

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-13636]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

Regulation of Transfer Agents

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission, in order to facilitate the establishment of a national system for the clearance and settlement of transactions in securities under section 17A of the Securities Exchange Act of 1934, is adopting rules applicable to transfer agents. The rules are intended: (1) to assure that registered transfer agents perform their functions in a prompt and accurate manner; (2) to provide early warning of inadequate transfer agent performance; (3) to apply limitations on the expansion of transfer agent activities when transfer agents are unable to meet the performance time standards; (4) to assure prompt response to inquiries concerning the status of items presented for transfer; and (5) to require the maintenance and preservation of certain records necessary to monitor compliance with the proposed rules.

EFFECTIVE DATES: Sections 240.17Ad-1; 240.17Ad-2 (c), (d), (f), (g), and (h); and 17Ad-4: October 3, 1977. Sections 240.17Ad-2 (a), (b) and (e); 17Ad-3; and 17Ad-5 through 7: January 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Harry F. Day, Assistant Director, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, 202-472-4515 or 202-755-8834.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Securities and Exchange Commission (the "Commission") has amended Title 17, Chapter II, Part 240 of the Code of Federal Regulations to add §§ 240.17Ad-1, 240.17Ad-2, 240.17Ad-3, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6 and 240.17Ad-7 (hereinafter "adopted rules") under the Securities Exchange Act of 1934 (the "Act"), in particular Sections 2, 17, 17A and 23(a) of that Act, 15 U.S.C. 78b, 78q, 78q-1 and 78w(a). In accordance with Section 17A(d)(3)(A)(i) of the Act, 15 U.S.C. 78q-1(d)(3)(A)(i), the Commission consulted and requested the views of the Federal bank regulatory agencies at least fifteen days prior to this announcement.

I. INTRODUCTION

A. BACKGROUND

On May 12, 1976, the Commission published notice of proposed rules ("draft rules") prescribing performance stand-

ards for registered transfer agents.¹ The Commission received approximately 150 letters of comment on the draft rules, and those letters were carefully considered in drafting revised rules.

On February 24, 1977, the Commission published revised rules for comment ("proposed rules").² The comment period ended April 13, 1977, and the Commission received 45 letters of comment. The rules adopted herein include a number of revisions (discussed below) made to the proposed rules in response to the suggestions of the commentators.

B. THE PURPOSE OF THE ADOPTED RULES

The adopted rules are designed to protect investors and persons facilitating transactions by and on behalf of investors and to contribute to the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities by: (1) assuring that the transfer agent community performs its functions in a prompt, accurate and more predictable manner; (2) providing an early warning system to alert the transfer agent regulatory agencies³ that a transfer agent is not meeting the performance standards, thereby enabling those agencies to take timely preventive and remedial measures to protect the public interest and investors; (3) precluding a transfer agent from expanding its transfer agent activities when it has been unable to comply with performance standards and, in the event of continued substantial performance failures, requiring such transfer agent to alert issuers of securities serviced by it of its performance failures; (4) assuring prompt response to inquiries concerning the status of items presented for transfer and to certain other inquiries, in order to better meet the needs of investors who deal with transfer agents, to promote more prompt identification of lost securities and to assist broker-dealers undergoing examination and seeking to comply with requirements relating to control of customer securities; and (5) prescribing recordkeeping and record retention requirements to better enable transfer agents to monitor their own activities and to permit regulatory authorities to monitor transfer agent compliance with the adopted rules.

¹ See Securities Exchange Act Release No. 34-12440 (May 12, 1976); 9 SEC Docket 627 (May 25, 1976); 41 FR 22595 (June 4, 1976). Comments were requested to be submitted by July 2, 1976, and that deadline was extended to July 19, 1976 in Securities Exchange Act Release No. 34-12594 (July 2, 1976); 9 SEC Docket 1029 (July 21, 1976); 41 FR 28798 (July 13, 1976).

² Securities Exchange Act Release No. 34-13293 (Feb. 24, 1977); 11 SEC Docket 1818 (March 8, 1977); 42 FR 12191 (March 3, 1977).

³ The appropriate regulatory agencies for transfer agents, which are set forth in Section 3(a)(3)(B) of the Act, 15 U.S.C. 78c(a)(3)(B), are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposits Insurance Corporation and the Securities and Exchange Commission.

C. EFFECT ON RULES OF SELF-REGULATORY ORGANIZATIONS

Several commentators questioned whether the Commission's turnaround rules supersede similar rules imposed by self-regulatory organizations which require, among other things, that transfer agents acting for certain listed issues effect turnaround within 48 hours. The adopted rules are not intended to and do not supersede any rules of self-regulatory organizations which impose more stringent performance standards.⁴

D. EXEMPTIONS

Under § 240.17Ad-4 transfers of certain securities and transfer agents in certain circumstances are exempt from parts of these rules. Under paragraph (a) of that section certain transfers are exempt from §§ 240.17Ad-2, 240.17Ad-3 and § 240.17Ad-6(a) (1) through (7) and (11), but remain subject to §§ 240.17Ad-1, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6(a) (8), (9) and (10), (b) and (c) and § 240.17Ad-7. Transfer agents who qualify for exemption under paragraph (b) of § 240.17Ad-4 are exempt from §§ 240.17Ad-2 (a), (b), (c), (d) and (h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11), but remain subject to §§ 240.17Ad-1, 240.17Ad-2 (e), (f) and (g), §§ 240.17Ad-4, 240.17Ad-5, 240.17Ad-6(a) (1), (8), (9) and (10), (b) and (c) and § 240.17Ad-7.

II. DISCUSSION OF THE ADOPTED TURNAROUND RULES IN LIGHT OF COMMENTS RECEIVED

A. SECTION-BY-SECTION DISCUSSION OF THE ADOPTED RULES

SECTION 240.17Ad-1 DEFINITIONS

Section 240.17Ad-1 defines salient terms used throughout the rules; familiarity with these definitions is essential to understanding the rules.

The basic unit for which turnaround times and other requirements are prescribed is an "item." Section 240.17Ad-1 defines "item" to mean the certificates of a single issue of securities presented under one ticket, or, if there is no ticket (as is often the case with mail items from individuals), presented at one time by one presenter. Several commentators noted that in the past a single submission by a depository (shipment control list) might include a very large number of individual transfer instructions. These commentators recommended that the term "item" be defined to mean each individual transfer instruction for cer-

⁴ The rules usually mentioned in this connection are the New York Stock Exchange's Rule 496 and the American Stock Exchange's Rule 891. See 2 NYSE Guide (CCH) para. 2496 and 2 Am. Stock Ex. Guide (CCH) para. 9681. Those rules and similar rules of other self-regulatory organizations were identified for review by the Commission pursuant to Section 31(b) of the Securities Acts Amendments of 1975 and currently are being examined in accordance with the procedures provided in that section. Securities Exchange Act Release No. 13027 (December 1, 1976); 11 SEC Docket 1066 (December 14, 1976); 41 FR 53473 (December 7, 1976).

tificates of a single issue of securities included within a single ticket. It appears that the depository concerned has recently implemented changes in its procedures, and that, as a result, each ticket (shipment control list) shall on the average contain 20 lines requiring the issuance of a total of 24 certificates. Although many of the shipment control lists will exceed this average, we have been assured that the upward variation in size will not be of a magnitude to create difficulties. Accordingly, the definition of "item" has not been changed. The definition also extends to items presented under a transfer agent custodian arrangement. Finally, the definition provides that, for an outside registrar, each certificate to be counter-signed is an item.

Section 17Ad-1(c) provides that an item is, in various circumstances described therein, "made available" when it is dispatched or mailed. An item is considered dispatched when it leaves the premises at which transfer agent functions are performed and is sent to the receiving party or to a location from which it is to be picked up by the receiving party. For example, an outside registrar that received before noon an item subject to the processing requirement of § 240.17Ad-2(b) (1) would make the item available when, on or before the opening of business the next business day, the item is being taken by a messenger to a clearing house for delivery to the transfer agent. An item is considered mailed either when it is delivered to the location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service. The term "made available" has been amended to include the transfer agent's forwarding to a presenter, or other proper party, an item which has been returned to the transfer agent by an outside registrar.

The term "transfer" is defined as the accomplishment of all acts necessary to cancel certificates presented and to issue new certificates, including performance of the registrar function, and to make the item available to the presenter. One commentator asked whether original issues are excluded from the definition of "transfer." Public distributions, whether initial or secondary offerings, are not excluded from the term "transfer." Nevertheless, the Commission recognizes that an unusual volume of transfers is often associated with public offerings, and a provision for offerings is included in subsection (1) (8).⁶ The second part of the definition of "transfer" refers to the manner in which a transfer may be accomplished when a transfer agent maintains custody of securities under a transfer agent custodian program. The language "or complete registration of change in ownership of all or a portion of these securities" refers not to the function performed by the registrar but to the transfer and registration of own-

⁶See the discussion of Section 240.17Ad-1(f) (8) concerning the definition of "routine item" infra.

ership by book entry on the security-holder records when no certificates are issued.

"Turnaround" of an item is accomplished, in the case of a transfer agent that acts in the dual capacity of transfer agent and registrar, with respect to that item, when the item is transferred. For other transfer agents, turnaround occurs when the item is made available to the outside registrar.

Consideration was given to establishing a minimum time period within which items received from an outside registrar must be made available to the presenter. In the absence of any indication that this matter has been a source of delay, the Commission has required in § 240.17Ad-2(f) that a transfer agent make such items available "promptly" to the presenter. In most circumstances, "promptly" would mean that any item received by a transfer agent from an outside registrar in mid-afternoon would be made available to the presenter by the close of business the same day. The Commission will monitor the time taken by transfer agents to make such items available to presentors and will propose a specific time requirement for this step should experience indicate that such a requirement is needed.

For the purpose of measuring the performance of an outside registrar, the term "turnaround" does not apply; instead, the term "process" is used. An outside registrar is considered to have processed an item either when all acts necessary to perform the registrar function are completed and the item is made available to the presenting transfer agent or when the presenting transfer agent is advised why the registrar function for the item is delayed or may not be completed.

The time period for turnaround or processing of an item begins when the item is received by the registered transfer agent. Several commentators suggested that the time of "receipt" of an item be postponed until it arrives in the very room in which transfer agent functions are performed. Most commentators, however, did not foresee a problem with the proposed definition. Accordingly, no change has been made, and "receipt" occurs when an item arrives at the premises at which the transfer agent performs transfer agent functions. It will, therefore, be in the transfer agent's interest to see that a received item is promptly forwarded from the mail room to the transfer department.

Items received at a "window" or mail room at the premises at which the transfer agent performs transfer agent functions shall also be deemed to have been received by the transfer agent. However, items received at a "drop" or "window" maintained at a significant distance from the premises where the transfer agent performs its transfer agent functions usually would not be considered received for the purposes of § 240.17Ad-2 upon arrival at such "drop" or "window"; such items would be considered received upon delivery to the premises where the transfer agent performs

transfer agent functions.⁶ Additionally, items presented for transfer but rejected at a "drop" or "window" are not deemed to be received.

Section 240.17Ad-1(h) defines the term "business day." The second sentence of the proposed subparagraph has been moved to Section 17Ad-2(a). (See discussion infra.)

The performance time standards of the turnaround rules apply to items that are considered "routine," as defined by § 240.17Ad-1(i). It should be noted that distinctions between "routine" and "non-routine" do not depend on whether an item is received through the mail. Transfer agents are, in effect, required to examine uniformly all items received, regardless of the manner in which presented, to determine whether they are routine or non-routine.

The first exclusion from "routine" in paragraph (i) refers to issues for which the transfer agent does not maintain a working supply of unissued certificates but requisitions them as needed from another source, such as the issuer; this practice is often required by municipalities with respect to issues of municipal bonds. Some commentators recommended that the exclusion should be available to a transfer agent that has exhausted the supply of certificates it customarily retains in inventory, provided the transfer agent made a timely request for more certificates from the issuer. The availability of certificates cannot be controlled completely by the transfer agent. Nevertheless, the absence of an exclusion for such items from the definition of a routine item encourages the implementation of effective inventory control and efficient re-order procedures to insure the timely initiation of requests for new certificates. Diligent follow-up of these requests appears effective in most instances to insure the timely arrival of new certificates. When, however, these measures fail and a transfer agent's performance is adversely affected by a delayed arrival of new certificates, that factor may be asserted as a basis for exemptive relief from § 240.17Ad-3. Moreover, transfer agents requisitioning new certificates may remind issuers and others of the obligations imposed upon transfer agents by these rules.

Under the adopted rule, legal items are not necessarily "non-routine." Several commentators recommended that all items accompanied by certified corporate resolutions be deleted from the definition of "routine." Since it appears that most certified corporate resolutions follow standard forms and are found acceptable for transfer, no change has been made in § 240.17Ad-1(i) (4). As a result, if a legal item requires no more than a review of the supporting documentation listed in

⁶In this connection, it should be noted that § 240.17Ad-2(e) requires a transfer agent that receives items at a location other than the premises at which it performs transfer agent functions to have appropriate procedures to assure that the items are forwarded "promptly" to the premises at which receipt will be deemed to occur.

subsection (i) (4) (that is, "assignments, endorsements or stock powers, certified corporate resolutions, * * *"), the item would be considered routine. If that review, however, raised the need to obtain additional documentation, an opinion of counsel or other matter listed in subsection (i) (3), the item would be considered "non-routine."

In response to comments, subsection (6) has been amended to exclude from coverage as a routine item any warrant, right or convertible security presented for transfer of record ownership within five (increased from two) business days before exercise or conversion privileges either lapse or change. The word "change" was added to bring within the scope of subsection (6) securities which have multiple or step-down conversion dates. A new subsection (7) has been added to exclude from coverage as a routine item any warrant, right, or convertible security presented for exercise or conversion.

Proposed subsection (i) (7), which excluded from the definition of routine item a security of an issue whose outstanding amount was increased by 25 percent or more within the previous 15 business days in a public offering of securities registered under the Securities Act of 1933, was intended to provide temporary relief from the 90 percent-three day turnaround requirement in light of the acute volume of transfers which occur immediately after a public offering of a substantial amount of securities. Since the amounts of outstanding securities vary so widely among issuers, the determination of a percentage breakpoint for the size of an offering that would qualify the issue for temporary nonroutine treatment has not proved feasible. Instead, subsection (i) (8) as adopted permits temporary non-routine treatment provided the registered offering is "not of a continuing nature." To the extent the offering is made in the form of employee stock option purchases, or is otherwise an offering which continues over a period of time, items containing securities of the issue are routine under subsection (i) (8).

Nevertheless, although such items are temporarily deemed non-routine, transfer agents are reminded that § 240.17 Ad-2(e) requires that non-routine items be given diligent and continuous attention and turned around as soon as possible.

Some commentors suggested that the definition of "routine item" exclude securities of an issue for which the transfer agent recently assumed the responsibility for performance of transfer agent functions from another transfer agent. These commentors believed that in such circumstances the records may be in disarray and require an extensive period before they are properly arranged. Because the turnaround rules do not address the updating of securityholder records (except in the circumstance in which a transfer agent acts as custodian of the securities), and since changes in transfer agents are carefully timed to avoid any delay in effecting transfers,

the suggested addition to the definition of routine item has not been made.

SECTION 240.17Ad-2 TURNAROUND, PROCESSING AND FORWARDING OF ITEMS

Paragraph (a) of § 240.17Ad-2 sets forth the basic requirement that transfer agents (except when acting as outside registrars), with regard to at least 90 percent of routine items received during any month, must perform their functions "turnaround" such items) within three business days of the items' receipt. Paragraph (a), as proposed, has been amended by adding the second sentence from proposed Section 17Ad-1(h) (the definition of business day) which establishes a noon-to-noon cutoff for items received that are subject to paragraph (a).⁷

As proposed, paragraph (b), which pertains to a transfer agent when acting as an outside registrar, required that at least 90% of all items received during any month at or before noon on any business day be processed by the close of business that day. That paragraph, as adopted, requires the processing to be completed by the opening of the next business day. This change was made in recognition of the geographical distances that must be traversed in some parts of the nation in order to deliver completed registrar items to the transfer agent. Although the Commission is aware that a number of outside registrars both process and deliver most of their items in two to five hours and encourages them to continue to do so, geographic considerations make such a standard unrealistic for much of the nation. The provision requiring that at least 90% of all items received after noon on any business day be processed by noon of the next business day has not been changed. Certain items are excluded from the term "items received" in paragraph (b)

⁷The sentence in question provides that items received at or before noon on a business day shall be deemed to have been received at noon on that day, and that items received after noon on a business day, on a weekend or on a holiday shall be considered as received at noon on the next business day. For example, this provision, operates as follows: An item received at 11:00 a.m. on a Monday that is not a holiday would be considered as received at noon on that day and, assuming none of the intervening days are holidays, would have to be turned around by noon on Thursday. Assuming either one of the intervening days or Thursday is a holiday, the item would have to be turned around by noon of the following business day (Friday). An item received on a Friday afternoon, or received on a weekend, would be considered as received at noon on Monday and, assuming the intervening weekdays are business days, would have to be turned around by noon of the following Thursday. An item received on a Tuesday that is a holiday would be considered as received at noon on Wednesday (provided that Wednesday is not a holiday) and, assuming the intervening weekdays are business days, would have to be turned around by noon on Monday. Again, if the day for receipt or accomplishment of turnaround is not a business day, then the time of receipt or the deadline for turnaround would be noon of the next business day.

in order to remove items which may present special difficulties from the processing time requirements.

Several commentors recommended that the turnaround standard which is three business days when an outside registrar is utilized should be increased to four business days when the transfer agent is acting in a dual capacity to allow additional time for performance of the registrar function. Because there has been a widespread acceptance of the proposal that the maximum time a transfer agent acting in a dual capacity should take to turnaround and process items is three business days, no adjustment to the three business day standard in § 240.17Ad-2(a) has been made in the adopted rule. Transfer agents are encouraged to do better than this standard when possible. The Commission intends to monitor carefully the performance of transfer agents in a single capacity with a view to determining whether the turnaround standard for items sent to an outside registrar should be reduced to two business days.

Commentors suggested that in the case of debt securities for which the bond registrar is not also the trustee or the authenticating agent and the authenticating agent maintains and updates securityholder records (such as, for example, when the authenticating agent registers the payment of interest), the turnaround standard should be increased to one business day. In such circumstances, the authenticating agent is not acting solely as a processor of items but is also performing "transfer" functions (in the equity sense), and the adopted rules adequately provide for this situation. In the above example, the authenticating agent would be permitted three business days to accomplish the transfer and registration of the ownership of the interest coupons.

Paragraph (c), as proposed, has been restated as paragraphs (c) and (d). Paragraphs (c) and (d), as adopted, prescribe a notice requirement for transfer agents which, during any month, fail to comply with the performance standards of paragraphs (a) and (b) respectively.⁸ The information required in such notice is intended to inform the regulatory authorities of the extent to which the reporting transfer agent has failed to meet the turnaround requirements and to alert those authorities of the need for monitoring the transfer agent's performance and of the possible need for supplementing the limitations under § 240.17Ad-3 with remedial action.⁹ In

⁸ Section 240.17Ad-3, discussed infra, prescribes certain limitations that are applied to transfer agents which, because of continued failure to meet the performance standards, are required to file notices repeatedly.

⁹ Repeated failure to perform at the level prescribed by Section 240.17Ad-2 (a) and (b) requires filing notices with the regulatory authorities and, if continued, application of limitations on the expansion of the transfer agent's business until the agent can demonstrate an ability to meet the standards. During this time, the regulatory authorities can monitor the transfer agent's performance to determine whether to initiate, under Sec-

order to better facilitate prompt responses by the appropriate regulatory agencies to requests for exemption from § 240.17Ad-3, the adopted rule requires that the notice pursuant to § 240.17Ad-2(c) include a statement of the number of routine items, aged in increments of one business day, which on the last business day of the month have been in the transfer agent's possession for more than four business days. A similar provision for unprocessed registrar items has been incorporated into paragraph (d) as adopted.

The written notice under proposed § 240.17Ad-2(c) has been changed in adopted § 240.17Ad-2 (c) and (d) to require that notices be filed with the Commission and the appropriate regulatory agency, if it is not the Commission, within ten business days after the end of the month instead of sent to regulatory agencies within six business days after the end of the month. Some commentators had suggested that more time be allowed for transfer agents to compute their performance for a given month (the disposition of items received on the last business day of a month will not be known until three business days following the end of that month). In addition, a requirement that notices be filed with an agency would be consistent with requirements imposed in other areas when reports or other materials are required. The date on which the notice is actually received by a regulatory agency is considered the date of filing thereof.¹⁰

Section 240.17Ad-2(e) (formerly paragraph (d)) provides that the 10% of routine items not required to be turned around or processed within the time periods established by § 240.17Ad-2 (a) and (b) must be turned around or processed "promptly"; in the case of transfer items, under usual circumstances, "promptly" would be within one additional business day and, in the case of registrar items, by the end of the business day following the day of receipt. Paragraph (e) also requires that all non-routine items must receive diligent and continuous attention and must be turned around as soon as possible.

SECTION 240.17Ad-3—LIMITATIONS ON EXPANSION

This rule sets forth the consequences which automatically attach to a transfer agent's failure on a continuing basis to meet the prescribed performance standards. The limitations are designed to maintain the status quo so that a transfer agent can bring its performance into

compliance with the rules. The limitations are not intended to be a penalty for failure to meet the turnaround standards. In addition, it should be noted that the application of limitations does not preclude the institution of administrative, civil or criminal (if the violation is willful) proceedings if necessary to protect investors and persons facilitating transactions by and acting on behalf of investors. Paragraph (a) applies limitations to transfer agents who fail for each of three consecutive months to meet the 90% turnaround or processing standards of paragraphs (a) or (b) of § 240.17Ad-2 (and who therefore are required to file monthly notices under paragraphs (c) or (d) of that section). The limitations attach on the fifth business day following the end of the third consecutive month in which a notice was required by § 240.17Ad-2(c) or (d) and remain in effect for at least three consecutive months thereafter. The rule as proposed provided that limitations would apply for six consecutive months, but upon further consideration it appears that a term of three consecutive months will provide a sufficient period of time for a transfer agent to demonstrate its ability to meet the performance standards.

It should be noted that paragraphs (a) and (b) § 240.17Ad-3 would apply to a transfer agent which, for example, failed for two consecutive months to turnaround within three business days 90% or more of routine items received (as required by § 240.17Ad-2(a)) and then in the third consecutive month failed to process within the specified time frames 90% or more of items received as outside registrar (as required by § 240.17Ad-2(b)). Similarly, if a transfer agent during a month failed to turnaround within three business days 75% or more of its routine transfer items and in the next month failed to process timely 75% or more of its outside registrar items, paragraph (b) of § 240.17Ad-3 would attach on the fifth business day following the end of the second month.

During the three month limitations period, a transfer agent may not begin to perform a transfer agent activity for issues for which it does not perform, or is not under agreement to perform, transfer agent activities before the fifth business day (the "limitations date"). Similarly, after the limitations date, a transfer agent may not begin to perform for issues for which it performs a transfer agent function prior to the limitations date any new transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to the limitations date. Section 240.17Ad-3 does not preclude a transfer agent who has agreed to act in a new capacity prior to the attachment of the limitations provision from carrying out the terms of the agreement.¹¹

¹¹ Thus, a transfer agent who, prior to the application of limitations, is under agreement to act as a dividend disbursing agent for an issue (even though the dividend disbursing activity does not begin until after the limitations are applied) would be per-

Once the limitations are applied, whether because of failure to comply with § 240.17Ad-2(a) or § 240.17Ad-2(b) or both, they remain effective until the transfer agent's performance has met the standards of both paragraphs (a) and (b) of that section for three consecutive months, i.e., 90% or more of accountable transfer agent and registrar items are each turned around or processed within the prescribed periods of time for each of three consecutive months.

A few persons commented that limitations on new transfer agent business should not attach to transfer agent activities which, in their view, the Commission does not regulate, such as dividend disbursements. Adopted § 240.17Ad-3(a) does not reflect this view. The rationale for the limitations provision is that it is not in the public interest or consistent with the protection of investors for a transfer agent which is unable to perform its current obligations in a timely manner to take on additional responsibilities. Moreover, the Commission's rulemaking authority (Section 17A (d) (1) of the Act) is not circumscribed by the functions which are provided elsewhere as the precedents for registration. Indeed, an unnecessarily restrictive view of the Commission's rulemaking authority could well impede the Commission's efforts to provide necessary or appropriate regulations for transfer agents in the broader context of the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. For example, a transfer agent that is unable to meet the performance time requirements for transfers but which nevertheless was permitted to begin a new activity such as dividend disbursing could necessarily be diverting resources to that new activity at the time the performance standards for transfers were not being met.

Some commentators recommended that the limitations under § 240.17Ad-3 should not attach until after a reasonable "appeal" period. Since the limitations period does not commence after a single month of failure to perform but rather after several months of operating below the minimum standard, the Commission believes that a transfer agent will have sufficient advance notice before the application of limitations becomes effective to begin preparing an exemption request for submission to the appropriate regulatory agency.

mitted by subparagraphs (a) (1) and (2) to act as dividend disbursing agent for that issue. In contrast, if the agreement to perform a new activity for an issue, such as disbursing dividends, were not signed until the fifth business day after the end of the month, i.e., after the limitations become effective, the transfer agent would be prohibited from initiating that, or any other, new function or activity for that issue.

The attachment of limitations would not prevent a transfer agent from acting for new series of bonds (of an open-end indenture) issued after the limitations date, provided the transfer agent acted in the same capacity for the bonds before the limitations date.

tions 17A(c) (3) (A), 17A(d) and 21(d) of the Act, 15 U.S.C. 78q-1(c) (3) (A), 78q-1(d) and 78u(d), administrative or civil action which may lead to the imposition of a remedial sanction upon, or the enjoining of, the transfer agent. Of course, an intentional failure to comply with the requirements of any of the rules may constitute a criminal violation of the Federal Securities laws (Section 32(a) of the Act, 15 U.S.C. 78ff(a)).

¹⁰ 17 CFR 240.0-3. Transfer agents that are banks should note that the notices pursuant to § 240.17Ad-2 (c) and (d) must be filed with both their appropriate Federal bank regulator and the Commission.

Paragraph (b) describes limitations which attach to a transfer agent that is unable for each of two consecutive months to process at least 75% of the accountable items under § 240.17Ad-2 (a) or (b). Paragraph (b) applies to the limitations of paragraph (a), discussed above, and also requires the transfer agent to notify the chief executive officer of each issuer of each issue serviced by the transfer agent (including the chief executive officer of an issuer that acts as its own transfer agent) that performance has fallen below the 75% standard.

Transfer agents are allowed 20 business days before notice must be made to issuers; the additional 15 business days beyond the day limitations are applied may be used by the transfer agent to apply to its appropriate regulatory agency for relief upon grounds that the failure to perform was caused, in significant part, by circumstances beyond the transfer agent's control.¹² Applications for relief should be well-documented and contain a thorough presentation as to why and how circumstances beyond the transfer agent's control caused its performance to fall below the standards each month. Ordinarily, the presentation should show that the transfer agent's performance would have satisfied the minimum standard but for the circumstances beyond its control. When an exemption is sought because of a failure to meet the turnaround standards of § 240.17Ad-2(a), the transfer agent should include with its request for an exemption information as to the age of routine items not turned around timely.

The filing of a request for an exemption, however, does not toll the effective date of the application of limitations, but the appropriate regulatory agency will make every effort to act promptly on the request for exemption. The appropriate offices to contact are as follows: (A) For a transfer agent registered with the Comptroller of the Currency, the Deputy Comptroller for Trust Operations, Office of the Comptroller of the Currency, Washington, D.C. 20219; (B) for a transfer agent registered with the Board of Governors of the Federal Reserve System, the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (C) for a transfer agent registered with the Federal Deposit Insurance Corporation, the Director, Division of Bank Supervision, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, D.C. 20429; and (D) for a transfer agent registered with the Securities and Exchange Commission, the Office of Securities Processing Regulation, Division of Market Regulation, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

The application of limitations under paragraphs (a) and (b) may operate cumulatively so that, for example, a

¹² Section 17A(c)(1) of the Act, 15 U.S.C. 78q-1(c)(1), in relevant part, empowers the appropriate regulatory agency to exempt under certain circumstances transfer agents registered with it from any rule or regulation imposed pursuant to Section 17A of the Act.

transfer agent that performs at the 80% level for two months, and then at the 70% level for the next two months, would become subject to the application of paragraph (a) at the end of the third month and would become subject to the additional requirement of paragraph (b) (notices to issuers) at the end of the fourth month.

SECTION 230.17Ad-4—APPLICABILITY OF SECTIONS 240.17Ad-2, 240.17Ad-3 AND 240.17Ad-6(a) (1) THROUGH (7) AND (11)

In response to comments received on the initial and the revised proposed rules, the Commission has determined that the turnaround rules shall not apply to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, 15 U.S.C. 80a-8. It appears that the transfer agent activities performed for those securities involve for the most part the redemption of fund shares and that the redemption of shares is significantly different from the transfer of ownership of stocks and bonds on issuer's records.¹³ Moreover, that activity is subject to Section 22(e) of the Investment Company Act of 1940, 15 U.S.C. 80a-22(e). Therefore, paragraph (a) provides that §§ 240.17Ad-2, 240.17Ad-3 and 240.17Ad-6(a) (1) through (7) and (11) do not apply to the issuance, redemption or transfer of redeemable securities issued by investment companies registered under Section 8 of the Investment Company Act of 1940.¹⁴ The exemption was amended to include also redeemable securities of registered unit investment trusts.

Lastly, the exemptions of paragraph (a) have been expanded to include the transfers and withdrawals of shares from dividend reinvestment plans, which also require procedures significantly different from the procedures required to transfer ownership of stocks and bonds.

Approximately 2,400 transfer agents have registered with either the Commission or one of the bank regulatory authorities. Information on Forms TA-1 received at the time of those registrations indicates that the level of transfer activity varies widely among registered transfer agents. In view of the fact that the number of transfers performed by many transfer agents is relatively small and involves issues which are not traded actively, the Commission has determined that it is not necessary or appropriate at this time to require those transfer agents to comply with the minimum performance standards and certain recordkeeping provisions. Accordingly, paragraph (b) of § 240.17Ad-4 exempts from § 240.17Ad-2 (a), (b), (c), (d) and

¹³ The amount of certificated fund shares is relatively small, and the amount of transfer agent activity in connection with transferring ownership of certificated shares represents a very small part of a transfer agent's activity with regard to an open-end investment company.

¹⁴ The turnaround rules do apply to registered transfer agents performing transfer agent functions for securities issued by closed-end investment companies.

(h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11) any registered transfer agent that receives within any six consecutive months with respect to all issues serviced fewer than 500 items for transfer and fewer than 500 items for processing, provided the transfer agent files with its appropriate regulatory agency within ten business days of the close of the sixth such month the notice described in that paragraph.¹⁵ Additionally, the notice is required to be filed only with the transfer agent's appropriate regulatory agency.¹⁶

The transfer and processing time standards of § 240.17Ad-2 (a) and (b) always apply together to a transfer agent not qualifying for an exemption under § 240.17Ad-4(b). Conversely, neither paragraph 2(a) nor 2(b) applies to a transfer agent which does qualify for the exemption. Thus, to qualify for the exemption, the number of items received for transfer in a six month period must be fewer than 500, and the number of items received for processing in a six month period must be fewer than 500.

The operation of § 240.17Ad-4(b) may be illustrated as follows. If a transfer agent receives 500 or more items for transfer in a six month period and in the same period receives less than 500 items for processing, the transfer agent is not eligible for the exemption provided by § 240.17Ad-4(b). Similarly, if a transfer agent receives for processing 500 or more items in a six month period and receives for transfer less than 500 items in that period, the transfer agent remains subject to § 240.17Ad-1 through 7.

Paragraph (c) sets forth the condition under which a transfer agent loses its exemption under paragraph (b). The last sentence of paragraph (c) requires that a transfer agent, which previously was exempt and thereafter has a volume of activity that removes the exemption, remain subject to the performance standards for six consecutive months before again qualifying for an exemption. This provision is intended to relieve both

¹⁵ For example, a transfer agent which received during the previous six months 499 items for transfer and 499 items for processing (in its capacity as an outside registrar) would, upon timely filing of the required notice with its appropriate regulatory agency, be exempt from the enumerated sections.

¹⁶ Section 17(c)(1) of the Act, 15 U.S.C. 78q(c)(1), among other things, requires every transfer agent which files a notice with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency or the Federal Deposit Insurance Corporation to file a copy of such notice with the Securities and Exchange Commission. The Securities and Exchange Commission and the Federal bank regulatory agencies have developed procedures pursuant to which the Federal bank regulatory agencies will transmit a copy of any notice under Section 240.17Ad-4(b) filed with them to the Securities and Exchange Commission. Accordingly, such filings with the appropriate regulatory agency by transfer agents for which the Securities and Exchange Commission is not the appropriate regulatory agency will constitute filings with the Securities and Exchange Commission for purposes of Section 17(c)(1) of the Act.

a transfer agent and the appropriate regulatory authority from the administrative burden that would be imposed when a transfer agent's volume of activity fluctuates around the exemption breakpoint.

One commentator asked whether § 240.17Ad-4 applies to transfer agents that do not issue and cancel, or act as registrar for, certificates but which only update and maintain the securityholder records (Section 3(a)(25)(C), 15 U.S.C. 78c(a)(25)(C)). Section 240.17Ad-2 is not intended to apply to a transfer agent in those circumstances and, accordingly, the notice requirement of § 240.17Ad-4 is also inapplicable.

Transfer agents which qualify for an exemption under § 240.17Ad-4 are not required thereafter to file additional notices for subsequent six month periods. The exemption remains effective until such transfer agent receives during a six month period 500 or more items for transfer or processing.

It should be noted that transfers of securities exempted under § 240.17Ad-4 (a) from certain provisions of these rules remain subject to §§ 240.17Ad-1; 240.17Ad-4; 240.17Ad-5; 240.17Ad-6(a)(8), (9) and (10), (b) and (c); and § 240.17Ad-7. In addition, transfer agents exempt under § 240.17Ad-4(b) from certain provisions of these rules remain subject to the sections listed above, as well as to § 240.17Ad-2 (e), (f) and (g) and § 240.17Ad-6(a)(1).

SECTION 240.17Ad-5 WRITTEN INQUIRIES

This rule sets forth the obligation of transfer agents to respond within prescribed time frames to inquiries which fall within the rules. Paragraphs (a) through (d) of the section are intended to cover four separate circumstances in which various persons make written inquiry about the transfer agent's performance of the transfer function. The information which the inquirer must present is the type of information that in practice is given to a transfer agent and is found sufficient to enable the agent to identify the account involved and the item presented. Nevertheless, a transfer agent that is able to respond within the requisite time frames to an inquiry even though it falls outside of the parameters of § 240.17Ad-5 is encouraged to make every effort to do so, particularly when the inquirer is not a professional in the securities business.

Paragraph (a) is written for "any person" who inquires in writing about the "status of * * * [his] item presented for transfer within the preceding six months." The status of the time on the transfer agent's books does not determine whether the inquiry falls under this paragraph of the rule; the status of the item on the presenter's books is the determinative factor. A transfer agent is required to respond, orally or in writing, within five business days after receiving the inquiry. For example, a written inquiry received on a Monday which is a business day must, assuming the intervening weekdays are business days, be responded to by close of business the fol-

lowing Monday. Paragraph (a) of the rule also indicates that if a new certificate is dispatched or mailed to the presenter within five business days following receipt of the inquiry, a response is not required. However, if the item is made available to the presenter by other means (i.e., it is awaiting pick-up), the transfer agent is required to notify the presenter that the item is available.

Paragraph (b) is written to complement existing § 240.15c3-3(c)(3) (17 CFR 240.15c3-3(c)(3) (regarding a broker-dealer's control of customer securities) and § 240.17a-13(b)(3) (17 CFR Section 240.17a-13(b)(3) (regarding quarterly security counts by broker-dealers). Paragraph (b) applies when a broker-dealer requests in writing that a registered transfer agent either confirm the agent's possession of a security previously presented for transfer by the broker-dealer or revalidate a window ticket for the security. The transfer agent is required to respond in writing within five business days, giving the required information. No written response is required if the transfer agent, within five business days following receipt of the inquiry, dispatches or mails the new certificate to the presenter or notifies the presenter that it is available for pick-up. One commentator requested that the phrase "revalidate a window ticket" be defined. The Commission understands the phrase to have a generally accepted meaning in the industry and accordingly believes that the phrase need not be defined in the rule.

Transfer agents whose response to an inquiry made under paragraphs (a) or (b) is that the security either was never received or was returned previously to the presenter should be aware of the requirements for reporting of lost, missing or stolen securities pursuant to § 240.17f-1 (17 CFR 240.17f-1). Similarly, other persons who are reporting institutions under that section should be aware of their reporting responsibility upon receipt of such information from a transfer agent.

Paragraph (c), although applicable to "any person," is designed primarily for a broker-dealer which is performing or undergoing a securities positions examination. Accordingly, this paragraph refers to a written request that a transfer agent "confirm possession of a certificate as of a given date." Several commentators recommended that the paragraph should require that the date specified for confirmation be within thirty days of the date the inquiry is received, because an open-ended "as of" date could in some cases impose a substantial burden upon a transfer agent. The paragraph has been modified to limit its application to an inquiry that was received not more than thirty days after the date specified

¹¹ A transfer agent is requested to "revalidate a window ticket" when the presenter desires acknowledgement in some appropriate fashion (e.g., by time-stamping again a copy of the window ticket) that the item is in the transfer agent's possession pursuant to the presenter's transfer instructions.

for confirmation. In addition, to insure that the person inquiring about the account has proper authority to do so, the paragraph has been modified to provide that it applies only to inquiries from a person or someone acting on behalf of the person whose account is involved. Moreover, the alternative of making available the certificate in question is not provided since, in most cases, the paragraph applies to confirmation activities by auditors of broker-dealers and will usually relate to a certificate already transferred.

Reference to a fee in paragraphs (c) and (d) was made in recognition of the current practice of some transfer agents of charging a fee for supplying the specific historical data described in those paragraphs and to confirm that those paragraphs are not intended to affect that established practice. Neither paragraph affirmatively requires the charging of a fee nor conditions the response to a request made thereunder on the time any such fee is paid, although a transfer agent may require assurance that payment will be received. Several commentators suggested that § 240.17Ad-5 (c) and (d) be modified to allow a transfer agent either to charge fees in advance of responding to written inquiries or to delay responding thereto until payment has been received. As the rule is adopted, a transfer agent may follow a practice of seeking written assurance of payment if he wishes. In this case, the time periods in paragraphs (c) and (d) would run from the date assurance of payment is received.

Several commentators recommended that rather than require the transfer agent to provide historical data arranged to show the status of an account as of a particular date, the transfer agent should be permitted to provide the inquirer with sufficient historical information about the activity in the account to enable the inquirer to reconstruct the certificates outstanding in his account as of the date specified in the request. Since the latter was the intention of paragraph (e), the language of § 240.17Ad-5(d) has been amended accordingly.

No provision was made in the proposed rules for an inquiry or request which does not meet the requirements of § 240.17Ad-5 (a) through (d). The Commission has, therefore, proposed Section 240.17Ad-5(e) in a release published today.

SECTION 240.17Ad-6 RECORDKEEPING PROVISIONS

The recordkeeping (§ 240.17Ad-6) and record retention (§ 240.17Ad-7) requirements are intended to serve a dual purpose: (1) to assure that all registered transfer agents are maintaining the minimum records necessary to monitor and keep adequate control over their own performance; and (2) to permit the appropriate regulatory authorities to examine registered transfer agents on an historical basis for compliance with applicable rules.

The recordkeeping rules are flexible with respect to the form in which most

records must be kept. Paragraph (a) (1) requires that "a receipt, ticket, schedule, log or other record" be kept showing the business day (that is, the year, month and day as determined under § 240.17Ad-1(h)) on which each routine and non-routine item is received from a presenter or outside registrar and is made available to such persons. For example, many transfer agents preserve the tickets accompanying items, and such tickets, if stamped with the required information, would comply with this rule. A transfer agent that uses a batch method for handling transfer items would use an "other record" referred to in the paragraph by recording the required information for each batch of items.

Paragraph (a) (2) (i) (B) as proposed has been restated as paragraphs (a) (2) (i) and (iii) to clarify the requirement that the records showing turnaround of routine items for each month distinguish clearly between routine items turned around within three business days of receipt and routine items turned around after three business days of receipt.

Some commentators suggested deleting the portions of paragraphs (a) (2) (vi) and (vii) (proposed paragraphs (a) (2) (ii) and (iii)) which require a transfer agent to maintain, as of the last business day of each month, a record of aged routine and non-routine items. As previously stated, the Commission believes that such logs are desirable controls for every registered transfer agent which turns around, transfers or processes securities and, hence, has determined to retain the provisions, with two changes. Paragraph (a) (2) (vi) has been modified to require that the log of routine items set forth the number of routine items in the transfer agent's possession which, as of the close of business on the last business day of each month, have been in its possession for more than four business days (not three as previously proposed). Since 90 percent of routine items must be turned around in three business days, and since the balance should be turned around by the fourth business day, a transfer agent normally should not have on the last business day of a month five-day old routine items to enter on the log. If the agent does, however, the necessity to make entries on this log will alert the transfer agent to its inadequate performance, as well as assist the regulatory agencies to gauge better the degree of the difficulties being experienced by transfer agents who apply for an exemption from the limitations provisions of § 240.17Ad-3. It should be noted that the log of aged routine items is required without regard to whether a transfer agent turned around more or less than 90 percent of routine items received during the month.

Paragraph (a) (2) (vii) has been modified from the form in which it was proposed previously to eliminate the re-

quirement that the record of non-routine items in a transfer agent's possession as of the last business day of each month contain the age of each non-routine item; as modified, the paragraph requires only that the number (and not the age) of such items be recorded.³⁶

Paragraph (a) (3) (previously proposed § 240.17Ad-6(a) (7)) does not require an outside registrar to track each item individually, but rather requires an outside registrar to keep a record showing for each month the total number of items which were received for processing, the number which were processed within the time frame specified in § 240.17Ad-2(b) and the number which required more than the specified time for processing.

Paragraph (a) (3) (ii) (B) has been modified to clarify the requirement that the number of items processed within the time frames of § 240.17Ad-2(b) must be stated separately from the number of items that required more than the time frames for processing specified by that section.

Paragraph (a) (4) requires a record of the calculations made in connection with performance monitoring to determine compliance with § 240.17Ad-2. This provision does not require any specific form of calculation; nevertheless, transfer agents seeking to comply with the 90 percent performance standards of § 240.17Ad-2 necessarily will perform monthly calculations to determine compliance. For example, at the close of the third business day following the end of a month, a transfer agent would know the total number of routine items received during the preceding month (§ 240.17Ad-6(a) (2) (i)) and the total number of those items turned around within three business days (§ 240.17Ad-6(a) (2) (ii)). Dividing the former into the latter will provide the percentage of routine items turned around within the time limits prescribed by § 240.17Ad-2.

³⁶ Both of the logs required by paragraphs (a) (2) (ii) and (iii) are cumulative; that is, any item reflected on the previous month's log which is still in the registered transfer agent's possession as of the last business day of the next month must be shown on the current month's log. It is expected, however, that no transfer agent will have any routine item in its possession for such a length of time.

In response to comments received, paragraph (a) (7) (previously proposed § 240.17Ad-6(a) (6)) has been revised to require recordation of exceptions only. Paragraph (a) (7) requires only a log identifying the number of inquiries subject to § 240.17Ad-5 received but not responded to within the time frames and the number of those inquiries still pending as of the last business day of the month covered by the report.

Paragraph (a) (11) (previously proposed § 240.17Ad-6(b) (3)) has been revised, in response to comments, to clarify the requirement that a registered transfer agent keep the document upon which it bases its determination that a particular item was received in connection with a special event and is therefore not routine under § 240.17Ad-1(i) (5) or (7). Of course, since only transfer agents which cancel and issue certificates would have an occasion to make such a determination, the section effectively applies only to those transfer agents.

The scope of paragraph (b), previously designated § 240.17Ad-6(b) (1), has been clarified. As adopted, transfer agents need not keep any documents concerning the matters covered by that paragraph. Instead, paragraph (b) requires a record setting forth, with respect to each issue, the total authorized and the total issued and outstanding.

In response to comments received, paragraph (c) (previously proposed § 240.17Ad-6(b) (2)) has been revised to apply only to registered evidences of ownership which have been cancelled.

SECTION 240.17Ad-7 RECORD RETENTION REQUIREMENTS

The record retention periods specified in § 240.17Ad-7 are not intended to replace longer retention periods that might be required by state law or other Federal laws. The retention periods are those considered necessary for the appropriate regulatory agency to monitor compliance with the turnaround rules.

The record retention provisions apply both to records described in § 240.17Ad-6 that are being kept at the time the retention provisions become effective and to records that are maintained thereafter in compliance with § 240.17Ad-6.

The following is a chart relating to the records required in § 240.17Ad-6 to the retention periods of § 240.17Ad-7:

Sec.	Maximum retention period	Period to be easily accessible	Relevant paragraph of sec. 240.17Ad-7
240.17Ad-6(a) (1)	2 yr.	6 mo.	(a)
240.17Ad-6(a) (2)	2 yr.	1 yr.	(b)
240.17Ad-6(a) (3) (i)	2 yr.	6 mo.	(a)
240.17Ad-6(a) (3) (ii)	2 yr.	1 yr.	(b)
240.17Ad-6(a) (4)	2 yr.	1 yr.	(b)
240.17Ad-6(a) (5)	2 yr.	1 yr.	(b)
240.17Ad-6(a) (6)	2 yr.	6 mo.	(a)
240.17Ad-6(a) (7)	2 yr.	1 yr.	(b)
240.17Ad-6(a) (8)	(c)	Termination	(c)
240.17Ad-6(a) (9)	(c)	do	(c)
240.17Ad-6(a) (10)	(c)	do	(c)
240.17Ad-6(a) (11)	2 yr.	6 mo.	(a)
240.17Ad-6(b)	(c)	Termination	(c)
240.17Ad-6(c)	6 yr.	6 mo.	(d)

³⁷ Termination plus 1 yr.

Paragraph (f) is intended to assure that records in the possession of service agents who act under contract with transfer agents are available for examination by regulatory authorities.²

The question was asked whether the phrase "easily accessible place" would permit records to be kept in "low-storage-cost" record centers from which the records could be retrieved within twenty-four hours. The purpose of requiring that records be kept in an "easily accessible place" is to insure that regulatory authorities may examine them as necessary or appropriate in discharging regulatory responsibilities. Inasmuch as the length of time for which records must be kept in an "easily accessible place" has, in most cases, been shortened, it is expected that records subject to that requirement will be made available either immediately or on the same day as the request to examine them is made.

In response to comments, the Commission has added § 240.17Ad-7(h) to relieve a registered transfer agent, which ceases to perform transfer agent functions for an issue, of the responsibility of retaining records required to be made and kept under § 240.17Ad-6(a) (1), (6), (9), (10), and (11), (b) and (c) once the records are delivered to the successor transfer agent.

III. STATUTORY BASIS AND COMPETITIVE CONSIDERATIONS

Sections 240.17Ad-1 through 17Ad-7 are adopted pursuant to the Securities Exchange Act of 1934, in particular Sections 2, 17, 17A, and 23(a) thereof, 15 U.S.C. 78b, 78g, 78q-1, and 78w(a). Certain editorial changes have been made to the rules as proposed. Other amendments that appear in the adopted rules were made to clarify the Commission's intent in light of comments received, and such amendments either grant exemptions in addition to those proposed or relieve restrictions that were contained in the proposed rules. Accordingly, the Commission has determined that further notice and public procedures on these rules are unnecessary.

The Commission finds that any burden upon competition imposed by these rules is necessary and appropriate in the public interest, for the protection of investors and to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.

IV. EFFECTIVE DATES

Section 240.17Ad-1 (definitions), § 240.17Ad-2(c) (notice of failure to comply with the turnaround requirement of § 240.17Ad-2(a)), (d) (notice of failure to comply with the processing requirement of § 240.17Ad-2(b)), (f) (procedures assuring that items received at

² Paragraph (f) permits registered transfer agents who currently return all cancelled certificates and other records to the issuer to continue to do so provided the issuer agrees to make the certificates and records available for examination by, and to furnish copies upon request to, the transfer agent regulatory agencies.

locations other than the premises at which the transfer agent performs transfer agent functions will be forwarded to such premises promptly), (g) (procedures assuring that processed items received by a transfer agent are made available promptly to the presenter), (h) (where to file notices) and § 240.17Ad-4 (exemptions) are effective as of October 3, 1977. The remaining provisions, including the time requirements for turnaround or processing of items and automatic imposition of limitations, are effective January 2, 1978.

Under this arrangement of phased implementation dates, transfer agents will have three months to implement a monitoring system and to develop operating procedures and three additional months to complete whatever changes are necessary to comply with the adopted rules. During the second three month period, between October 3, 1977, and January 2, 1978, transfer agents will be required to report if they are not meeting the turnaround and processing requirements of § 240.17Ad-2 (a) and (b), even though these two paragraphs do not themselves become effective until January 2, 1978. This will enable the appropriate regulatory agencies to monitor the transfer agent industry's progress in making any adjustments necessary to comply with the rules.

VI. TEXT OF §§ 240.17Ad-1 THROUGH 17Ad-7

§ 240.17Ad-1 Definitions.

As used in this section and §§ 240.17Ad-2, 240.17Ad-3, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6, and 240.17Ad-7:

(a) The term "item" means a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presenter) presented for transfer, or an instruction to a transfer agent which holds securities registered in the name of the presenter to transfer or to make available all or a portion of those securities. In the case of an outside registrar each certificate to be countersigned is an item.

(b) The term "outside registrar" with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(c) An item is "made available" when

(1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presenter or a person designated by the presenter, or

(2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or

(3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

(d) The "transfer" of an item is accomplished when, in accordance with the presenter's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presenter by the transfer agent, or when, in accordance with the presenter's instructions, a transfer agent which holds securities registered in the name of the presenter completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presenter or a person designated by the presenter or, with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(e) The "turnaround" of an item is completed when transfer is accomplished or, when an outside registrar is involved, the transfer agent in accordance with the presenter's instructions completes all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(f) The term "process" means the accomplishing by an outside registrar of all acts necessary to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed.

(g) The "receipt" of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in Section 3(a) (25) of the Act.

(h) A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays, and legal holidays, or other holidays normally observed by the transfer agent.

(i) An item is "routine" if it does not (1) require requisitioning certificates of an issue for which the transfer agent, under the terms of its agency, does not maintain a supply of certificates; (2) include a certificate as to which the transfer agent has received notice of a stop order, adverse claim, or any other restriction on transfer; (3) require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations, or opinions of counsel before transfer may be effected; (4) require review of supporting documentation other than assignments, endorsements or stock powers, certified corporate resolutions, signature, or other common and ordinary guarantees, or appropriate tax, or tax waivers; (5) involve a transfer in connection with a reorganization, tender offer, exchange, redemption, or liquidation; (6) include a warrant, right, or convertible security pre-

sented for transfer of record ownership within five business days before any day upon which exercise or conversion privileges lapse or change; (7) include a warrant, right, or convertible security presented for exercise or conversion; or (8) include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

§ 240.17Ad-2 Turnaround, processing, and forwarding of items.

(a) Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt of at least 90 percent of all routine items received for transfer during a month. For the purposes of this paragraph, items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(b) Every registered transfer agent acting as an outside registrar shall process at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of this section, "items received" shall not include any item enumerated in § 240.17Ad-1(i) (5), (6), (7), or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

(c) Any registered transfer agent which fails to comply with paragraph (a) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the number of routine items which the registered transfer agent failed to turnaround in accordance with the requirements of paragraph (a) of this section, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(d) Any registered transfer agent which fails to comply with paragraph

(b) of this section with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of this section. Such notice shall state the number of items received for processing during the month, the number of items which the registered transfer agent failed to process in accordance with the requirements of paragraph (b) of this section, the percentage that such items represent of all items received during the month, the reasons for such failure and the steps which have been taken, are being taken or will be taken to prevent a future failure, and the number of items which as of the close of business on the last business day of the month have been in the transfer agent's possession for more than the time allowed for processing and have not been processed.

(e) All routine items not turned around within three business days of receipt and all items not processed within the periods prescribed by paragraph (b) of this section shall be turned around or processed promptly, and all non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(f) A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(g) A registered transfer agent which receives processed items from an outside registrar shall have appropriate procedures to assure, and shall assure, that such items are made available promptly to the presenter.

(h) Any notice required by this section or § 240.17Ad-4 shall be filed as follows:

(1) Any notice required to be filed with the Commission shall be filed in triplicate with the principal office of the Commission in Washington, D.C. 20549 and, in the case of a registered transfer agent for which the Commission is the appropriate regulatory agency, an additional copy shall be filed with the Regional Office of the Commission for the region in which the registered transfer agent has its principal office for transfer agent activities.

(2) Any notice required to be filed with the Comptroller of the Currency shall be filed with the Office of the Comptroller of the Currency, Administrator of National Banks, Washington, D.C. 20219.

(3) Any notice required to be filed with the Board of Governors of the Federal Reserve System shall be filed with the Board of Governors of the Federal Reserve System, Washington, D.C. 20251 and with the Federal Reserve Bank of the district in which the registered transfer agent's principal banking operations are conducted.

(4) Any notice required to be filed with the Federal Deposit Insurance Corporation shall be filed with the Federal De-

posit Insurance Corporation Washington, D.C. 20429.

§ 240.17Ad-3 Limitations on expansion.

(a) Any registered transfer agent which is required to file any notice pursuant to § 240.17Ad-2 (c) or (d) for each of three consecutive months shall not, from the fifth business day after the end of the third such month until the end of the next following period of three successive months during which no such notices have been required:

(1) Initiate the performance of any transfer agent function or activity for an issue for which the transfer agent does not perform, or is not under agreement to perform, transfer agent functions prior to such fifth business day; and

(2) With respect to an issue for which transfer agent functions are being performed on such fifth business day, initiate for that issue the performance of an additional transfer agent function or activity which the transfer agent does not perform, or is not under agreement to perform, prior to such fifth business day.

(b) Any registered transfer agent which for each of two consecutive months fails to turn around at least 75% of all routine items in accordance with the requirements of § 240.17Ad-2(a) or to process at least 75% of all items in accordance with the requirements of § 240.17Ad-2(b) shall be subject to the limitations imposed by paragraph (a) of this section and further shall, within twenty business days after the close of the second such month, send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice filed pursuant to § 240.17Ad-2 (c) or (d) with respect to the second such month.

§ 240.17Ad-4 Applicability of §§ 240.17Ad-2, 240.17Ad-3 and 240.17Ad-6(a) (1) through (7) and (11).

(a) Sections 240.17Ad-2, 240.17Ad-3 and 240.17Ad-6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(b) Except as provided in paragraph (c) of this section, §§ 240.17Ad-2 (a) (b), (c), (d) and (h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11) shall not apply to any registered transfer agent which during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing and which, within ten business days following the close of the sixth such consecutive month, shall have filed with its appropriate regulatory agency a notice certifying to that effect (hereinafter an "exempt transfer agent").

(c) Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent receives 500 or more items for transfer or 500 or more

items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with its appropriate regulatory agency notice to that effect. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the registered transfer agent shall no longer be exempt under paragraph (b) of this section from the requirements of §§ 240.17Ad-2 (a), (b), (c), (d) and (h), 240.17Ad-3 and 240.17Ad-6(a) (2) through (7) and (11). Any registered transfer agent which has ceased to be an exempt transfer agent shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing sections for six consecutive months following the month in which it filed the notice required by this paragraph.

§ 240.17Ad-5 Written inquiries and requests.

(a) When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presenter within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(b) When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket with respect to such security and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall, within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched

or mailed to the presenter within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(c) When any person, or anyone acting under his authority, requests in writing that a transfer agent confirm possession as of a given date of a certificate presented by such person during the 30 days before the date the inquiry is received and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which the certificate was registered, every registered transfer agent shall, within ten business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available a written response to such person, or anyone acting under his authority, confirming or denying possession of such security as of such given date.

(d) When any person requests in writing a transcript of such person's account with respect to a particular issue, either as the account appears currently or as it appeared on a specific date not more than six months prior to the date the registered transfer agent receives the request, every registered transfer agent shall, within twenty business days following receipt of the request and upon assurance of payment of a reasonable fee if required by such transfer agent, make available to such person a transcript, ledger or statement of account in sufficient detail to permit reconstruction of such account as of the date for which the transcript was requested.

§ 240.17Ad-6 Recordkeeping.

(a) Every registered transfer agent shall make and keep current the following:

(1) A receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presenter and, if applicable, from the outside registrar and (ii) made available to the presenter and, if applicable, to the outside registrar;

(2) A log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the months that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's pos-

session for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession as of the close of business on the last business day of each month;

(3) With respect to items for which the registered transfer agent acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (1) received from the presenting transfer agent and (2) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;

(B) The number of items processed within the time required by § 240.17Ad-2(b); and

(C) The number of items not processed within the time required by § 240.17Ad-2(b);

(4) A record of calculations demonstrating the registered transfer agent's monitoring of its performance under § 240.17Ad-2 (a) and (b);

(5) A copy of any written notice filed pursuant to § 240.17Ad-2;

(6) Any written inquiry or request, including those not subject to the requirements of § 240.17Ad-5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presenter; if no response to an inquiry or request was made, the date the certificate involved was made available to the presenter; or, in the case of an inquiry or request under § 240.17Ad-5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry;

(7) A log, journal, schedule or other record showing the number of inquiries subject to § 240.17Ad-5 (a), (b), (c) and (d) received during each month but not responded to within the required time frames and the number of such inquiries pending as of the close of business on the last business day of each month;

(8) Any document, resolution, contract, appointment or other writing, and any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer;

(9) Any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer;

(10) A copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

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(11) Any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under § 240.17Ad-1(i) (5) or (8).

(b) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization.

(c) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presenter.

§ 240.17Ad-7 Record retention.

(a) The records required by § 240.17Ad-6(a), (1), (3) (i), (6) or (11) shall be maintained for a period of not less than two years, the first six months in an easily accessible place.

(b) The records required by § 240.17Ad-6(a) (2), (3) (ii), (4), (5) or (7) shall be maintained for a period of not less than two years, the first year in an easily accessible place.

(c) The records required by § 240.17Ad-6(a) (8), (9) and (10) and (b) shall be maintained in an easily acces-

sible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(d) The records required by § 240.17Ad-6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(e) Every registered transfer agent shall maintain in an easily accessible place:

(1) All records required under § 240.17f-2(d) until at least three years after the termination of employment of those persons required by § 240.17f-2 to be fingerprinted; and

(2) All records required pursuant to § 240.17f-2(e) for three years;

(f) The records required to be maintained pursuant to § 240.17Ad-6 may be produced or reproduced on microfilm and be preserved in that form for the time required by § 240.17Ad-7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other representatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(g) If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of §§ 240.17Ad-6 and 240.17Ad-7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other record-keeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other record-keeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent, if it is not the Commission; and

(2) The outside service bureau, record-keeping service, or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad-7 to retain the records required to be made and kept current under § 240.17Ad-6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

Accordingly, the Commission hereby adopts §§ 240.17Ad-1, 240.17Ad-2, 240.17Ad-3, 240.17Ad-4, 240.17Ad-5, 240.17Ad-6 and 240.17Ad-7.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

JUNE 16, 1977.

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