RULINGS AND REGULATIONS

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 fulfill their functions; (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); 240.17Ad-5; 240.17Ad-6 (a), (b), and (f); and 240.17Ad-7 through 17Ad-5 (sections hereinafter "adopted rules") entered into force on August 22, 1977.

DISCUSSION OF THE ADOPTED RULES

SUMMARY: 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 performs its functions with promptness and accuracy as set forth in section 17A(d)(3)(A)(i) of the 1934 Act, 15 U.S.C. 78q-1(d)(3)(A)(i), the 41st Federal Register, Part 240, 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 commenters.

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 performs its functions with promptness and accuracy as set forth in section 17A(d)(3)(A)(i) of the 1934 Act, 15 U.S.C. 78q-1(d)(3)(A)(i), the 41st Federal Register, Part 240, 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 commenters.

C. EFFECT OF RULES OF SELF-REGULATORY ORGANIZATIONS

Several commentators questioned whether the Commission's turnaround time standards, which are similar to those imposed by self-regulatory organizations which require, among other things, that transfer agents act for certain listed issuers 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.

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-4 (a) (1) and (11), but remain subject to §§ 240.17Ad-5, 240.17Ad-6 (a) (8), 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), and (h), 240.17Ad-3, and 240.17Ad-6 (a) (8), (f), and (g), §§ 240.17Ad-4, 240.17Ad-5, 240.17Ad-6 (a) (1), (8), (9), and (19), (b) and (c) and 240.17Ad-7.

II. DISCUSSION OF THE ADOPTED TURN-AROUND 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 turnover time standards 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 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 shipment control list.
CERTIFICATES OF A SINGLE ISSUE OF SEcurities INCLUDED WITHIN A SINGLE TICKET. It appears that the depositary concerned has recently implemented changes in its procedures, and that, as a result, each ticket (shipment control list) shall be the average contain 20 lines requiring delivery 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 render the certificates required. Accordingly, the definition of "item" has not been changed. The definition also extends to issues presented under a transfer agent custodian arrangement. Finally, the definition of "transfer," public distribution, outside registrar, each certificate to be countersigned is an item.

Section 17A-d-1(c) provides that an item, 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 reasonable such as to the transfer agent 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 requirements of § 240.17Ad-2(b)(1) would make the item available when, or on or before the opening of the next business day, the item is being taken by a messenger to a location 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 delivered 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. Public distributions, outside 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 (d) (8). The second part of the definition of "transfer" refers to the manner in which the transfer agent performs its function when a transfer agent maintains custody of securities under a transfer agent custodian program. The language of the definition of certain means that a transfer agent's performance of the function performed by the registrant to the transfer and registration of ownership by book entry on the security holder records when no certificates are delivered to the transfer agent. If a transfer agent transfers "promptly" to the presentor, one of a procedure to avoid delays in delivering items required to be transferred to the presentor. One commentor asked whether an item received at a location where it is to be picked up by the receiving party, such as a transfer agent's office or 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 delivered to the transfer agent by an outside registrar.

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subsections (i) (d) (that is, "assignments, endorsements or stock powers, certified corporate resolutions, etc.") of the item would be considered "non-routine." If, in 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. If received between two business days, before exercise or conversion privileges expire 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 amounts were 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 options, 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 commenters suggested that the definition of "routine item" exclude securities of an issue for which the transfer agent recently assumed the responsibility for the function of transfer agent functions from another transfer agent. These commenters believed that in such circumstances the records may be in disarray and require an extensive period of time to perform all necessary work. 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, an item should be considered "non-routine." 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) must perform their functions "turnaround" such items) within three business days of the items' receipt. Paragraph (b), as adopted, requires the processing to be completed by noon 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 registering items to the transfer agent. Although the Commission is aware that a number of outside registrars both process and deliver most of their items to the transfer agent acting in a dual capacity to percent of routine items received during any month, must perform their obligations as part of the "turnaround" function." Section 17Ad-1 (h) of the definition of "business day" which establishes a noon-to-noon cutoff for items received that are subject to paragraph (a).

As proposed, paragraph (b), which pertains to a transfer agent when acting as an outside registrar, required that at least 90 percent 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 noon 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 registering 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 encourage 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 percent 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).

The 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 before noon 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 in 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 over 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 that day and, assuming the intervening weekdays are business days, would have to be turned around by noon of the following 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.

Paragraph (c), as proposed, has been restated as paragraphs (c) and (d). Paragraph (d) as adopted, prescribes a notice requirement for transfer agents which, during any month, fail to meet the performance standards established by paragraphs (a) and (b) respectively. The information in such notices 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 the possible need for supplementing the limitations under § 240.17Ad-3 with remedial action. In

Section 240.17Ad-3, discussed infra, prescribes certain limitations that are applied to transfer agents with respect to the failure to meet the performance standards, are required to file notice repeatedly. Requested failure to perform at the level with a view Section 240.17Ad-3 (a) and (b) requires filing notices with the regulatory authorities and, if continued, application of further remedial action. In the transfer agent's business until the agent can demonstrate an ability to meet the standards. During this time, the regulatory authorities can consider the agent's performance to determine whether to initiate, under Sec-

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order to better facilitate prompt responses by the appropriate regulatory agencies to requests for exemption from § 240.17Ad-3, the Commission 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 as proposed. One commenter had suggested that more time be allowed for transfer agents to compute their performance for a given month (the disposition of items received before the last business day of the 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 for ten reports or other materials to be received by a regulatory agency.

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 described in §§ 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 of receipt, 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 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 considering whether the application of limitations does not preclude the institution of administrative or civil or criminal (if the violation is willful) proceedings 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 the 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(e) 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 the three-month time period 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 turn around within three business days 90% or more of its 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 § 240.17Ad-2(b)). Similarly, if a transfer agent during a month failed to turn around within three business days 75% or more of its routine transfer items and in the next month failed to turn around 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 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 activity that 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.

Once the limitations are applied, whether because of failure to comply with § 240.17Ad-2(a) or § 240.17Ad-2(b) both, it remains for the transfer agent's performance to meet the standards of both paragraphs (a) and (b) of that section for three consecutive months, i.e., 90% or more of all actions for which the transfer agent has agreed to act, including items each turned around or processed within the prescribed periods of time for each of the 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 transfer agents which are unable to perform its current obligations in a timely manner to take on additional responsibilities. Moreover, the Commission believes that any limitation on new transfer agent business 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 business, may perform 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 standard of that transfer was not being met.

Some commenters urged 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 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.

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

The attachment of limitations would not prevent a transfer agent from acting for new series of bonds (of an open-end fund) issued after the limitations date, provided the transfer agent acted in the same capacity for the bonds before the limitations date.
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 account items under § 240.17Ad-2 (a) or (b). Paragraph (b) applies to the limitations described in paragraph (a) specified above, and also requires the transfer agent to notify the chief executive officer of each issuer of each item 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. Applications for relief should be well-documented and contain a thorough presentation as to the facts demonstrating that 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 notification 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. 20438; (D) for a transfer agent registered with the Securities and Exchange Commission, the Office of Securities Protection and 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 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 application 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) (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 purchase of stocks and bonds on issuer's record. Moreover, that activity is subject to Section 23(e) of the Investment Company Act of 1940, 15 U.S.C. 80a-23(e). There is no factual basis, however, 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. 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 received on transfers and withdrawals of shares during the initial quarter of this year 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 all transfer agents to comply with the minimum performance standards and certain recordkeeping provisions. Accordingly, paragraphs (B) of § 240.17Ad-4 exempts from § 240.17Ad-2 (a), (b), (c), (d) and (b), 240.17Ad-3 and 240.17Ad-6 (a) (7) and (11) any registered transfer agent that, 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 regulatory agency within ten business days of the close of the sixth such month a notice described in that paragraph. Additionally, if the notice is required to be filed only with the transfer agent's appropriate regulatory agency.

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 not be qualified as 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 same period, the transfer agent remains subject to § 240.17Ad-1 through 7.

Paragraph (c) sets forth the conditions 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

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.

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 Commission or the Federal Reserve Bank of New York, the Federal Reserve Bank of Chicago, or the Federal Reserve Bank of San Francisco, to transmit a copy of any notice under Section 17(c) of the Act, 15 U.S.C. 78q (c) (1) and the Securities and Exchange Commission. Accordingly, such filings with the appropriate regulatory agency by transfer agents for which the Federal Reserve banks or 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.

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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 commenter asked whether § 240.17Ad-4 applies to transfer agents that do not issue and cancel, renew, and register for, certificates but which only update and maintain the securityholder records (Section 3(a) (28) (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 any items from 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-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 subject to the sections listed above, in addition 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 and to the type of 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 make a decision and return the information to the inquirer. 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 following receipt of the inquiry. For example, a written inquiry received on a Monday which is a business day may, assuming the intervening weekdays are business days, be responded to by close of business the following 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., is awaiting pick-up), the transfer agent is required to identify to the presenter that the item is available.

Paragraph (b) is written to complement existing § 240.17Ad-3(c) (3) (17 CFR 240.17Ad-3(c) (3)) (regarding a broker-dealer or transfer agent's records and § 240.17Ad-13(b) (3) (17 CFR Section 240.17Ad-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 when the security is revaluated 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 commenter indicated 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 that it is not available, the presenter should be aware of the requirements for reporting of lost, missing or stolen securities pursuant to § 240.17Ad-1 (17 CFR 240.17Ad-1). Similarly, other information in the section that are not subject to the 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 requires that the date specified for confirmation be the one or two business 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 for confirmation. In addition, to ensure that the person inquiring about the account has proper authority to do so, the paragraph has been amended 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 not 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 such fee is paid, although a transfer agent may require assurance that payment will be received. Several commentors recommended 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. One commenter indicated that 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 of the assurance of payment received.

Several commentors 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 account as of the date of receipt. The section allows 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 (c), the phrase 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-4(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 agencies 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
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:

<table>
<thead>
<tr>
<th>Relevant paragraph of sec. 240.17Ad-6</th>
<th>Period to be easily accessible</th>
<th>Maximum retention period</th>
</tr>
</thead>
<tbody>
<tr>
<td>§240.17Ad-6(a)</td>
<td>1 yr</td>
<td>7 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(b)</td>
<td>1 yr</td>
<td>5 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(c)</td>
<td>1 yr</td>
<td>3 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(d)</td>
<td>1 yr</td>
<td>2 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(e)</td>
<td>1 yr</td>
<td>1 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(f)</td>
<td>1 yr</td>
<td>1 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(g)</td>
<td>1 yr</td>
<td>1 yr</td>
</tr>
<tr>
<td>§240.17Ad-6(h)</td>
<td>1 yr</td>
<td>1 yr</td>
</tr>
</tbody>
</table>

Footnotes:
1. Terminology added 3 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. 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 assure that regulatory authorities may examine them as necessary or appropriate in discharging regulatory responsibilities. Inasmuch as the necessity 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.

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 records and necessary records for examination by, and to furnish copies upon request to, the transfer agent regulatory agencies.

(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 representing all or a portion of those securities and to make available the new certificate or certificates to the presentor or a person designated by the presentor, 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.

PHILIP G. LADENBURG

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sent for transfer of record ownership within five business days following their receipt. Any transfer agent which fails to perform its duties as required by this section shall be deemed to have failed to comply with the requirements of paragraph (b) of this section unless it is shown that the failure was not due to any act or omission on its part.

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

(a) Every registered transfer agent (except when acting as an outside registrar) shall be required to process items received during a month. For the purposes of this section, "items received" shall mean all items received by the transfer agent during a month. For the purposes of this section, "items" shall include any item enumerated in paragraphs (a), (b), (c), and (d) of this section. Items received during a month shall be processed by the transfer agent on the fifth business day following the end of the month, unless the transfer agent has been given specific instructions by the Securities and Exchange Commission to the contrary. Items received during the month shall be processed within five business days after the end of the month, unless the transfer agent has been given specific instructions by the Securities and Exchange Commission to the contrary.

(b) Every registered transfer agent acting as an outside registrar shall process items received during the month within three business days after the end of the month, unless the transfer agent has been given specific instructions by the Securities and Exchange Commission to the contrary.

(c) Any notice required to be filed with the Securities and Exchange Commission shall be filed in accordance with § 240.17Ad-2 and § 240.17Ad-3 on or before noon on the business day following the end of the month

§ 240.17Ad-3 Timeliness of notices.

(a) Any notice required to be filed with the Securities and Exchange Commission shall be filed in accordance with § 240.17Ad-3 and § 240.17Ad-4 on or before noon on the business day following the end of the month.

(b) Any notice required to be filed with the Securities and Exchange Commission shall be filed in accordance with § 240.17Ad-3 and § 240.17Ad-4 on or before noon on the business day following the end of the month.

(c) Any notice required to be filed with the Securities and Exchange Commission shall be filed in accordance with § 240.17Ad-3 and § 240.17Ad-4 on or before noon on the business day following the end of the month.

§ 240.17Ad-4 Applicability of §§ 240.17Ad-2, 240.17Ad-3, and 240.17Ad-6.

(a) Sections 240.17Ad-2, 240.17Ad-3, and 240.17Ad-6 apply to transfer agents and their activities.

(b) Except as provided in paragraph (c) of this section, §§ 240.17Ad-2 (a), (b), (c), (d), and (e) and § 240.17Ad-6 (a) and (b) apply to transfer agents and their activities.
items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with the 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, within five business days of receipt of the request, provide written notice to each holder and anyone acting in behalf of any person who was engaged in an active business of the close of business on the last business day of each month, 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) presented, the approximate date of presentment, the certificate number and the name in which it is registered, the registered transfer agent acts as an outside registrar, 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, the registered transfer agent acknowledges the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor 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 with respect to a particular issue, either as of any given date of a certificate presented by such person during the 30 days before the date the inquiry is received 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 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 thirty days prior to the date the certificate was registered, the executing the account by such transfer agent, including those not subject to the requirements of § 240.17Ad-5, concerning an item, showing the date received; a record of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request made available to the presentor: (A) Each item is received from such transfer agent; and (B) each item is received from such transfer agent.

(e) 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, the registered transfer agent acts as an outside registrar, 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, the registered transfer agent acknowledges the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor 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.

(f) If any record, including those not subject to the requirements of § 240.17Ad-5, concerning an item, showing the date received; a record of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request made available to the presentor:

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

(h) Any copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

§ 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 addresses and address to which it was made available and the number of any new certificate which was registered and the name in which it is registered. If the registered transfer agent is required to make available to the presenting transfer agent a new certificate or a new receipt, ticket, schedule, log or journal in connection with 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,

(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, the 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 possesses, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presentor 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 with respect to a particular issue, either as of any given date of a certificate presented by such person during the 30 days before the date the inquiry is received 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 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 thirty days prior to the date the certificate was registered, the executing the account by such transfer agent, including those not subject to the requirements of § 240.17Ad-5, concerning an item, showing the date received; a record of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request made available to the presentor:

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

(f) Any copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

§ 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 on which each such item is received; (2) a record of calculations demonstrating the registered transfer agent’s monitoring of its performance under § 240.17Ad-2 (a) and (b); (3) A record of any written notice filed pursuant to § 240.17Ad-2; (4) Any written inquiry or request, including those not subject to the requirements of § 240.17Ad-5, concerning an item, showing the date received; a record of any written response to an inquiry or request, showing the date dispatched or mailed to the presentor; if no response to an inquiry or request was made, the date the certificate involved was made available to the presentor; or, in the case of an inquiry or request made available to the presentor:

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

(c) Any copy of any transfer journal and registrar journal prepared by such registered transfer agent; and
(1) 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, reorganization, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under §240.17Ad-1(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, 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 retained for a period of not less than two years, if 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 retained 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 (d) shall be maintained in an easily accessible 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 recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping 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, recordkeeping 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), (5), (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. Pittman,
Secretary.


[FR Doc.77-17766 Filed 6-23-77; 8]