the presentor along with a copy of the transfer agent's standards and the reasons for the rejection. With regard to notification to a guarantor, a transfer agent may satisfy this notification requirement by sending a copy of the transfer agent's standards at the time the transfer agent notifies the guarantor of the rejection.

The Commission believes that Rule 17Ad-15(d) is consistent with state commercial law with respect to transfer agent credit determinations. Although Rule 17Ad-15(d) requires transfer agents to assess the creditworthiness of the guarantor institution, transfer agents currently make those credit determinations in accepting or rejecting signature guarantees and state commercial law requires these determinations to be reasonable. Rule 17Ad-15(d) is consistent with state commercial law and, specifically, U.C.C. 8-402, which allows transfer agents to make a determination that the guarantee is signed by a person the issuer or its transfer agent reasonably believes is responsible.

Under Commission rules, transfer agents are required to turn around within three business days of receipt at least 90 percent of all routine items presented for transfer during a month.[37] However, determinations made with respect to signature guarantees may be considered "non-routine" under Rule 17Ad-1(a)(1)(i) if the transfer agent requires, among other things, "additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected."

The Commission notes that a tranfer agent may need additional documentation to determine whether the signature guarantor satisfies the transfer agent's written standards. As noted above, however, state commercial laws generally impose liability on the issuer or its transfer agent in favor of the person presenting a certificated security or an instruction for registration or his principal for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer, pledge, or release.[38]

[34] CTAA, Procter & Gamble, and USX.

[35] Similarly, Procter & Gamble stated that transfer agents would be unable to closely monitor the financial condition of the expanded universe of guarantor institutions. Procter & Gamble stated that the proposed rule would require it to add at least two additional employees at a cost of approximately $100,000 annually to verify the creditworthiness of guarantors.

[36] Professor Guttman, FDR, and USX.

[37] Securities Exchange Act Rule 17Ad-2, 17 CFR 240.17Ad-2.

[38] U.C.C. 8-401(2).

Two commentators stated that transfer agents should bear the burden of proof in determining whether the criteria used to accept or reject signature guarantees satisfies the proposed rule. The NAFCU commented that transfer agents should bear the burden of proof of determining whether the criteria used to accept or reject signature guarantees satisfies the proposed rule. Pacific IBM Federal Credit Union believes that transfer agents should bear the burden of proof only if procedures are in place to allow near instant dial-up between transfer agents and the Federal Deposit Insurance Corporation ("FDIC") and NCUA.

Another commentator suggested that signature guarantors should bear the burden of proof. According to this commentator, there is no reason why the burden of showing discriminatory standards or inequitable application of those standards should not be on the party alleging a violation of a Commission requirement.

As adopted, the rule is designed to require transfer agents to have written standards, to determine whether the guarantor meets those standards and to apply such standards equitably among eligible guarantor institutions. Thus, a transfer agent rejecting a signature guarantor must explain why the guarantor institution did not meet the transfer agent's guarantee standards. A guarantor challenging that determination or the transfer agent's written standards, however, would bear the burden of proof to show that the transfer agent's standards, as written, violated Rule 17Ad–15.

VIII. Rule 17Ad–15(e): Record Retention

Rule 17Ad–15(e)(1) requires registered transfer agents to maintain a copy of their standards and procedures in an easily accessible place. Rule 17Ad–15(e)(2) requires transfer agents to provide any requesting party, within three days of the request, a copy of the transfer agent's standards and procedures. Rule 17Ad–15(e)(3) requires transfer agents to maintain, for a period of three years following the date of the rejection, a record of all transfers rejected, along with the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standard.

The Commission made one modification to the proposed rule to require transfer agents to provide copies of their standards to the public upon request.

Eleven commentators addressed proposed Rule 17Ad–15(e).[39]

Six commentators stated that transfer agents should provide written standards and procedures upon request.[40] For example, the Alliance requested that the Commission include comprehensive and specific requirements for making standards available upon request and require that the standards and procedures be maintained in the transfer agent's main office. The Alliance also requested that transfer agents provide the standards within a certain number of days and that the Commission prohibit any charge for providing the standards and procedures.

The Commission agrees with commentators that the public should have ready access to a transfer agent's written standards and procedures and that the transfer agent should provide those standards upon request. Thus, the Commission has renumbered proposed Rule 17Ad–15(e)(2) to Rule 17Ad–15(e)(3) and added a new Rule 17Ad–15(e)(2) which requires transfer agents to provide a requesting party, within three days of receipt of the request, a copy of the transfer agent's standards and procedures.

The Commission believes that the transfer agent may refuse to make available the standards, until a reasonable fee to cover its expenses of providing such standards is paid, when the request for or the mailing of such transfer agent standards is from the general public and is not incident to a guarantee or transfer rejection because the guarantor did not meet the transfer agent's guarantee standards.[41] While transfer agents may charge a reasonable fee, the Commission believes that it is in the best interest of transfer agents and issuers to make such information as widely available as possible to minimize transfer delays.

Five commentators argued that the recordkeeping burden imposed by Rule 17Ad–15(e) would be too costly.[42] For example, the STA stated that the recordkeeping burden with regard to rejected guarantees will not only be exceedingly costly and burdensome but will introduce heretofore unknown inefficiencies into the security transfer process. Procter & Gamble stated that the recordkeeping and tracking systems required by the proposed rule would likely cost approximately $50,000 annually.

The Commission believes that the cost to transfer agents to maintain a copy of their individual standards and procedures are minimal. The cost associated with the recordkeeping of rejected items will vary from transfer agent to transfer agent. There are, of course, going to be costs associated with establishing standards that provide for equitable treatment of guarantors, to the extent that a transfer agent's current standards do not comply with the Rules as adopted. Nevertheless, transfer agents that have established clear standards and seek to have those standards widely known should not have a lot of rejected items once guarantors learn about the transfer agents' standards. Thus, recordkeeping costs should be lower for such transfer agents. Likewise, transfer agents that require all guarantors to be participants in or members of a signature guarantee program should have fewer rejected items once guarantors know of the transfer agents' standards. Moreover, the record retention requirement is important to the Commission's and other regulatory agencies' efforts to monitor and enforce the rule.

IX. Rule 17Ad–15(f): Exclusions

Rule 17Ad–15 specifies certain instances where transfer agents may reject signature guarantees from guarantor institutions without violating Rule 17Ad–15. Rule 17Ad–15(f)(1) provides that a transfer agent may reject a transfer request for reasons unrelated to acceptance of the guarantor institution.[43] Rule 17Ad–15(f)(2) allows a transfer agent to reject a transfer if the person purportedly acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf. Rule 17Ad–15(f)(3) allows a transfer agent to reject transfers from broker-dealers that are not members of a registered clearing agency and do not

[39] Alliance, CTAA, FDR, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, TCUL, TRW, Procter & Gamble, STA, and Wisconsin Energy.

[40] Alliance, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, TCUL, and TRW.

[41] A transfer agent may not hold up sending such standards when the transfer involves a rejection because the guarantor did not meet the transfer agent's guarantee standards. See discussion regarding notification of a rejected item under Rule 17Ad–15(d), *supra*, p. 28.

[42] CTAA, FDR, Procter & Gamble, STA, and Wisconsin Energy.

[43] For example, a transfer agent may reject a transfer where the transfer agent reasonably believes that the transfer would be wrongful, the issuer has a duty as to adverse claims, the signature is forged, or the transfer would result in a violation of any applicable law relating to the collection of taxes.

maintain net capital in excess of $100,000.

The Commission proposed Rule 17Ad-15(f) as a "safe harbor" for transfer agents for rejections of securities transfers that some might otherwise view as a violation of the rule. Subsection (1), (2), and (3) of proposed Rule 17Ad-15(f) is the same as the adopted rule. Proposed Rule 17Ad-15(f)(4) would have provided a "safe harbor" for transfer agents for rejected securities transfers if the dollar value of the securities subject to the requested transfer exceeds a maximum dollar value as specified in the transfer agent's standards or procedures, provided that the maximum dollar value specified applies to all eligible guarantor institutions or bears a reasonable relationship to the financial condition of the eligible guarantor institution whose guarantee was rejected.

Seventeen commentators addressed the safe harbor exclusions enumerated in proposed Rule 17Ad-15(f). Two commentators addressed proposed Rule 17Ad-15(f)(1). The U.S. League stated that it supported Rule 17Ad-15(f)(1). The TCUL suggested that the proposed exclusion is too broad and recommended the rule be revised to provide an exclusion for "reasons unrelated to the guarantor institution if such rejection is otherwise permitted by applicable law."

The Commission has decided to adopt Rule 17Ad-15(f)(1) as proposed. Rule 17Ad-15(f)(1) is designed to clarify that the Rule does not change current transfer agent practices in areas unrelated to acceptance or rejection of guarantors. Today, a transfer agent relies upon its own experience and industry practice to determine if it has a reasonable legal basis for rejecting a transfer. The Commission believes that adding the language, "if such rejection is otherwise permitted by applicable law," may create uncertainty about whether a transfer agent can rely upon its own experience and industry practice in determining if it has a reasonable basis for a rejection that is unrelated to the guarantee.

Three commentators addressed proposed Rule 17Ad-15(f)(2). The U.S. League stated that it supported Rule 17Ad-15(f)(2). The CTAA generally supports Rule 17Ad-15(f)(2) and believes that tighter controls should be the responsibility of the financial institutions and that transfer agents should not have the responsibility to assure authorized signatures on behalf of eligible guarantors are proper and genuine. FDR commented that the rule should include an exclusion that reads: "because the security bears a signature guarantee by a person which is not an eligible guarantor institution."

The Commission has decided to adopt Rule 17Ad-15(f)(2) as proposed. The provision is designed to allow transfer agents to require reasonable assurances that the person signing the guarantee has the authority to act on behalf of that institution as currently is the practice in the securities industry through signature card programs. The Commission declined to establish a safe harbor for rejections because the security or instruction bears a signature guarantee from a non-eligible guarantor institution. Because the rule only deals with signature guarantees from eligible institutions, the Commission does not believe that such an exclusion is needed.

Three commentators addressed proposed Rule 17Ad-15(f)(3). The U.S. League stated that it supported Rule 17Ad-15(f)(3). Bear Stearns suggested that the proposed rule needs to be clarified so that transfer agents' scope and discretion are defined. FDR commented that transfer agents must have knowledge of the guarantor's membership in a registered clearing agency or about its net capital. FDR noted that transfer agents do not maintain such information today. Accordingly, FDR argued that an agent would have to establish and continuously update a new data base—the cost of which could conceivably approach the cost of the present signature card system.

The Commission has decided to adopt Rule 17Ad-15(f)(3) as proposed. As the Commission stated in the Proposing Release, the proposed safe harbor is permissive and not mandatory. The Commission believes that no clarification is needed regarding the scope of this rule and that any cost associated with this safe harbor is totally discretionary.

Thirteen commentators addressed proposed Rule 17Ad-15(f)(4).[44] Seven commentators supported the proposed exclusion.[45] For example, the STA stated that a transfer agent should be able to reject transfers in which the value of the securities involved exceeds an amount with which the transfer agent is comfortable on an objective basis since the very nature of the signature guarantee is that it is given repeatedly in a multitude of situations. The STA also stated that while the chances of forged or unauthorized endorsements are few, there is still a substantial risk to the transfer agent that the guarantor will not be financially responsible when called upon. Therefore, the STA believes that transfer agents should be permitted to continue to exercise basic business judgment, objectively applied, in accepting guarantees where the value of the securities involved is excessive.

CUNA supported the exclusion, but stated that a maximum dollar figure that a credit union can guarantee within a certain period should be set on a non-discriminatory basis. CUNA also suggested that transfer agents should consider not only criteria within the institutions themselves, such as its capital, but also the financial institution's insurance limits.

Langley stated that it supported the exclusion enumerated in Rule 17Ad-15(f)(4) since it is appropriate to be able to guarantee up to, but not exceeding, an institution's guarantee capability. Langley stated that capital requirements should be similar to those minimal capital requirements established for the guarantor by the regulatory bodies with regulatory jurisdiction or insurance coverage responsibility for the guarantor (*e.g.*, in Langley's case, NCUA and Navy Federal Credit Union). Langley also commented that transfer agents should be permitted to use NCUA's "5300" reports to determine a credit union's credit-worthiness. Langley suggested that these reports provide feasible access to information about credit unions.

Six commentators objected to proposed Rule 17Ad-15(f)(4).[46] For example, NAFCU stated that it strongly objects to the ambiguous language of Rule 17Ad-15(f)(4) since the exclusion could be inappropriately used by some stock transfer agents to reject signature guarantees from credit unions. NAFCU believes that surety bond coverage rather than the financial condition of the institutions should be sufficient to justify the acceptance of a guarantee. NAFCU also commented that the proposed exclusion would be detrimental to small institutions and administratively impracticable for transfer agents to monitor accurately the contingent liabilities of a guarantor institution.

FTC stated that the exclusion in proposed Rule 17Ad-15(f)(4) would be unfair and impractical since any criteria regarding the guarantor's capital should be linked to its credit rating. FTC also

[44] Bear Stearns, CUNA, FTC, Indiana Credit League, Langley, Merrill, NAFCU, Navy Federal Credit Union, Orange County Federal, Professional Federal Credit Union, Shearson, STA, and U.S. League.

[45] CUNA, Indiana League, Langley, Navy Federal Credit Union, Orange County Federal Credit Union, Professional Federal Credit Union, and STA.

[46] Bear Stearns, FTC, Merrill, NAFCU, Shearson, and U.S. League.

commented that a seller of a large amount of stock represented by a single certificate exceeding the transfer agent's maximum would first have to submit the certificate to the transfer agent and request that the stock be re-issued to the seller in smaller denominations. FTC explained that this would slow down the transfer process, thereby reducing the liquidity of any stock that is certificated rather than book-entry. FTC believes that the result of the exclusion would be contrary to the goal of the Group of Thirty since the exclusion would require custodian banks to request and hold an increased number of physical certificates in smaller denominations, and thus would increase unnecessarily the overall number of transactions and certificates.[47]

The U.S. League objected to proposed Rule 17Ad-15(f)(4) because the U.S. League believes that it would be impossible for transfer agents to know what the current inventory of guarantees is for any guarantor at any given time. The U.S. League also commented that it would be impossible for guarantors to determine whether or not a particular signature guarantee transaction will meet the threshold of a particular transfer agent.

The Cashiers, Merrill, Bear Stearns, and Shearson expressed concern about how the proposed exclusion could affect broker-dealer practices in the handling (*i.e.*, delivery or receipt) of physical certificates (*e.g.*, what constitutes a "good delivery" of securities and good delivery criteria such as number of shares per certificate or dollar value per certificate). Merrill stated that the exclusion would present a burden on the financial community in the area of physical deliveries. Shearson stated that it believes the exclusion would result in a connection being established between what dealers will accept as "good delivery" and the amount of monies involved in a transfer.[48] The Cashiers also objected to the exclusion since the exclusion would prevent a broker-dealer from making a delivery of securities having a market value in excess of the broker-dealer's surety limit (*e.g.*, $1,000,000).

Shearson explained that "the extension of credit or a guarantee signed by a brokerage financial intermediary to its clients clearly speaks to the intermediatory management process and accountabilities, including credit assessments. Any expectation that such financial intermediary should pass 'judgment' on someone else's clients is unrealistic, especially when the result is to shift the financial burdens to those who are clearly not engaged in that business, and at a time after money has changed hands upon receipt of delivery."

The Commission has deleted proposed Rule 17Ad-15(f)(4) from the final rule to avoid confusion. Several of the commentators stated that insurance and bond coverage should be considered rather than the financial condition of the guarantor institution. There also was confusion over the effect the safe harbor would have on "good delivery" rules. To avoid such confusion, the Commission believes that it is better if the rule is silent on whether transfer agents may set a maximum dollar amount threshold on the value of securities subject to a single guarantee. In deleting the safe harbor, however, it is the Commission's explicit intent not to affect existing agreements between clearing agencies and transfer agents concerning procedures or incidental guarantees.[49]

X. Rule 17Ad-15(g): Signature Guarantee Programs

Rule 17Ad-15(g) has been adopted to permit transfer agents to reject a request for transfer because the guarantor was neither a member of nor a participant in a "signature guarantee program," and to permit transfer agents to accept signature guarantees only from guarantors who are participants in a "signature guarantee program." Rule 17Ad-15(g) defines a "signature guarantee program" to be a program the terms and conditions of which the transfer agent reasonably determines are designed to facilitate the equitable treatment of eligible guarantor institutions, and to promote the prompt, accurate and safe transfer of securities by providing: (i) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and (ii) adequate protection to the transfer agent against the issuance of unauthorized guarantees. Rule 17Ad-15(g) also will require a transfer agent, during a transition period, to provide that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors before rejecting any guarantees for that reason. The transition period would be six months, starting on the date the transfer agent revises its standards and procedures to include a signature guarantee program.

The Commission proposed Rule 17Ad-15(g) to permit a transfer agent to comply with Rule 17Ad-15(c) if the transfer agent's standards and procedures provide for the acceptance of guarantees from eligible guarantor institutions who are participants in a signature guarantee program. The rule, as proposed, did not expressly permit transfer agents to mandate participation in a signature guarantee program. The Commission intended Rule 17Ad-15(g) to alleviate transfer agents' burden in assessing the creditworthiness of the increased number of guarantor institutions. The Commission also intended Rule 17Ad-15(g) to encourage the development of signature guarantee programs that would provide a more efficient transfer process.

Fifty commentators addressed Rule 17Ad-15(g).[50] Of the fifty commentators, forty-three commentators supported a signature guarantee program (voluntary, transfer-agent directed, or Commission mandated),[51] and seven commentators objected to any use of signature guarantee programs.[52]

Twenty-nine of the commentators supported the development of signature guarantee programs and believe participation in such a program should be mandatory.[53] Two predominant

[47] Bear Stearns and Shearson also objected to the proposed exclusion because they believed it would contravene the intended goals of the Group of Thirty.

[48] Shearson explained that "a good delivery is always transferrable. However, a good transfer item is not always necessarily considered a good delivery transaction."

[49] See letter from DTC.

[50] ABA, Alliance, Ameritrust, Bear Stearns, CILCORP, CTAA, CUNA, CUNA Mutual, DQE, DTC, FDR, First Chicago, Gulf States, Harris Bank, ICI, Kemark, Langley, Manufactures Hanover, Meridian Point, Merrill, MWSTA, NAFCU, Navy Federal Credit Union, New Jersey League, New York League, Orange County Federal Credit Union, Otter Tail, Pacific IBM Federal Credit Union, Pentagon Federal Credit Union, Procter & Gamble, Professional Federal Credit Union, Professor Guttman, Registrar and Transfer, San Antonio Teachers Credit Union, Shearson, Smith Barney, STA, SWSTA, TCUL, TRW, U.S. League, U.S. Trust, Union Electric, Mellon, USX, Washington Water Power, WPL Holdings and WSTA.

[51] ABA, Alliance, Ameritrust, Cashiers, CILCORP, CTAA, CUNA, CUNA Mutual, DQE, FDR, ICI, Kemark, Langley, First Chicago, Gulf States, Harris Bank, Manufactures Hanover, Meridian Point, MWSTA, Navy Federal Credit Union, New Jersey League, New York League, NCUA, Orange County Federal Credit Union, Otter Tail, Pacific IBM Employees Federal Credit Union, Pentagon Federal Credit Union, Procter & Gamble, Professional Federal Credit Union, Professor Guttman, Registrar and Transfer, San Antonio Teachers Credit Union, SIA, STA, SWSTA, TCUL, TRW, U.S. League, U.S. Trust, Mellon, Union Electric, USX, Washington Water Power, WPL Holdings and WSTA.

[52] Bear Stearns, Cashiers, DTC, Merrill, SIA, Shearson, and Smith Barney.

[53] ABA, Ameritrust, CILCORP, CTAA, DQE, First Chicago, FDR, Gulf States, Harris Bank, Manufactures Hanover, Mellon, Meridian Point,

Continued

concerns of these commentators were the burden for transfer agents to develop individual written standards and procedures and the difficulty for transfer agents to assess the creditworthiness of guarantor institutions. Although the rule as proposed provides for acceptance of signature guarantees from members in a signature guarantee program, these commentators noted that transfer agents would still be required to assess the financial condition of guarantor institutions that are not members of a signature guarantee program.

The ABA commented that permitting transfer agents to mandate participation in a signature guarantee program would be the least expensive alternative and believes that further cost savings may be realized by eliminating the distribution and maintenance of updated signature cards. The ABA commented that it would be difficult and costly for transfer agents to establish standards and to assess the creditworthiness of the expanded universe of signature guarantors. The ABA estimated that these costs would run in the millions of dollars. The ABA also questioned whether transfer agents would be able to assess the creditworthiness of financial institutions without extending the requisite turnaround time under Rule 17Ad–2. The ABA also expressed concern about the potential cost of participation in a signature guarantee program and the potential for disproportionate impact on many smaller bank members, who may as an accommodation to customers, only guarantee one or two signatures per year.

The STA and the CTAA also urged the Commission to authorize transfer agents to mandate participation in a signature guarantee program, or, alternatively, to require participation in a Commission approved signature guarantee program. The STA and CTAA believe that mandating a signature guarantee program would be the most effective way to meet the Commission's concerns to facilitate the equitable treatment of eligible guarantors and to provide the necessary protection for transfer agents at a reasonable cost.[54]

The NCUA also stated that it supported a requirement that all signature guarantors must participate in a program so long as the Commission prohibits the programs from imposing large fees and cumbersome requirements. The NCUA believes that the current signature card program is outdated, labor intensive, costly, and inefficient, but would oppose any program that operated as a monopoly to exclude other entities in the marketplace from offering similar types of signature guarantee programs.

Procter & Gamble, USX, U.S. Trust, and Mellon, urged the Commission to permit transfer agents to require participation in a signature guarantee program since the cost to assess the creditworthiness of the expanded number of guarantors, including costs to employ the necessary skilled personnel and to receive credit information from government agencies or commercial vendors, would outweigh the benefits of the rule. Procter & Gamble estimated that absent such a rule, it would need to employ two additional people at a cost of approximately $100,000 annually to verify the creditworthiness of guarantors and recordkeeping and tracking systems would likely add another $50,000 annually. USX stated that the cost to a guarantor to participate in a signature guarantee program would be small in comparison to the cost to a transfer agent of having to add employees or purchase additional services on the outside.

Several commentators stated their concern that as a result of the proposed rule guarantor institutions would be confronted with numerous and possibly differing standards since the proposed rule would require each of an estimated 2,000 transfer agents to develop standards and procedures relating to the acceptance of signature guarantees. The U.S. League noted that it would be difficult, costly, and time-consuming for a guarantor to determine whether it meets a specific transfer agent's standards. The U.S. League suggested that program participation should be required to ensure guarantors that transfer agents apply consistent standards relating to the acceptance of signature guarantees.

The Navy Federal Credit Union and the Orange County Federal Credit Union stated that if signature guarantee programs were mandated, there would be some assurance that procedures and guidelines would be consistent and all eligible guarantors would be treated equitably. However, the Navy Federal Credit Union stated that it believes it would be difficult to mandate that all transfer agents and all eligible guarantors must participate in a signature guarantee program.

Several commentators objected to any use of signature guarantee programs. Opponents of signature guarantee programs included Bear Stearns,[55] Cashiers,[56] DTC,[57] Merrill,[58] SIA,[59]

MWSTA, NAFCU, Navy Federal Credit Union, Orange County Federal Credit Union, Otter Tail, Procter & Gamble, Professor Guttman, Registrar and Transfer, STA, SWSTA, Union Electric, U.S. Trust, U.S. League, USX, Washington Water Power, WPL Holdings, WSTA.

[54] Ameritrust, CILCORP, DQE, First Chicago, Gulf States, Harris Bank, Meridian Point, MWSTA, Otter Tail, Registrar and Transfer, SWSTA, Union Electric, Washington Water Power, WPL Holdings, and WSTA supported the STA comment letter.

[55] Bear Stearns objected to the proposed signature guarantee program because it believes that the program as proposed would, by the affixation of a universal medallion, automatically render the certificate fully negotiable. Since the transmittal of negotiable certificates creates substantially greater risk for broker-dealers, as well as greater cost (insurance for negotiable certificates is four times greater), Bear Stearns requests that the power of distribution remain separate and distinct.

[56] Cashiers objected to the use of a signature guarantee program and urged an industry wide consensus in any uniform signature guarantee procedure. Cashiers believes that if some transfer agents decide to only accept a STAMP/Medallion guarantee it would not be operationally possible to carry out daily receipt and delivery of securities. Cashiers also stated its concern with the apparent shift in liability for security registration changes and questioned whether individual firms who affix medallions would be fully liable for the security registration change.

[57] DTC urged the Commission to amend or clarify the proposed rule to require transfer agents to accept facsimile signatures without separate signature guarantees or medallions from registered clearing agencies. DTC stated its concern that the proposed rule would cause some transfer agents to introduce unnecessary and burdensome changes in the process by which certificates registered in the name of DTC's nominee, Cede & Co., are transferred. Currently, certificates registered in the name of Cede & Co. are endorsed by a facsimile signature without a separate signature guarantee. DTC commented that the proposed rule may lead transfer agents to require a signature or medallion guarantee for Cede & Co. certificates which would severely disrupt DTC's operations.

[58] Merrill objected to Rule 17Ad–15(g) as proposed. Merrill believes that before such a program is mandated, the program must establish a specific process that clearly defines "good transfers" or "good delivery" including a clear set of rules or regulations to identify what certifications and/or guarantees are required by the program. Merrill stated that the current value of physical deliveries may have to be analyzed along with direct impact on liquidity. Merrill also urged that any program insurance should cover all program participants.

[59] The SIA stated that the costs involved to broker-dealers to switch from the current system to a system as suggested by the STAMP program would be burdensome and inequitable to broker-dealers and urged the Commission not to mandate participation in a signature guarantee program. The SIA also stated that "[i]n no regard does the [SIA] believe participation in a signature guarantee program, such as STAMP, be mandatory." The SIA urged the Commission to "more clearly provide that broker-dealers who are members of a nationally registered clearing house would automatically be considered guaranteed." Noting the formation of the Market Transactions Advisory Committee, the SIA suggested that signature guarantees is an appropriate topic for the Advisory Committee and suggests that this proposal be studied more closely by the Advisory Committee prior to its enactment. Thus, the SIA believes that the Commission approve as part of the proposal either an exemption for broker-dealers or a safe harbor for transfer agents to use the current system. As further explanation,

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Shearson Lehman Brothers,[60] and Smith Barney. These commentators were concerned that the costs to broker-dealers to switch from the current system to a signature guarantee program would be burdensome and inequitable to broker-dealers. These commentators believe that a signature guarantee program would change the industry practices concerning requirements for what constitutes "good transfers" or "good delivery" of securities and that, if adopted, it would not be operationally possible for brokers and dealers to carry out daily receipt and delivery of securities. These commentators also stated their concern that a signature guarantee program would shift liability for security registration changes and questioned whether individual firms who affix medallions would be fully liable for the security registration change.

The ICI commented that the only way mutual funds and their transfer agents could comply with the proposed rule would be the development and acceptance of a signature guarantee program. However, the ICI noted its concern with insurance coverage limits in signature guarantee programs and stated that the limits in STAMP do not appear to be adequate. The ICI also commented that the STAMP program would not provide mutual funds and mutual fund transfer agents protection against fraud.

Several commentators objected to transfer agents mandating a signature guarantee program,[61] or urged Commission involvement in approving or monitoring signature guarantee programs.[62] These commentators are concerned that enabling transfer agents to mandate participation in signature guarantee programs may lead to inequitable treatment of guarantor institutions, and specifically, smaller guarantor institutions that may provide guarantor services to accommodate their customers on an exception basis.

Six commentators encouraged the development of signature guarantee programs as proposed in Rule 17Ad-15(g) and do not believe that participation in such a program should be mandatory.[63] For example, CUNA anticipated that the key means of access to provide signature guarantees will be through acceptance in a signature guarar ee program which provides insurance coverage to stock transfer agents relying upon credit union guarantors. CUNA believes that the rule as proposed has struck the right balance between encouraging, without mandating, the use of signature guarantee programs. CUNA also commented that it believes it is an absolutely essential element for credit unions that any authorized program recognize the need for reasonable pricing for those institutions that want to provide a relatively limited number of guarantees annually .

Similarly, the Alliance stated its support for the Commission's involvement in the development of a signature guarantee program similar to the STAMP and GAP programs, but believes that the rule should not allow transfer agents to accept signature guarantees only from eligible guarantor institutions that participate in a program acceptable to the transfer agent. The Alliance commented that would be "to large a loophole for allowing disparate treatment of institutions that are otherwise eligible to guarantee signatures."[64]

Nine of the commentators urged the Commission to take a more direct role in either the approval of review of signature guarantee programs.[65] For example, the U.S. League uged the Commission to take an active role in establishing the requirements for such a program and in approving the standards and procedures of such a program. The U.S. League believes that the only way to achieve both equality and efficiency is to mandate development of a uniform signature guarantee program which is administered by a central party and requiring all eligible guarantor institutions to participate in an approved signature guarantee program. The U.S. League stated that this will enable the development of universal minimum standards understood by and applicable to all. The U.S. League believes that such a program will significantly streamline the administration of the process by eliminating the signature guarantor cards and individual transactions can be directly tied to the appropriate guarantor institution.

Similarly, FDR commented that participation in a signature program should be mandatory, otherwise FDR believes that transfer agents would have to operate two systems. FDR stated that it believes transfer agents should be permitted to require participation and the role of the Commission should be limited to initial approval of the signature guarantee programs.[66]

In response to these concerns, the Commission has determined to revise proposed Rule 17Ad-15(g) to permit transfer agents to reject signature guarantees from eligible guarantors that are not members of or participants in a signature guarantee program recognized by that transfer agent, even if those guarantors otherwise meet the transfer agents standards for guarantor acceptance. To help reduce confusion during the transition, however, the Commission has also revised the proposed rule to require transfer agents to give notice to guarantor institutions before rejecting guarantees from non-member, financially responsible guarantors.

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the SIA noted: "[t]o present the proposal in any other form would be to make it inequitable for those who use the current system."

[60] Shearson urged that the proposed rule not permit transfer agents to comply with the proposed rule by accepting guarantees from a signature guarantee program. Shearson commented that it believes that such a program would shift on-going credit evaluations and monitoring to a third party which would contradict the definition of good delivery.

[61] Alliance, CUNA, Langley, Pacific IBM Federal Credit Union, TCUL, and TRW.

[62] Alliance, CUNA, FDR, Navy Federal Credit Union, Orange County Federal Credit Union, Pacific IBM Employees Federal Credit Union, Professional Federal Credit Union, TCUL, and U.S. League.

[63] Alliance, CUNA, Langley, Pacific IBM Federal Credit Union, TCUL, and TRW.

[64] TCUL supported the implementation of a signature guarantee program stating that such a program would be "the best solution for all involved." However, TCUL believes transfer agents should not require participation in a program since this would "not appear to be equitable." Langley, Pacific IBM Federal Credit Union, and TRW stated that the rule should not allow transfer agents to require a credit union's participation in a program. Pacific IBM Federal Credit Union stated that it may be more costly for smaller guarantors to participate in a signature guarantee program since many small guarantors deal with one or two primary transfer agents.

[65] Alliance, CUNA, FDR, Navy Federal Credit Uion, Orange County Federal Credit Union, Pacific IBM Employees Federal Credit Union, Professional Federal Credit Union, TCUL, and U.S. League.

[66] CUNA and Pacific IBM Employees Federal Credit Union urged the Commission to monitor signature guarantee programs to ensure the equitable treatment of smaller guarantor institutions. CUNA stated that it is an essential element for credit unions that any authorized program recognize the need for reasonable pricing for those institutions that want to provide a relatively limited number of gurantees annually. Professional Federal Credit Union stated that the Commission should review all signature guarantee programs to avoid discrimination. However, Professional Federal believes that there should be no requirement for participation if outside bonding or capital is available. Navy Federal Credit Union and Orange County Federal Credit Union urged Commission involvement in review, recognition, monitoring, and enforcement of signature guarantee programs to ensure that procedures and guidelines are consistent. Navy Federal Credit Union commented that a signature guarantee program may be one means to ensure the establishment of equitable guidelines and to reduce paperwork and financial risk. TCUL stated that it believes that signature guarantee programs would be the best solution for all concerned and that the Commission should review various programs prior to approval to ensure that the programs fulfill the requirements of the proposed rule.

The Commission believes this is the best way to foster equitable treatment of eligible guarantors and at the same time facilitate the efficient transfer of securities. As explained in the Proposing Release, transfer agents for many years have exercised credit judgments in determining whether to accept guarantees in connection with securities transfers and the standard for exercising those credit judgments, for many years, has been rooted in state commercial law. For many years commercial banks and broker-dealers effectively were the only financial institutions authorized to guarantee signatures and were the only organizations that had established systems and procedures to disseminate to transfer agents "signature cards" with lists of their authorized agents, usually through organizations like the New York or American Stock Exchanges. Implicit in comments from brokers and dealers is the suggestion that other authorized guarantors should establish their own signature card dissemination services. Transfer agent commentators argue, however, that signature card systems are antiquated and cannot be the basis for efficient transfer agent operations today. Thus, transfer agent commentators argue, they must be permitted to upgrade their guarantee acceptance system for all guarantors, not just eligible guarantors whose signature cards are not now accepted. Commentators representing existing guarantor institutions, however, express concern about the cost of a new signature guarantee system and the collateral consequences of such a system.

The Commission does not believe it is appropriate for the Commission to mandate either participation in, or acceptance of, one or more specific signature guarantee programs. This could require the Commission to make, in effect, credit decisions for transfer agents and program participants. It would also require the Commission to review and regulate the design and operation of signature guarantee programs. That approach would be expensive and could stifle innovation. Requiring transfer agents to establish written standards that provide for equitable treatment without allowing transfer agents to establish uniform procedures for all guarantors also would be inappropriate given the statutory goal of efficient transfer of ownership of securities.

The Commission shares commentator concerns about the potential cost to eligible guarantors, particularly small institutions, of gaining acceptance by transfer agents generally and participation in a signature guarantee program in particular. By allowing transfer agents to designate an acceptable signature guarantee program, free market forces should keep the cost of such programs low. Nothing would prevent an organization that currently offers signature card distribution services (or any other organization, for that matter) from establishing and offering a signature guarantee program at competitive rates.

Finally, the Commission believes that the rule will further the public interest and the protection of investors. As many commentators noted, it is often the public investor who bears the costs of a rejected signature guarantee—delays in the completion of securities transfers, lost opportunities, and aggravation, to name a few. Many public investors do not have accounts with a commercial bank or a broker-dealer and yet must obtain a signature guarantee from such an institution before they can dispose of their securities. In many of those cases, the guarantor does not have a basis to know whether the person seeking a guarantee is who they claim to be.

XI. Summary of the Final Regulatory Flexibility Analysis

On September 6, 1991, the Commission prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603, as amended by the Regulatory Flexibility Act (the "FRA"), regarding proposed Rule 17Ad-15. No commentators specifically referred to the IRFA, however, some commentators noted that costs related to the implementation of the proposed rule might have a significant impact on smaller entities.

The Commission has prepared a Final Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 604, as amended by the FRA, regarding Rule 17Ad-15. The Analysis notes that the Rule, while requiring transfer agents to have written standards and procedures for the acceptance of signature guarantees, is only seeking to assure the equitable treatment of eligible guarantors by requiring transfer agents to follow what the Commission believes is already required by state law. Thus, the cost to implement written standards and procedures should not be significant for transfer agents already complying with applicable state law regarding acceptance of signature guarantees.

In the Analysis, the Commission shared commentators' concerns about the potential cost to eligible guarantors, particularly small institutions, of gaining acceptance by transfer agents generally and participation in a signature guarantee program in particular. Rule 17Ad-15(g) is revised to provide that a transfer agent may reject a request for transfer because the guarantor was neither a member of nor a participant in a signature guarantee program and to permit transfer agents to accept signature guarantees from guarantors who are participants in a signature guarantee program. By allowing transfer agents to designate acceptable signature guarantee programs, free market forces should keep the cost of such programs low. Nothing would prevent an organization that currently offers signature card distribution service (or any other organization, for that matter) from establishing and offering a signature guarantee program at competitive rates.

Accordingly, the Commission believes that any cost incurred by small transfer agents and guarantor institutions would be outweighed by the benefits derived from the equitable treatment of eligible guarantor institutions, greater efficiency in the transfer of securities, and the reduced risk associated with the acceptance of signature guarantees.

A copy of the Analysis may be obtained by contacting Anthony Bosch, Esq., Division of Market Regulation, Mail Stop 5-1, 450 Fifth Street, NW., Washington, DC 20549.

XII. Competitive Considerations

As required by Section 23(a) of the Exchange Act, the Commission has specifically considered the impact that these rules would have on competition. For the reasons discussed above, the Commission finds that any increased burden imposed, including any increase in the costs imposed on transfer agents and guarantor institutions, is outweighed by the benefits obtained from the equitable treatment of all guarantor institutions, increased efficiency of the securities transfer process, and the reduced risk associated with a guarantor's inability to meet its obligation. Thus, the Commission finds that the rules would not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act and, in particular, Section 17-A of the Exchange Act.

XIII. Statutory Authority

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3, 17, 17A(d), and 23(a) thereof, 15 U.S.C. 78c, 78q, 78q-1(d) and 78w(a), the Commission adopts Rule 17Ad-15.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

XIV. Text of Rule

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—AMENDED

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a-29, 80a-37, unless otherwise noted.

2. Section 240.17Ad-15 is added to read as follows:

§ 240.17Ad-15 Signature guarantees.

(a) *Definitions.* For purposes of this section, the following terms shall mean:

(1) Act means the Securities Exchange Act of 1934;

(2) Eligible Guarantor Institution means:

(i) Banks (as that term is defined in section 3(a) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)]);

(ii) Brokers, dealers municipal securities dealers, municipal securities brokers, government securities dealers, and government securities brokers, as those terms are defined under the Act;

(iii) Credit unions (as that term is defined in Section 19 (b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]);

(iv) National securities exchanges, registered securities associations, clearing agencies, as those terms are used under the Act; and

(v) Savings associations (as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]).

(3) Guarantee means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security or instructions concerning transfer of securities.

(b) *Acceptance of Signature Guarantees.* A registered transfer agent shall not, directly or indirectly, engage in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution or a class of institutions.

(c) *Transfer agent's standards and procedures.* Every registered transfer agent shall establish:

(1) Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and

(2) Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions. Such standards and procedures shall not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type specified in paragraphs (a)(2)(i)–(a)(2)(v) of this section.

(d) *Rejection of items presented for transfer.* (1) No registered transfer agent shall reject a request for transfer of a certificated or uncertificated security because the certificate, instruction, or documents accompanying the certificate or instruction includes an unacceptable guarantee, unless the transfer agent determines that the guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

(2) A registered transfer agent shall notify the guarantor and the presentor of the rejection and the reasons for the rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. Notification to the presentor may be accomplished by making the rejected item available to the presentor. Notification to the guarantor may be accomplished by telephone, facsimile, or ordinary mail.

(e) *Record retention.* (1) Every registered transfer agent shall maintain a copy of the standards and procedures specified in paragraph (c) of this section in an easily accessible place.

(2) Every registered transfer agent shall make available a copy of the standards and procedures specified in paragraph (c) of this section to any person requesting a copy of such standards and procedures. The registered transfer agent shall respond within three days of a request for such standards and procedures by sending the requesting party a copy of the requested transfer agent's standards and procedures.

(3) Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

(f) *Exclusions.* Nothing in this section shall prohibit a transfer agent from rejecting a request for transfer of a certificated or uncertificated security:

(1) For reasons unrelated to acceptance of the guarantor institution;

(2) Because the person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution; or

(3) Because the eligible guarantor institution of a type specified in paragraph (a)(2)(ii) of this section is neither a member of a clearing corporation nor maintains net capital of at least $100,000.

(g) *Signature guarantee program.* (1) A registered transfer agent shall be deemed to comply with paragraph (c) of this section if its standards and procedures include:

(i) Rejecting a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program; or

(ii) Accepting a guarantee from an eligible guarantor institution who, at the time of issuing the guarantee, is a member of or participant in a signature guarantee program.

(2) Within the first six months after revising its standards and procedures to include a signature guarantee program, the transfer agent shall not reject a request for transfer because the guarantor is neither a member of nor participant in a signature guarantee program, unless the transfer agent has given that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors.

(3) For purposes of paragraph (g) of this section, the term "signature guarantee program," means a program, the terms and conditions of which the transfer agent reasonably determines:

(i) To facilitate the equitable treatment of eligible guarantor institutions; and

(ii) To promote the prompt, accurate and safe transfer of securities by providing:

(A) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and

(B) Adequate protection to the transfer agent against the issuance of unauthorized guarantees.

Dated: January 6, 1992.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-570 Filed 1-9-92; 8:45 am]

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17 CFR Parts 240 and 270

[Release No. 34-30147; IC-18467; File No. S7-23-91]

RIN 3235-AE38

Shareholder Communications Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission today announced the adoption of amendments to the shareholder communications and related rules to implement provisions of the Shareholder Communications Improvement Act of 1990 ("SCIA"). The amendments, adopted substantially as proposed, require: (1) Investment companies registered under the Investment Company Act of 1940 ("Investment Company Act") to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of the registrant; and (2) brokers and banks that hold shares for beneficial owners of securities in nominee name to forward to the beneficial owners the proxy statements of investment companies registered under the Investment Company Act ("Investment Company Act registrants"), as well as the information statements of both Investment Company Act registrants and companies with a class of securities registered under Section 12 of the Securities Exchange Act of 1934 ("Exchange Act").

DATES: The amendments are effective January 10, 1992. They apply to shareholder meetings held, or corporate actions taken by consent or authorization, on or after March 31, 1992, that have a record date on or after February 10, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Murphy, Office of Disclosure Policy, Division of Corporation Finance, at (202) 272-2589; with regard to investment company issues, Kathleen K. Clarke, Office of Disclosure and Adviser Regulation, Division of Investment Management, at (202) 272-2107, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to the proxy and information statement rules under the Exchange Act.[1] Specifically, the revisions affect Rules 14a-13,[2] 14b-1,[3] and 14b-2[4] of Exchange Act Regulation 14A [5] and Rules 14c-1,[6] 14c-2,[7] and 14c-7 [8] of Exchange Act Regulation 14C.[9] In addition, a corresponding amendment to Rule 20a-1 [10] under the Investment Company Act [11] is adopted.

I. Executive Summary and Background

The Commission is adopting revisions to the proxy and information statement rules to implement amendments to Exchange Act sections 14(b)(1) [12] and 14(c) [13] enacted by the SCIA.[14] Prior to revision, there were several regulatory gaps in the rules. First, the rules required Investment Company Act registrants to distribute proxy materials [15] to shareholders, [16] but did not require them to distribute information statements to shareholders in connection with shareholder meetings not involving the solicitation of proxies [17] by the registrant.[18] Second, the rules did not require brokers and banks to forward either the proxy materials or information statements of Investment Company Act registrants to beneficial owners.[19] Third, while the rules required section 12 registrants to distribute both proxy materials and information statements to shareholders, brokers and banks were required to forward only the proxy materials to beneficial owners.[20]

The legislation eliminated these gaps in regulation of shareholder communications by authorizing the Commission to require: (1) Investment Company Act registrants to distribute information statements to shareholders in connection with shareholder meetings not involving the solicitation of proxies by the registrant; and (2) brokers and dealers ("brokers") and banks [21] to transmit to beneficial owners of securities the proxy materials and information statements of Investment Company Act registrants and the information statements of section 12 registrants.

Brokers and banks may obtain reimbursement of their reasonable costs incurred in performing the obligations imposed by the revised proxy and information statement delivery requirements.[22] The commission is not, however, adopting the proposed surcharge provision permitting banks and brokers to recoup any costs associated with implementation of the amendments, since commenters on the proposal indicated that such a provision is unnecessary. Finally, in response to commenters' remarks, the revised rules clarify that the new provision requiring Investment Company Act registrants to distribute information statements to their shareholders applies only to companies that have made a public securities offering.[23]

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[1] 15 U.S.C. 78a *et seq.*

[2] 17 CFR 240.14a-13.

[3] 17 CFR 240.14b-1.

[4] 17 CFR 240.14b-2.

[5] 17 CFR 240.14a-1 *et seq.*

[6] 17 CFR 240.14c-1.

[7] 17 CFR 240.14c-2.

[8] 17 CFR 240.14c-7.

[9] 17 CFR 240.14c-1 *et seq.*

[10] 17 CFR 270.20a-1.

[11] 15 U.S.C. 80a-1 *et seq.*

[12] 15 U.S.C. 78n(b)(1).

[13] 15 U.S.C. 78n(c).

[14] Pub. L. 101-550, 104 Stat. 2713. The SCIA amendments were enacted on November 15, 1990. The proposed rule amendments were published in Release No. 34-29562 (August 15, 1991) [56 FR 41635] ("Proposing Release"). The comments on the proposal and a summary of comments are available for inspection and copying through the Commission's Public Reference Room (File No. S7-23-91).

[15] The term "proxy materials" as used in this release refers collectively to proxy cards, consents, authorizations or requests for voting instructions, proxy or other soliciting material, and annual reports to security holders.

[16] Investment Company Act section 20(a) [15 U.S.C. 80a-20(a)] and related Rule 20a-1 cause the proxy solicitation rules adopted pursuant to Exchange Act Section 14(a) to apply to Investment Company Act registrants.

[17] The term "proxies" as used in this release refers to proxies, consents, or authorizations.

[18] Prior to the SCIA amendments, Exchange Act Section 14(c), which requires issuers to distribute information statements to shareholders in connection with a shareholder meeting where proxies, consents, or authorizations are not solicited by or on behalf of management of the issuer, pertained only to companies with a class of securities registered under Section 12 of the Exchange Act [15 U.S.C. 78*l*] ("Section 12 registrants"). Only a small proportion of investment companies are required to register under Section 12 of the Exchange Act (*i.e.*, closed-end investment companies whose shares are traded on an exchange, and business development companies).

[19] Prior to the SCIA amendments, brokers and banks were required to forward only the proxy materials of Section 12 registrants to beneficial owners pursuant to Exchange Act section 14(b)(1) and related Rules 14b-1 and 14b-2.

[20] *Id.*

[21] The term "banks" includes other institutions that may hold securities in nominee name for their customers including, without limitation, savings and loan associations and savings banks that maintain trust and customer accounts and similar entities that perform comparable fiduciary functions on behalf of customers. See Rules 14a-1(c) [17 CFR 240.14a-1(c)] and 14b-2; Release No. 34-23276 (June 5, 1986) [51 FR 20504].

[22] Rules 14a-13(b)(5) [17 CFR 240.14a-13(b)(5)], 14b-1(c)(2)(i) [17 CFR 240.14b-1(c)(2)(i)], 14b-2(c)(2)(i) [17 CFR 240.14b-2(c)(2)(i)], and 14c-7(a)(5) [17 CFR 240.14c-7(a)(5)].

[23] This limited exception has been adopted to address concerns raised by commenters on the proposed amendments that the information statement requirement should not extend to

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