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Brent J. Fields
Secretary, Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: Concept Release on Transfer Agent Regulations - File No. S7-27-15

Hamilton & Associates, a boutique securities law firm in Boca Raton, Florida, would like to take this opportunity to comment on the Commission's concept release on new regulations for transfer agents.

We will address our comments to issues involving transfer agents that we encounter regularly in our practice as securities attorneys. Naturally, we agree with the Commission, much has changed since 1977, when transfer agent rules were first adopted. The development of the Internet and the availability of online trading tools have changed the way transfer agents, those who work with them, and those who depend on them for information to do business.

To begin, we believe the Form TA-1 should be expanded. Unlike broker-dealers, accountants, and attorneys, transfer agents are not subject to professional licensing at any level, so the initial information required of them by the Commission should be extensive given the critical role they play in securities transactions. Both principals and key employees should be asked to provide information about previous employment and any relationships they may have with broker-dealers, issuers, or others in the securities industry. The Form TA-2 should be expanded to include a list of the transfer agent's current clients, and should be amended if any changes are made. Further, Bad Actor provisions requiring disclosure or disqualification should be codified.

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

The suggestion is a good one. But requiring an audit might be a burden for smaller agencies. Perhaps it would be sufficient that their financial statements be prepared by an outside accountant.

9. Does the receipt of securities as payment for services create conflicts of interest for transfer agents, and if so, should the Commission require that such payments be disclosed?

Absolutely, particularly since transfer agents are fiduciaries in control of vital information regarding restricted shares being rendered “free trading” and entering the trading float. Such payments and all other potential conflicts of interest should be reported. It would be useful if, as the Commission suggests, it provides a list of reportable conflicts.

14. Should the Commission require that any arrangement for transfer agent services between a registered transfer agent and an issuer be set forth in a written agreement?

Yes. That is the only way to avoid, or largely avoid, termination disputes that can result in inaccuracies in record keeping.

We are particularly interested in what the concept release has to say about restricted securities: "The need to prevent unregistered securities distributions is particularly acute in the microcap market, where OTC issuers may not be subject to certain of the Commission's disclosure requirements and there is an increased potential for fraud and abuse because potential investors have few, if any, resources for obtaining meaningful disclosure or conducting independent research on microcap issuers."

Illegal sales of unregistered securities have been the subject of many SEC enforcement actions in the past ten years and more. They are invariably aided, wittingly or unwittingly, by the issuer's transfer agent. The release mentions in passing the case of CMKM Diamonds, whose transfer agent issued hundreds of billions of unrestricted shares on the strength of hundreds of fraudulent attorney opinion letters, for the benefit of company insiders. While most penny companies don't go to such lengths, the problem is pervasive in the OTC Markets, and such illegal issuances are usually discovered after the fact, often long after. Something needs to be done.

36. Should transfer agents be permitted to rely on the written legal opinion of an attorney under certain circumstances?

Since most transfer agents are not attorneys, that seems a reasonable proposal. Unfortunately, attorneys willing to write fraudulent opinions—claiming, for example, an exemption from registration for which the stock in question doesn't qualify—are far from uncommon. Some lawyers, like the notorious Guy M. Jean-Pierre, wrote hundreds of bogus opinions using pseudonyms after he was barred by the OTC Markets. It was not until AFTER the Florida Bar initiated an investigation that the Commission took action against Jean-Pierre. Should the transfer agent hire his own attorney to vet the opinions of other attorneys? Who would ultimately decide which lawyer was right?

37. Should the Commission obligate transfer agents to: (i) confirm the existence and legitimacy of an issuer's business (for example by reviewing leases for corporate offices, etc.); (ii) obtain names and signature specimens for persons the issuer authorizes to give issuance or cancellation instructions, together with any documents establishing such authorization; (iii) conduct credit and criminal background checks for issuers' officers and directors and shareholders requesting legend removal; (iv) obtain and confirm identifying information for shareholders requesting legend removal (e.g., legal name, address, citizenship); and/or (v) obtain and review publicly-available news articles or information on issuers or principals?

No. While that laundry list may sound desirable, it's impracticable. Review a corporate lease? Many penny companies use a virtual office or a UPS Store as their official address. Research company officers and directors, as well as shareholders requesting legend removal? Unrestricted stock is often issued in connection with debt conversions. If the debt is appropriately aged, the security holder's note is converted into unrestricted stock; the transfer agent makes the issuance

on the basis of an attorney opinion letter and, in most cases, other documentation provided by the security holder. This system is far from fool proof. While in many cases the note holder is a well-known institution, in others it's merely a nominee company registered offshore. For all the transfer agent knows, it may ultimately be controlled by a company officer, director, or other insider, or by a bad actor hiding from the regulators. How could the agent make sure that wasn't the case, without going to extraordinary trouble and expense?

39. Are there types of securities or categories of transactions commenters believe should require a heightened level of scrutiny or review by transfer agents before removing a restrictive legend or processing a transfer? ...For example, should the Commission require additional diligence requirements for securities offered by issuers that are not required to file financials with the Commission?

We believe any form of unregistered security including debt conversions should receive more scrutiny, because of the reasons cited above, and because they often result in the issuance of very large amounts of stock where there are no effective public disclosure protocols in place. In contrast, removing legends in connection with a stock dividend paid by the company a year earlier would be far less problematic. It would make sense to require greater diligence for the issuance of unregistered securities and change of control transactions.

We would like to suggest a remedy that addresses many of the problems discussed above. We propose that transfer agents be required to file every opinion letter covering unregistered securities that they act on with EDGAR, along with the letters of instruction, information about the amount of stock issued and the date of issuance. The filing of these opinions should occur three days prior to the processing of any legend removal. Alternatively, market participants submitting legal opinions could be required to file the opinions on EDGAR, with the transfer agent then confirming the filing before processing legend removal requests.

Such a requirement would have a number of benefits. First, it would keep shareholders informed about large new issuances, something the issuers themselves often fail to do. Second, it would make the opinions immediately available to regulators and DTC; there'd be no need for specific requests to be made. The letters would also be available to the general public, allowing investors to make more informed decisions about these companies before investing. It would also help to prevent forgeries of legal opinions and counterfeiting of shares.

Finally, it would create no conflict for the transfer agents. On the one hand, they work as agents for their issuer clients; on the other, in recent years the SEC has characterized them as "gatekeepers" responsible for reporting any potential wrongdoing they may encounter. If they report a transaction they feel may be illegal, they risk termination by the issuer. It has become routine for dilution funders to bring actions against transfer agents who refuse to remove restrictive legends causing the transfer agents to incur significant out of pocket costs. If all transfer agents were required to post all opinions they act on at EDGAR, no retaliation would be possible. Best of all, it seems likely that such a requirement would discourage many security holders from requesting questionable issuances, and many attorneys from providing questionable opinion letters.

The mechanics would be fairly simple: the critical details could be posted in the same way insider

transactions are now, along with the issuer's EDGAR filings, but in a separate section. Opinion letters for non-reporting issuers would also be filed. An EDGAR file would have to be created for these issuers, but that presents no problem. Many non-reporting issuers already report Forms D to EDGAR. Opinion letters for non-reporting issuers would also be filed. An EDGAR file would have to be created for these issuers, but that presents no problem. Many non-reporting issuers already report Forms D to EDGAR.

We have a final concern, one not addressed in the concept release. It has to do with "zombie tickers": abandoned or defunct issues that continue to trade on the Pink Sheets or the Grey Market. There are hundreds of them. It has been our experience that transfer agents have been involved in reinstating and hijacking dormant issuers. To prevent activity, we believe that all corporate reinstatements and change of control transactions including for non-reporting companies should be reported on EDGAR by the issuer's transfer agent. Transfer agents should also be required to report on an amended Form TA-2 when an issuer client stops paying for their services and can no longer be contacted.

Thank you for your consideration of our comments. We hope the new rules eventually proposed will benefit transfer agents and issuers alike.

Sincerely,

Brenda Hamilton, Esq.
For the Firm