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"Helping publicly traded companies - and their suppliers - to deliver better and more cost effective services to investors…since 1992"

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RE: S7-27-15 **April 13, 2016**

Dear ladies and gentlemen of the SEC,

Thank you and congratulations on your comprehensive and thoughtful review of the transfer agency regulatory scene and for your request for comments and fresh perspectives on transfer agency regulation in light of the many changes and challenges in the transfer agency arena that have occurred since 1977.

I am pleased to offer some comments and suggestions, based on a lifetime career in and around the transfer agency community, which I think may be helpful for me to briefly summarize, and which I will do as an Appendix to this letter, so I can cut straight to the chase, as I hope you will do too.

I. IN GENERAL…

- **Transfer agency rules and regulations are in need of a fairly wide variety of additions and enhancements in order to better protect publicly traded companies and their still very significant numbers of "registered" investors, most of whom are individual people, rather than professional investors.**

- **The most urgent need, by far, is for transfer agents to have assets - and/or insurance policies in force - that are commensurate with the considerable liabilities that come with being in this business. These liabilities are, in my experience, directly related to the size, scope, market values and overall riskiness of all the stocks, bonds and cash for which their specific business portfolios make them responsible - both to shareholders themselves, and to the issuers of securities for whom they act as agents.**

- **The SEC release is correct in placing the registration and disclosure issues at the top of the agenda: I believe that all registered transfer agents should be required to disclose the names, CUSIP numbers, shares outstanding and the current market values (i.e. the current "market-cap") for each and every**

securities issue for which they act as agent (perhaps after deducting or specifying the street-name positions held at CEDE & Co.) as of a given date each year, on an expanded TA-1 form.

- **Transfer agents should also be required to itemize and disclose all of the cash accounts maintained, and the cash on hand for each issue, as of the same date, along with the purpose of each account - such as uncashed dividends, funds pending investment in DRPs and DSPPS and, especially, funds held pending the exchange or tender of securities for which they act as agent.**

- **Transfer agents should also be required to provide details on all threatened and pending litigation - much as publicly traded companies must do - including the dollar amounts at risk under a worst-case scenario. This will provide the SEC with an excellent window into potentially problematical situations at registered transfer agents that might require additional inspections, audits or other actions on the part of the SEC in order to protect investors, and issuing companies themselves.**

- **The SEC should use this information to very quickly develop requirements for all transfer agents to have capital (cash, investments and other relatively liquid assets) and/or insurance in force that would provide a high degree of assurance that any and all claims against them can and will be satisfied - whether for cash, securities, or for losses due to errors or omissions on their part, or for outright thefts - including cyber-thefts, or thefts made by subcontractors they may use - of cash or securities that are on their books and in their care.**

- **One would imagine that there might, and probably should be, three or four "tiers" here - to separate T-As with significant liabilities from those with moderate or low or very low ones.**

- **It should be especially noted that transfer agents that provide "book-entry" forms of ownership have, as a result, moved far beyond the position of being simply "agents" - but have become "custodians" - which makes them *fiduciaries* - which must be held to a much higher set of standards than agents are, under the law.**

- **In addition, it should be noted that whereas "certificated" investor positions create an independent record, and essentially a "proof" of ownership, transfer agents become the *sole source* of information about "de-materialized" ownership positions, so they must be required to have very robust records retention systems, including backup, recovery and cyber-security systems in place.**

- **Even if a transfer agent acts only as an *agent*, every registered agent should indeed be required to submit audited financials annually - and also an annual certification from a reputable accounting firm as to the adequacy of the agent's internal control systems, as the staff has suggested.**

- **Transfer agents should be required to update their annual filings whenever there are material changes in their portfolio of business - and whenever there are adverse audit findings or adverse claims, or other circumstances (like the cancellation of one or more insurance policies or an unfavorable decision in a court case) that might have a material effect on their on their overall financial condition and/or their ability to satisfy potential or actual claims.**

II. OTHER AREAS DESERVING OF SEC ATTENTION AND ACTION

1. "REORG" ACTIVITIES:

All so-called 'reorg activities" - such as exchanges of securities, tender offers, merger processing and other activities involving capital reorganizations should be performed only by registered transfer agents that have demonstrated that they have adequate financial resources to satisfy a major loss of value on their watch - whether due to an error, omission or defalcation on their part, or on the part of an employee or sub-contractor. (DTCC seems as if they could and should be the logical gatekeeper here.)

Reorg transactions are, by far, the riskiest securities processing transactions an "agent" is appointed to handle. And actually, as noted above, once an "agent" becomes the *custodian* of corporate and/or shareholder funds - and/or "shares held pending exchange" - it becomes a "fiduciary" - which calls for a much higher standard of care and which results in a variety of much higher liabilities.

I would urge the staff to review the article on Transfer Agent Liabilities that is on my website, www.optimizeronline.com under "Articles/Transfer Agents": In today's highly interconnected and fast-moving technological environment, one can readily envision a worst-case scenario where the entire cash proceeds of an exchange or tender offer could be "hacked-away" by an outsider - or simply "wired away" by a rogue employee or business owner - or by a sub-contractor - and transported to persons and places unknown…in an instant. (Perhaps, the SEC - and DTCC - should consider making public companies - rather than an "agent" - pay the entire consideration due to street-name holders directly to DTCC as a way to significantly minimize the dollar value of the very considerable risks here.)

2. "CONTRACTUAL ISSUES":

Issuers of securities and their transfer agents should, *of course,* be required to have a written contract in place - and subject to inspection by SEC staff - that spells out or lists, in plain English, all of the duties the transfer agent agrees to undertake, the fees that have been agreed, and provides either a detailed statement as to the out-of-pocket expenses the agent expects to charge -or a written commitment to bill for them at cost - or a statement as to the markups they intend to charge for any and all kinds of expenses billed to customers.

The contract should also describe any and all charges the agent intends to pass on to shareholders themselves, so that issuers will be aware of them, and can be sure the charges are commercially reasonable ones since they owe shareholders a duty of loyalty, and of care - or perhaps decide to absorb some or all of these charges themselves.

Very important to note, the agreement should also spell out, in detail, as the Release suggests, any and all charges the agent would impose if the issuer decides to move to another agent.

It should be crystal clear in the agreement that the "shareholder register" - and all the associated records - are the property of the issuer - and should not be treated as property of the *agent,* as some transfer agents have done in order to generate added revenue for themselves, often surreptitiously - or by "holding the records hostage" if the issuer tries to change agents - terrible practices which I know the SEC is well aware of.

3. RECORDS RETENTION ISSUES:

Both from my reading of the Release - and from my own experiences as an expert witness in numerous cases involving transfer agents - it seems clear that better clarification of the records a transfer agent is required to keep - and/or to hand-off officially to a successor agent - or to the issuer - is very much needed.

The "shareholder register" - the "control book" - and all of the daily "transfer journals" - which should record all debits and credits to the shareholder register…plus all of the associated backup information, like signature guarantees, affidavits of loss, bonds of indemnity, letters of instruction and opinions of counsel concerning "original issuances" and the removal of legends from restricted securities - should be preserved in perpetuity, as part of a company's basic corporate records, in order to answer any and all shareholder claims that may arise over time.

Special care should also be taken to preserve the same sets of records involving exchanges, tender offers and mergers - and to recognize that all such records are the property of the issuers themselves. All too often, these records go missing, or get discarded following sales or mergers at transfer agents, or simply get discarded by exchange agents, or transfer agents who think, wrongly, that they are too old to matter anymore. (The article on Transfer Agent Liabilities, mentioned above, cites numerous instances where the loss of such records has led to significant losses for transfer agents or, ultimately, if the agent is no longer solvent, for corporate issuers.)

4. UNREGISTERED, "RESTRICTED" AND OTHER "LEGENDED" SECURITIES:

To date, the brokerage and transfer agency communities have not been able to come up with a reliable system for identifying unregistered or otherwise restricted securities - except for placing "legends" on physical stock certificates. This practice does indeed place all parties - potential buyers, sellers, transferees - and transfer agents - "on notice" that no transfers should be made unless and until the proper legal requirements have been met.

As more and more securities are being "de-materialized" however - and with the impending move to T+2 settlement - and with many companies believing that they can do away with stock certificates altogether - a reliable system to place all parties on notice as to unregistered and otherwise restricted securities is absolutely imperative to have.

I believe that the SEC should actively seek out bidders to develop the needed systems and procedures as quickly as possible. I also believe that this should not be a very daunting task: The need - and the "networking requirements" - are virtually identical to the systems and procedures that were developed many years ago by the Securities Information Center (SIC) in response to earlier SEC actions with respect to securities that are "restricted from transfer" because they were reported lost or stolen - or ultimately replaced. There may well be other bidders - say at DTCC or some other clearing house, securities exchange or SRO.

5. ABANDONED PROPERTY ISSUES:

Actions by state governments to balance their budgets by seizing and selling-off securities they deem to be "abandoned" - then failing to give shareholders

or their heirs the fully appreciated value if and when the do come forward to claim their assets (which only a very small number of then ever do) is a national scandal. Please see the article "When the Protectors Become the Predators" - and numerous other articles on the scandalous and I believe *unconstitutional* search and seizure methods that many states engage in - at www.optimizeronline.com

Unfortunately, when congress and the SEC last acted to require transfer agents to take reasonable methods to locate so-called "lost shareholders" - by reference to nationally recognized data bases - decedents and corporations - which represent two of the largest "pots" of so-called abandoned property - were exempted from the data-base searches. This has left these shareholders vulnerable - not just to seizures of property by state treasurers, but to numerous unscrupulous "finders" - and sometimes to employees of issuers or transfer agents or other service providers who "help themselves" to the property.

Even more unfortunately, as the SEC itself has noted on earlier occasions, several transfer agents have improperly treated the records of so-called "lost shareholders" as if they were *their own property* - and have systematically "mined them" to generate income for themselves - typically without proper notice to the true "holders" - the issuers themselves - and with no accountability or accounting for the very significant profits they generated. One large agent I know of (no longer in the business, thank goodness) actually had a computerized program to analyze "lost shareholder accounts" to determine whether they would make more money by finding people - and charging them fees to be "reunited" with their property - or by intentionally *not looking for them* - and/or using the worst data-bases available - then taking "commissions" from so-called "abandoned property clearinghouses" who would instantly sell of the securities deemed "lost" and, unbeknownst to issuers, who would share the "loot" with the transfer agent.

Quite aside from the potential conflicts of interest a transfer agent may have in offering various kinds of abandoned property services (which SEC staff has noted earlier, but with no actions taken as far as I know) - is the fact that issuers do indeed owe shareholders a duty of care, and a duty of loyalty, which many transfer agent programs have caused them to breach, and which often create expensive and long-drawn-out lawsuits against transfer agents and against issuers themselves when "found shareholders" fail to get full and fair value for shares that were escheated and sold off.

Recently, there have been other troublesome developments on the abandoned property front - the emergence of self-styled "Abandoned Property Audit Firms" - which are not at all like real audit firms in any respect. They are being hired by various states to conduct "audits" on their behalf - with compensation based primarily on the amounts of abandoned property that

are turned over - who demand to examine highly sensitive shareholder data, and download it to their computers - and who threaten transfer agents and issuers with fines and penalties if they refuse to provide access to shareholder data to these typically thinly-capitalized and totally unregulated firms…or to agree to pay over amounts the "auditors" simply assert is due, based on their own estimates.

One last factor worth emphasizing, so-called abandoned property is especially ripe for being stolen away by employees of issuers, transfer agents and other suppliers: Please see the article "Tales from the Crypt" at www.optimizeronline for a variety of abandoned property horror stories.

Accordingly, I believe that the SEC should thoroughly revisit this subject and develop more appropriate and much more robust rules and regulations that would govern issuers - and their transfer agents - and add significant, and sorely needed investor protections.

This becomes even more imperative, in my view, in light of rapidly increasing "dematerialization" - since stock certificates themselves were, and still are, quite often the only indication to shareholders, or their heirs, that there is valuable property that has become unattended.

6. "NON-ROUTINE ITEMS"

In my opinion, the current SEC definition of a "non-routine item" - as well as the need for an SEC-determined "outside date for proper turnaround time" - are both sorely in need of attention.

At a bare minimum, I believe the SEC should provide transfer agents with "guidance" - so that they promptly return deficient items to the sender - with clear information about the deficiencies and how to cure them - in order to protect investors from sharp drops in market value while the deficiencies are being cured.

7. PROXY-PLUMBING ISSUES RE: NOBOS AND OBOS

Many of the most important "proxy plumbing issues" have been effectively addressed in recent years, thanks to market forces - and to the added attention that institutional investors, issuers and financial service providers have been paying to the "finer details" of proxy voting - and to the SEC's own efforts, which have greatly reduced, but not entirely eliminated incidences of "over-voting" at shareholder meetings.

The debate over the so-called OBO and NOBO system continues to simmer, it seems - and clearly, to my mind at least, this ancient and "purely binary" system is very much in need of a 21st century upgrade.

Investors in U.S. equities are absolutely entitled to privacy with regard to their financial affairs. But at the same time, many investors would, I believe, gladly allow their names, addresses, email addresses and maybe telephone numbers too, to be disclosed to issuers - and perhaps to their adversaries too, when there are proxy contests - in order to get the benefit of their thinking.

I also feel certain that many investors would be happy to receive additional financial information, information about new products or services, or special deals for shareholders - and maybe even press releases on specific kinds of matters - all of which could easily and safely be enabled by current technologies, and by what is known as *"permission-based"* outreach and marketing activity.

It seems to me, however, that any new categories here can be developed in response to market-driven forces, so that no SEC actions - except perhaps for enabling "guidance" - would be necessary.

III. TRANSFER AGENT MARKET-SHARE:

The transfer agency business has undergone very dramatic changes since 1977 in terms of the number and the nature of the "players."

It is especially worth noting, I think, that in 1977 the vast majority of shareholder records, and of the funds being disbursed and/or retained on behalf of individual shareholders, were maintained by agents that were banks or trust companies.

While one might well note that banks and trust companies, and their multiple regulators, hardly covered themselves in glory during the several market melt-downs we have lived through since then, bank and trust company agents did have very significant capital on hand, and insurance in force - and valuable reputations to protect. And, aside from also having stronger than average internal and external audit regimens, they were subject to state or federal banking oversight *in addition* to SEC oversight.

Please refer to www.optimizeronline.com for numerous articles about transfer agents, and changes in market share, which I have been tracking and reporting on since 1994. The *OPTIMIZER*'s most recently published statistics, and related commentary, are attached as Appendix II.

IV. OTHER QUESTIONS AND ISSUES RAISED IN THE RELEASE

The Release asks for input on a very large number of other matters where I have experiences, opinions and background information I would gladly share, but I have very little free time to type out detailed responses, much as I would like to.

I would, however, be more than willing to speak to the staff at any time - or to meet in person, -either in NYC or in DC - if ever it would be helpful.

With all my best regards - and thanks - for the considerable effort that has been made to date - and all my best wishes for a fast and successful conclusion to this important project.

Sincerely,

Carl T. Hagberg

CARL T. HAGBERG and ASSOCIATES

Appendix I

Some background information about Carl T. Hagberg and Carl T. Hagberg and Associates:

Hagberg started his career in the securities industry in the "back office" of Manufacturers Hanover Trust Company (MHT or 'The Bank') in 1960 - in the midst of the "paperwork crisis" that was immobilizing Wall Street - and well before their were commercially available computers.

From 1970 to early 1972 he was "loaned out" by MHT to become part of a six-person Task Force to BASIC, the Banking and Securities Industry Committee, whose groundbreaking work is well described in the SEC Release.

Carl spent the second decade of his career in the sales and marketing unit of MHT's Corporate Trust and Agency Division, which in the 1970s was in a five-way tie as the fifth largest transfer agent and which, by the early eighties, had become the country's largest agent, based on the number of publicly traded companies served.

For most of his last decade with the bank (1981-1991) Hagberg served as the officer-in-charge and business manager for MHT's Stockholder and Bondholder Services Group, which, with over 1700 corporate clients, was then the nation's largest transfer agent. In this capacity he had 'bottom-line responsibility' for the overall operating and financial performance of the business unit. He reviewed and approved all responses to internal and external audit reports, all activities surrounding threatened or actual litigation, including any monetary settlements that were made, all responses to regulatory developments and to regulatory agencies, and all "client-sensitive matters."

In 1992, shortly after the merger with Chemical Bank, Hagberg took "early retirement" to start his own consulting and publishing firm, which focuses intensively on shareholder services and on the transfer agency and related industries.

Since 1994 Hagberg has published a quarterly newsletter, The Shareholder Service *OPTIMIZER*, which has reported extensively on the transfer agency industry and the shareholder servicing space in general - including regulatory developments that impact public-companies and their key service suppliers, reports on purchases, sales and exits of the transfer agency business, and on new entrants. He has published statistics on transfer agent market share, the most recent of which can be found under "Transfer Agents" at www.optimizeronline.com where, currently, 8+ years of back-issues can also be found.

Since 1992 Carl has helped dozens of public companies to evaluate and sometimes to

change transfer agents.

He has also served as an expert consultant and/or expert witness in over three dozen cases involving securities transfers, exchanges and tender offers, restricted and lost securities and proxy voting matters, all of which involved significant monetary claims for damages. (We urge the staff to please see our article on Transfer Agent Liabilities for a wide variety of examples of cases where he has written expert reports and/or testified at trial and our "Tales from the Crypt", describing a variety of thefts, errors and omissions and defalcations involving transfer agents, other service providers and issuers themselves - mostly revolving around so-called abandoned property.)

APPENDIX II -

TRANSFER AGENT MARKET SHARE as of the 3RD QUARTER 2015

"Transfer Agent Market Share Updates Show Major Shrinkage in the Registered Holder Universe"

FROM The Shareholder Service *OPTIMIZER*, Q3, 2015

Much More Shrinkage Still To Come, We Say

Our last update on T-A market share - which we call a "major decider" of who will survive long-term - was back in the first quarter of 2013. We were surprised and startled to note the big shrinkage in just over two years - from an estimated 41.9 million registered shareholder records in 2013 to a mere 36 million today.

Computershare, the biggest T-A by far, now says it has roughly the same 6,000 clients it had in 2013 - but that shareholder accounts have fallen from 25.7 million to 19 million. And this is after the acquisition of Registrar & Transfer Company, which in 2013 was the number-six agent and which had roughly a million shareholder records when they were acquired by CPU last year. (See the chart below)

Transfer Agent Market Share As Of Sept 30, 2015 (Based On Shareholder Records - Millions)								
AGENT	A/O 1-01	%	A/O 1-09	%	A/O 3-13	%	A/O 9-15	%
BNY-MELLON	29	44%	32	48%	0	0%	0	0%
COMPUTERSHARE	22.5	34%	19	29%	25.7	61%	19	53%
WELLS FARGO	1.3	2%	3.4	5%	6.5	16%	6.7	19%
AST	4.5	7%	6	9%	3.5	8%	4.2	12%
CONTINENTAL	0.9	1%	1.5	2%	1.7	4%	1.7	4%
BROADRIDGE	0	0%	0	0%	1.6	4%	2.8	8%
R & T	0.7	1%	1	1%	0.8	2%	0	0%
NATL CITY	0.7	1%	1	1%	0	0%	0	0%
NEXT 4 AGENTS	0.5	0.75%	0.5	0.75%	0.03	0.07%	0.25	0%
ALL OTHERS	5.3	8.80%	2	2%	1.8	4%	1.5	4%
TOTAL	65.4		66.4		41.9		36	100%
Source: Carl T. Hagberg and Associates								

Some of this shrinkage, as we opined back then, is probably due to a long overdue cleanup of closed accounts. Some is due to what we call "secular attrition" - which is a polite way to say that the grim-reaper continues to take a toll on older investors, who tend to love their stock certificates - and (mostly) hate brokers. But we're sad to note that as the numbers clearly show, the attrition rate has accelerated dramatically vs. previous periods - in just the past two years.

We think that an even bigger secular trend is afoot – not just where the last of what we call the "post-WW-II savers and investors" are handing off to the big-spending, low investing baby-boomers - but where most of the boomers are now in their mid to upper 60s - and starting to use up or pass-on much of whatever stocks they have that survived the market meltdown of 2008, that drove so many individual investors away from the stock market altogether.

From the early 1970s - through 1999 - just over 50% of all U.S. households owned one or more stocks directly. Beginning with the infamous Y2K, and for the rest of the decade that we called "the noughties" - because stocks showed zero-returns after inflation for all of the 2000s - individual investors left the stock market in droves. (We also called the 2000 - 2009 period the years of the "naughties" - who took so many big companies down altogether). The upshot? Before the financial crisis of 2008, ownership of equities had plummeted to a mere 18% of U.S. households. And after the crash, the number plunged to a mere 13.8%.

Currently, people from "Gen-X" - and "the millennials" - still stand to inherit the biggest pile of assets ever. But most of them don't even know what a registered holder IS. Recently, my good buddy and former **STA** President **Ray Riley** began to do the same thing your editor has begun to do - cleaning out the safe-deposit box and drawing down most of those DRP and DSPP accounts, in order to consolidate everything in one place. And guess what that place is…When Ray sent a handful of stock certificates to his broker, it caused quite a stir: The broker told Ray that the clerks wanted to send them out for "authentication" (not realizing that that's exactly what happens when you send them to the T-A) because none of them had even seen a stock certificate before this!

And yet another big hit to the registered shareholder base is in the works thanks to record breaking M&A activities this year: So far this year there have been 37 deals announced that were valued at $10 billion or more. And 28 of them involved a U.S. target, where all, or virtually all of the target companies' registered shareholders will disappear. Yes, some shareholders will get stock in the new companies, and yes, there have been a few spinoffs, and a fair number of IPOs too - but the number of new registered accounts created is literally dwarfed by the number of registered accounts that will disappear for good.

Recently, an industry colleague asked when we thought the last transfer agent would fold its doors. He was genuinely surprised to learn that (a) every public company is required by law to have a T-A, and that (b) the fact they were no longer very busy was not necessarily a bad thing for public companies – or for TAs themselves. But for sure, Transfer Agents need to rethink their business models, sharpen their pricing models to rely less on pushing piles of paper, and on

“earnings on balances” – which currently are earning zero - and to better articulate their “value added propositions.”

Transfer Agents also need to rethink their basic operating and sales models, we think, if they want to replenish those fast vanishing registered shareholder accounts, and avoid dropping off the radar screens altogether. The smarter agents have been trying to revitalize their Direct Stock Purchase Plan offerings (mostly with poor success, due in part to bad pricing vs. discount brokers, and in part to public-company indifference to attracting individual investors…which *really* needs a re-boot.) Also, as we have been saying for 22+ years, while shareholders of record have been going away year after year, employee investors are (mostly) here to stay - and easy to grow if one has a mind to do it - and a plan. But here too, most of the old-line TAs have failed to invest in systems, procedures - and in sales and marketing plans too, that would better articulate the potential for big value being added by bigger employee ownership.

To end on a much happier note, since 2009 the number of U.S. households has grown from 117 million to 123 million+ today. If transfer agents could get just 10% of them to become direct share-owners - whether through DRPs, DSPPs, 401-ks or Employee Plans - they’d add 12 million more records - and the percentage of household ownership would still be less than half of what it was during most of the second half of the twentieth century. So, theoretically, the T-As could do even better.

Always the optimist, The OPTIMIZER thinks that T-As could really catch a big wave here: Wider share ownership would go a long way toward “democratizing” business ownership – and control too. And, at a time when income inequality is beginning to trouble many of our top business people, it would also contribute to a much better and arguably fairer sharing of the tremendous wealth our public companies create. More to come on this in our next issue...