



MUTUAL FUND DIRECTORS FORUM

The FORUM for FUND INDEPENDENT DIRECTORS

April 14, 2016

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

Re: Transfer Agent Regulations (File No. S7-27-15)

Dear Mr. Fields:

The Mutual Fund Directors Forum (“the Forum”)¹ welcomes the opportunity to comment on the recent concept release by the Securities and Exchange Commission (“Commission”) seeking public comment regarding the regulation of transfer agents.²

The Forum is an independent, non-profit organization for investment company independent directors and is dedicated to improving mutual fund governance by promoting the development of concerned and well-informed independent directors. Through education and other services, the Forum provides its members with opportunities to share ideas, experiences and information concerning critical issues facing investment company independent directors and also serves as an independent vehicle through which Forum members can express their views on matters of concern.

We appreciate the Commission’s concept release seeking input on transfer agent regulations. We agree that a concept release is appropriate in this complex area to allow the Commission to gather input from the regulated community before proposing rules. The release makes clear that the relationships between mutual funds and their shareholders have changed

¹ The Forum’s current membership includes over 940 independent directors, representing 141 mutual fund groups. Each member group selects a representative to serve on the Forum’s Steering Committee. This comment letter has been reviewed by the Steering Committee and approved by the Forum’s Board of Directors, although it does not necessarily represent the views of all members in every respect.

² See Transfer Agent Regulations, Release No. 34-76743 (File Nos. S7-27-15), 80 Fed. Reg. 81948 (Dec. 31, 2015) (“Release”).

dramatically over the past several decades, so a closer examination of the transfer agent rules in that area is warranted.

One significant change has been the manner in which many investors access mutual funds. While investors once primarily held direct accounts with funds, most investors now hold funds through intermediaries. The intermediaries aggregate the customer records in omnibus accounts, registered in the intermediary's name on the fund transfer agent's system. The fund (or its agent) enters into contracts with the intermediaries to compensate them for providing recordkeeping and shareholder services. As the release acknowledges, this movement to omnibus arrangements for mutual fund shareholders has resulted in a fundamental shift in the responsibility for shareholder servicing and recordkeeping.

The Release acknowledges that shares held through an omnibus account may result in a "lack of visibility into the identity of beneficial owners and products serviced by intermediaries acting as sub-transfer agents."³ Additionally, the Commission staff noted in recently issued guidance that intermediaries may bundle fees, so that the services provided in exchange for those fees are not clearly delineated.⁴ As many of the Commission's recent rule proposals and staff guidance recognize, effective oversight requires information. From oversight of operational risk,⁵ to fund liquidity,⁶ to distribution payments,⁷ management and fund boards are more effective in serving their shareholders and fulfilling their responsibilities when they have access to complete information.

As part of its oversight of a fund, a board generally considers the services performed and the fees paid for those services. When a board considers fees paid to intermediaries, it evaluates whether the fees are for distribution (and therefore must be paid out of a fund's 12b-1 plan or from the adviser's profits) or for recordkeeping or other shareholder services. The Commission staff has said it believes that "relevant service providers should provide to boards information

³ Release at 81998.

⁴ See *e.g.*, IM Guidance Update: Mutual Fund Distribution and Sub-Accounting Fees at 8, available at <https://www.sec.gov/investment/im-guidance-2016-01.pdf>.

⁵ IM Guidance Update: Cybersecurity Guidance at 2, available at <https://www.sec.gov/investment/im-guidance-2015-02.pdf> (suggesting that "funds and advisers may also wish to consider assessing whether protective cybersecurity measures are in place at relevant service providers.").

⁶ See Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release, Release Nos. 33-9922 and IC-31835 (File Nos. S7-16-15 and S7-08-15), 80 Fed. Reg. 62274 (Oct. 15, 2015) ("[T]o the extent that mutual fund shares are held through omnibus accounts, it could be difficult for a mutual fund to be fully aware of the composition of the underlying investor base, including investor characteristics that could affect the mutual fund's short-term and long-term flows (e.g., whether ownership in the mutual fund is relatively concentrated, and whether the mutual fund's underlying investors share any common investment goals affecting redemption frequency and timing)" (fns omitted)).

⁷ See *e.g.*, IM Guidance Update: Mutual Fund Distribution and Sub-Accounting Fees at 6 ("The staff believes that if a board is not provided such information, including payment flows from relevant fund service providers, then it would be difficult to make an informed judgment as to whether certain payments by the mutual fund are for distribution, despite ostensibly being characterized otherwise, and to assess conflicts of interest.").

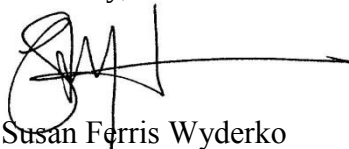
about sub-accounting payments, and other intermediary payment flows made in support of the fund's distribution and servicing activities and arrangements that would be relevant to a facts and circumstances analysis of whether the payments could be for distribution.”⁸ While advisers routinely request that intermediaries provide this information, they have little leverage to compel complete responses.

This information asymmetry additionally impacts boards' and advisers' ability to assess the quality of internal controls over matters including recordkeeping and shareholder communications. For example, boards and advisers may request that intermediaries complete the Financial Intermediary Controls and Compliance Assessment Engagements (“FICCA”) to obtain assurances on the effectiveness of the control environment. However, as the Release notes, funds have little ability to compel intermediaries to complete the FICCA and often receive incomplete reports.⁹

As the Commission evaluates the regulation of transfer agents, we ask that it contemplate the current information asymmetry that exists between funds and intermediaries and how that affects the oversight responsibilities that the Commission has entrusted to fund boards. In particular, we urge the Commission to evaluate whether changes in its rules could require fund intermediaries to provide the types of information the IM Guidance Update suggests boards should obtain, such as more complete information regarding specific services performed and the fees for those services.

Again, we commend the Commission for undertaking to address transfer agency regulation. We would welcome the opportunity to further discuss our comments with you. Please feel free to contact me at [REDACTED] at any time.

Sincerely,



Susan Ferris Wyderko
President, CEO
Mutual Fund Directors Forum

⁸ IM Guidance Update: Mutual Fund Distribution and Sub-Accounting Fees at 6.

⁹ Release at 81996, fn. 509 (“It is the understanding of the Commission that FICCA engagements are voluntary and some intermediary reports may not provide an assessment on all 17 areas of focus.”).