

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 200 and 240

[Release No. 34-35039; File No. S7-1-92]

RIN 3235-AE20

### Notice of Assumption or Termination of Transfer Agent Services

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rulemaking.

**SUMMARY:** Securities and Exchange Commission today is adopting new Rule 17Ad-16 under the Securities Exchange Act of 1934 which requires a registered transfer agent to provide written notice to a registered securities depository when terminating or assuming transfer agent services on behalf of an issuer or when changing its name or address. The rule will address a continuing problem of unannounced transfer agent changes which affects the prompt transfer of securities certificates.

**EFFECTIVE DATES:** Section 200.30-3(a)(56) is effective on December 8, 1994. Section 240.17Ad-16 is effective on February 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Ester Saverson, Jr., Special Counsel, at 202/942-4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission ("Commission") is adopting new Rule 17Ad-16 (17 CFR 240.17Ad-16) under the Securities Exchange Act of 1934 ("Act"). The rule requires registered transfer agents to notify a registered securities depository of changes in the transfer agent's name or address or in the securities for which it performs transfer agent functions.

#### I. Introduction and Summary

On January 10, 1992, the Commission published for comment proposed Rule 17Ad-16 pursuant to section 17A(d)(1) of the Act.<sup>1</sup> Section 17A(d)(1) of the Act provides, among other things, that no registered transfer agent shall engage in any activity in contravention of any rules and regulations that the Commission may promulgate "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of (the Act)."<sup>2</sup> Pursuant to that

grant of authority, the Commission has adopted rules that establish minimum performance standards for registered transfer agents in connection with the timely cancellation and issuance of securities certificates.<sup>3</sup> Those standards are designed to assure, among other things, that registered transfer agents expeditiously process items presented for transfer. The standards presuppose that securityholders will know, based on an examination of the certificate they intend to present for cancellation, the name and address of the transfer agent the issuer has assigned to perform transfer agent functions. As discussed in greater detail below, that presumption may not be valid in many cases.

Rule 17Ad-16 is designed to address a current and continuing problem of transfer delays due to unannounced transfer agent changes, including the change of a transfer agent for a particular issue and the change of the name or address of a transfer agent. The rule requires transfer agents to send a notice to the appropriate qualified registered securities depository<sup>4</sup> when assuming or terminating transfer agent services on behalf of an issuer or when changing its name or address.

The Commission believes that the proposed rule will facilitate the prompt and accurate clearance and settlement of securities transactions in shorter time frames.<sup>5</sup> With less time for transfer of securities ownership, it is critical that securities certificates be sent to the

respect to any security registered under section 12 of the Act or that would be required to be registered except for the exemption from registration provided by subsection (g)(2)(B) or (g)(2)(G) of that section to be registered with the Commission. Section 3(a)(25) of the Act defines transfer agent as any person who engages on behalf of an issuer of securities or on behalf of itself as an issuer of securities in (A) countersigning such securities upon issuance; (B) monitoring the issuance of such securities with a view to preventing unauthorized issuance (a function commonly performed by a person called a registrar); (C) registering the transfer of such securities; (D) exchanging or converting such securities; or (E) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

<sup>3</sup> See, e.g., 17 CFR 240.14Ad-7.

<sup>4</sup> The "appropriate qualified registered securities depository" is defined as the largest holder of record of all qualified registered securities depositories or such other qualified registered securities depository designated by the Commission by order. The Depository Trust Company, Philadelphia Depository Trust Company, and the Midwest Securities Trust Company currently are qualified registered securities depositories.

<sup>5</sup> On October 6, 1993, the Commission adopted Rule 15c6-1 which establishes three business days after trade date, rather than five business days, as the standard settlement cycle for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1994), 58 FR 52891. The rule becomes effective June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

appropriate transfer agent in order to avoid unnecessary settlement and transfer delays. In addition, sending stock certificates to the appropriate transfer agent greatly reduces the expense of transfer of ownership. Finally, the Commission today issued a release soliciting comment on the implications of an automated environment for the direct registration of investors with links to the secondary market clearance and settlement system. In such an environment, it is important that changes in transfer agent assignments be communicated on a timely basis.

Five commenters addressed one or more aspects of the proposed rule.<sup>6</sup> Three commenters favored the proposed rule, all of whom provided additional comments on specific sections of the proposed rule. One commenter offered suggestions without explicitly supporting the proposed rule. One commenter objected to the proposed rule. The views of the commenters are discussed in detail below.

The Commission has modified proposed Rule 17Ad-16 to address certain commenter suggestions and concerns. The Commission has rejected some suggestions offered by commenters, as discussed below. Finally, for the reasons discussed in the Proposing Release and below, the Commission is adopting Rule 17Ad-16 as revised.

#### II. Basis and Purpose

Transfer delays cause problems for registered securities depositories, depository participants, and their customers in the form of increased delays, costs, and risks. Timely securities transfer is necessary for the efficiency of the national system for the clearance and settlement of securities

<sup>6</sup> See Letters from Richard B. Nesson, General Counsel and Senior Vice President, The Depository Trust Company ("DTC"), to Jonathan G. Katz, Secretary, Commission (February 12, 1992); Sarah A. Miller, Senior Government Relations Counsel, Trust and Securities, American Bankers Association ("ABA"), to Jonathan G. Katz, Secretary, Commission (February 10, 1992); Cecelia M. Widup, President, Corporate Transfer Agents Association, Inc. ("CTAA"), to Jonathan G. Katz, Secretary, Commission (February 4, 1992); Fred D. Ellis, Vice President, Mellon Financial Services ("Mellon"), to Jonathan G. Katz, Secretary, Commission (June 2, 1992); and Donald R. Hollis, Executive Vice President, First Chicago Corporation ("First Chicago"), to Jonathan G. Katz, Secretary, Commission (February 7, 1992). These comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. In addition, as required by Section 17A(d)(3)(A)(i) of the Act, the Commission, at least fifteen days prior to issuance of this release, consulted with the requested views of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

<sup>1</sup> Securities Exchange Act Release No. 30148 (January 6, 1992), 57 FR 1128 (hereinafter cited as Proposing Release).

<sup>2</sup> Section 17A(c)(1) of the Act requires transfer agents that perform transfer agent functions with

transactions.<sup>7</sup> Transfer requests sent to the wrong transfer agent or to the wrong address must be returned to the party requesting the transfer, who then must ascertain the correct transfer agent or address. Even worse, in some instances a transfer request may not be returned to the requesting party, resulting in the loss of securities certificates. The rule is designed to reduce the number of misdirected transfer requests and the resulting delays, costs, and risks by requiring a transfer agent to provide the appropriate qualified registered securities depository advance notice of certain status changes.

Transfer delays cause acute problems for the three registered securities depositories—The Depository Trust Company (“DTC”), Philadelphia Depository Trust Company (“Philadep”) and the Midwest Securities Trust Company (“MSTC”)—that hold a large number of certificates for safekeeping and have a large daily volume of certificate transfers.<sup>8</sup> These delays also affect depository participants (e.g., banks and broker-dealers) and their customers, (i.e., shareholders) in the form of increased delays, costs, and risks.

The depositories hold securities certificates in the nominee name is safekeeping for the benefit of participants and their customers. When a participant deposits securities into a depository, the depository usually credits the participant's account for the deposit and sends the certificates to the issuer's transfer agent with instructions to transfer the certificate into the depository's nominee name. Whenever transfer delays occur, the depository faces an increased risk of lost certificates. The depository also has increased potential liability because it credits participants' accounts on the day certificates are presented for deposit. If deposited certificates presented for transfer are counterfeit or reported as stolen, the depository would be subject to credit and market risk because it could not take corrective action until

<sup>7</sup> Rule 17Ad-2 (17 CFR 240.17Ad-2) establishes mandatory timeframes within which registered transfer agents must complete most routine transfer requests. Transfer agents that receive more than 500 items in a six month period must turnaround within three business days 90% of the routine items received each month. Routine items that are not turned around within three business days and non-routine items must be turned around promptly. A registered transfer agent for depository-eligible securities that during the previous six consecutive months receives fewer than 500 items for transfer and fewer than 500 items for processing must turnaround 90% of the routine items within five business days.

<sup>8</sup> DTC, for example, presents an average of 100,000–120,000 certificates for transfer each business day. *Supra* note 1.

after the certificates have been resubmitted to the new transfer agent or delivered to the transfer agent's new address.

The costs of unannounced transfer agent changes can be significant for depositories and broker-dealers. DTC estimates that it incurs costs of at least \$200,000 each year directly related to unannounced transfer agent changes. Much of that cost is attributed to locating the correct transfer agent for the issue or the transfer agent's correct address to send the certificates for transfer. In addition, DTC surveyed thirteen of its largest broker-dealer participants that account for 52% of all DTC processed transfers. During 1990, those firms estimated cumulative costs of \$573,000 for processing transfers delayed because of unannounced transfer agent changes. Many of the firms noted that other costs, such as the increased possibility of certificate losses as well as increased customer dissatisfaction, were not included in their estimates because those costs were not easily quantifiable. As indicated by the comments received, the proposed rule will ameliorate these problems with minimal financial burden to the transfer agent community.

A substantial majority of the commenters expressed support for the proposed rule. For example, the ABA noted that the notification requirement is a particularly good idea in light of mergers in the banking industry and concluded that the proposed rule will assist in keeping the capital markets informed of changes affecting securities transfers. In addition, the CTAA commented that the notification requirement would be beneficial to the transfer agent community as a whole.

First Chicago, the sole objecting commenter, believed that adequate information is available from a private vendor, Financial Information, Inc., in monthly reports to subscribers that, in its opinion, are “timely, accurate and adequate.” First Chicago also believed that the information available from this vendor is superior to that which would be provided pursuant to Rule 17Ad-16 because under the rule information in the notice must be handled manually by the transfer agents and recipients whereas vendor-supplied information is already in machine readable form. The Commission understands First Chicago to suggest that the Commission should rely on the private sector to collect and disseminate timely information regarding transfer agent assignments and name changes. However, securities depositories need to receive notice in advance of the change in assignment. Monthly reports from services based on

information collected voluntarily, in light of other commenter views, do not appear to solve the need for timely prior notice from all transfer agents.<sup>9</sup>

First Chicago also believe the data required by the rule will be available from more than one securities depository and the proposed process does not (1) assure the integrity of the source data and the data exchanged between the depositories or (2) resolve data content differences caused by manual errors or fraudulent entries. The Commission does not believe that the proposed methodology embodied in proposed Rule 17Ad-16 is inherently flawed because of its reliance on written notice. The risk of manual error is roughly equivalent whether the information is manually entered into an electronic system by the transfer agent or manually written and delivered to the securities depositories. By requiring notice from two transfer agents—the one assuming the transfer functions for an issue and the one relinquishing those functions—the proposed rule will minimize errors and fraudulent information.

First Chicago also suggested that the Commission reconsider the notification method set forth in the proposed Rule 17Ad-16 and examine other alternatives such as an Electronic Data Interchange to permit electronic exchange of information between all agents and depositories. The Commission believes that the need for timely and accurate information by securities depositories, depository participants, and their customers in a sufficient incentive for securities depositories to develop a secure and cost effective method to assure data integrity and timely communication of transfer agent changes. Moreover, the securities depositories already have held discussions about the development of a centralized data base and have agreed that DTC should be the central repository for transfer agent information.<sup>10</sup> Nevertheless, if experience indicates a significant volume of notice is received on a regular basis, the Commission would encourage the depositories to consider establishing an electronic notification system through existing depository communications systems.

<sup>9</sup> Indeed, at least one commenter suggested that the mandatory notice time frame be lengthened. See Mellon letter, *supra* note 5.

<sup>10</sup> DTC letter, *supra* note 5.

### III. Section by Section Analysis

#### A. Rule 17AD-16(a): Notice of Termination of Transfer Agent Services

Proposed Rule 17Ad-16(a) would have required a registered transfer agent that ceases to perform services on behalf of an issuer to provide written notification of such change to all qualified registered securities depositories or to the appropriate qualified registered securities depository. As proposed, the rule required that notice be sent by "secure communication" no later than two business days after the effective date of such termination. As discussed below, the Commission is modifying the proposal to require more timely notice and to require that the notice be sent to the appropriate qualified registered securities depository.

A number of commenters addressed this requirement, urging various changes or clarifications. The CTAA stated that notification by a termination transfer agent is unnecessary because it is duplicative of the notification provided by assuming transfer agents under proposed Rule 17Ad-16(b). The CTAA favors placing the requirement solely on the assuming transfer agent because it is the party with the greatest interest in ensuring that the change in status is recognized by the industry.

As discussed above, the Commission believes that requiring notice from the terminating transfer agent is essential. This notice will serve to validate the notice sent by the assuming transfer agent and will serve as the only notice in those rare cases when a new transfer agent has not yet been selected.

Mellon suggests, as an alternative to the proposed two business day notification period, that a transfer agent be required to provide this notification, and the notification required under proposed Rule 17Ad-16(b), the later of (a) ten calendar days prior to the effective date of the change or (b) as soon as the transfer agent is aware of the change.<sup>11</sup> Mellon believes that the two business day notification period is inadequate to permit the securities depositories to react to the change so as to preclude the improper forwarding of transfer items to a transfer agent.

The Commission agrees with Mellon that the notice by a transfer agent ceasing to perform transfer services for a particular issue should be sent to depositories in sufficient time to preclude the improper forwarding of transfer items to the transfer agent. Thus, the Commission is modifying proposed Rule 17Ad-16(a) to require a

transfer agent to send the required notification on or before the later of ten calendar days prior to the termination date or the day the transfer agent is notified of the termination date. These modifications should minimize the risk of improperly forwarded transfer items without creating an undue burden on the transfer agent.

The Commission also is revising the proposed rule to require that a transfer agent submitting the notice of termination include in such notice its full name, address, telephone number, and Financial Industry Number Standard ("FINS") number.<sup>12</sup> The rule as proposed did not specifically require the transfer agent submitting a termination notice to provide this identification. The reporting of a FINS number will minimize possible confusion between transfer agents that have similar names. This change should not result in any additional burden because all transfer agents are required to obtain a FINS number in order to participate in the Commission's Lost and Stolen Securities Program.<sup>13</sup>

The Commission also is revising the proposed rule to require the transfer agent to send the notice to the appropriate qualified registered securities depository rather than to all qualified registered securities depositories. The Commission believes that it will be simpler for transfer agents to send the notice to the appropriate qualified registered securities depository because the transfer agent generally will be aware of the identity of the appropriate qualified registered securities depository. The Commission expects that DTC will seek designation as the appropriate qualified registered securities depository and that the Commission will act on that request before the effective date of the rule.

One commenter sought clarification regarding whether the proposed rule applies to a registered transfer agent with respect to services provided for securities exempt from registration under section 12 of the Act. Section

<sup>12</sup>A FINS number is a unique five digit number used by the securities industry as a means of identifying financial institutions in automated data processing systems. Currently all registered clearing agencies, including DTC, the National Securities Clearing Corporation, and the Commission's Lost and Stolen Securities Program use the FINS number.

<sup>13</sup>The Lost and Stolen Securities Program was established in 1977 to deter trafficking in lost, stolen, missing, and counterfeit securities and to assist institutions and the public in tracking missing securities. Reporting institutions, including transfer agents, broker-dealers, and banks, are required to report lost, stolen, missing, or counterfeit securities and to inquire whether certain securities certificates in their possession have been reported as lost, stolen, missing, or counterfeit.

17A(d)(1) of the Act grants the Commission rulemaking authority over all of the transfer activities of a transfer agent registered under section 17A(c)(1) of the Act, including securities exempt from section 12 of the Act. Accordingly, the Commission will interpret Rule 17Ad-16 to require registered transfer agents to provide notice of changes to securities depositories with regard to any "security," as defined in section 3(a)(10) of the Act.<sup>14</sup> Thus, for example, a registered transfer agent assuming or ceasing responsibility for municipal securities or government securities would be required to comply with Rule 17Ad-16.<sup>15</sup>

#### B. Rule 17Ad-16(b): Notice of Assumption of Transfer Agent Services

Proposed Rule 17Ad-16(b) would have required a registered transfer agent to provide written notification of any assumption of duties on behalf of an issuer or any change of its name or address no later than two business days after the effective date of the change. The Commission is modifying proposed Rule 17Ad-16(b) to reflect commenter suggestions that the two business day notification period under this section and under proposed Rule 17Ad-16(a) is inadequate to permit the securities depositories to react to the change. Thus, the Commission is modifying proposed Rule 17Ad-16(b) to require a transfer agent to send the required notification on or before the later of ten calendar days prior to the effective date of the change in status or the day the transfer agent is notified of the effective date. This modification, along with the similar modification in paragraph (a) of this proposal, should minimize the risk of improperly forwarded transfer items without creating an undue burden on the transfer agent.

In the Proposing Release, the Commission invited comment as to whether, in the case of notification of a name or address change, the transfer agent should be required to include in the notice all issues handled and their CUSIP numbers.<sup>16</sup> Of the three commenters addressing this issue, one

<sup>14</sup>The Commission notes that the scope of Rule 17Ad-16 is not limited to securities that are eligible for deposit at a registered securities depository. This information will help assist the securities industry as a whole (including broker-dealers and banks) to locate the appropriate transfer agent. In addition, as a result of the move to a three business day settlement time frame for most securities transactions, the vast majority of securities will be depository eligible.

<sup>15</sup>See Securities Exchange Act Release No. 17111 (September 2, 1980), 45 FR 59840.

<sup>16</sup>CUSIP is an acronym for the Committee on Uniform Securities Identification Procedures.

<sup>11</sup>Mellon letter, *supra* note 5.

did not object to the requirement,<sup>17</sup> one suggested it might not be necessary for its operations,<sup>18</sup> and one commenter specifically objected to the requirement.<sup>19</sup> In response to these comments, the Commission is deleting the requirement that a transfer agent include in a notice of a name or an address change the issuer's name, the issue or issues handled, and their CUSIP number(s). The Commission agrees with the commenters that the reporting of each issue and the corresponding CUSIP numbers handled by a transfer agent is not necessary when the transfer agent is reporting a name or an address change. The Commission, however, is concerned that one of the parties to a merger or acquisition—the transfer agent terminating its services or the one assuming services as a result of the merger or acquisition—may view the event as a name or an address change and may not file the appropriate information, including the CUSIP number for each issue. Thus, the Commission is revising paragraphs (a) and (b) to clarify the need for both transfer agents in the case of a merger or an acquisition to include in the notice the issuer's name, issuers or issues handled, and the CUSIP number for each issue.

The Commission is adding a requirement, corresponding to the modification to proposed Rule 17Ad-16(a), that the FINS number of the transfer agent be included in the notice. As discussed above, this requirement will act as a confirmation of identity without adding substantially to the burden of the transfer agent. The Commission also is modifying proposed Rule 17Ad-16(b), corresponding to the modification to proposed Rule 17Ad-16(a), to eliminate the option that the notice be sent to all qualified registered securities depositories.

#### C. Rule 17Ad-16(c): Delivery of Notices

Proposed Rule 17Ad-16(c) would have provided that the notice required by paragraph (a) or paragraph (b) of the proposal must be delivered by means of a secure communication and state to

<sup>17</sup> The ABA did not oppose the requirement, stating that supplying CUSIP numbers would not add significantly to the transfer agent's burden.

<sup>18</sup> DTC stated that the inclusion of CUSIP numbers was not necessary because of the method DTC uses to maintain transfer agent data.

<sup>19</sup> First Chicago opposed the requirement of supplying CUSIP numbers because it would add to the data capture, communication, and storage requirements. First Chicago also believed that the integrity of the data would be suspect because of the extensive manual handling involved. Finally, First Chicago stated that extensive processes would be required to reconcile differences between redundant data repositories.

which registered securities depositories notice is sent. Proposed Rule 17Ad-16(c) also defined "secure communication."<sup>20</sup> No commenter specifically addressed proposed Rule 17Ad-16(c). The Commission defined the term "secure communication" broadly so as to allow the Commission, by an interpretation or through the no-action process, to determine whether a form of communication not specifically enumerated in the rule is a form of "secure communication." The Commission is modifying Rule 17Ad-16(c) to delete the requirement that the notice state to which registered securities depositories notice is sent. This requirement is no longer necessary because the notice will be sent only to the appropriate qualified registered securities depository.

#### D. Rule 17Ad-16(d): Forwarding of Notices

Proposed Rule 17Ad-16(d) requires a qualified registered securities depository that receives notices under paragraph (a) or paragraph (b) to forward copies by means of a secure communication to each registered securities depository and to its own participants. One commenter addressed this provision seeking clarification of how it might comply with the rule.<sup>21</sup> The Commission is modifying proposed Rule 17Ad-16(d) in several respects.

DTC, the only commenter to address proposed Rule 17Ad-16(d), requested that it be permitted to make the information contained in the notice available to its participants upon inquiry over DTC's Participant Terminal System rather than forwarding copies of the notice by means of "secure communication." The Commission in using the term "secure communication" did not intend to preclude the forwarding of notices in an electronic format. Although the Proposing Release suggested that all notices must be forwarded by the securities depository within 24 hours, proposed Rule 17Ad-16(d) did not contain a specific time period for forwarding notices. The Commission is revising proposed Rule 17Ad-16(d)(2) to allow a registered securities depository to make available the notice, or all material information from the notice, within 24 hours in a manner set forth in a rule of the depository.<sup>22</sup> Because changes to depository rules must be filed with the

Commission and published for comment, the Commission believes it is appropriate to determine in that context whether the method proposed to forward such notices is consistent with the purposes of this rule and the Act.

The reference to the recipients of notice in Rule 17Ad-16(d) has been revised to read "qualified registered securities depositories" rather than "registered securities depositories." This revision is to clarify that Rule 17Ad-16 only requires notice to be sent to securities depositories that meet the definition of "qualified registered securities depositories" under Rule 17Ad-16(e). Finally, the Commission is modifying proposed Rule 17Ad-16(d) to clarify that a qualified registered securities depository must forward all notices received to its participants, rather than just notices received under paragraphs (a) and (b). This change is to ensure that a qualified registered securities depository that is not the appropriate qualified registered securities depository, which receives notices under paragraph (d), will provide its participants with copies of the notices. Those revisions have been incorporated in new subparagraph (1) of Rule 17Ad-16(d).

Proposed Rule 17Ad-16(d) also would have imposed certain record keeping requirements on the qualified registered securities depository and on the notifying transfer agent. The substance of those requirements, as adopted, has not changed but the requirements are contained in two new subparagraphs of Rule 17Ad-16(d). The record keeping requirement for a qualified registered securities depository is contained in new subparagraph (3) of Rule 17Ad-16(d) and the record keeping requirement for a transfer agent is contained in new subparagraph (4) of Rule 17Ad-16(d).

#### E. Rule 17Ad-16(e): Qualified Securities Registered Depository

Proposed Rule 17Ad-16(e) defined the term "qualified registered securities depository" as a clearing agency registered under Section 17A of the Act that performs clearing agency functions as described in Section 3(a)(23)(A)(i) of the Act and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to paragraphs (a) and (b) of the Rule 17Ad-16. No commenters addressed proposed Rule 17Ad-16(e). The Commission is modifying proposed Rule 17Ad-16(e) to clarify that a qualified registered securities depository may receive

<sup>20</sup> "Secure communication" includes telegraph, overnight mail, facsimile, or any other form of secure communication.

<sup>21</sup> See DTC letter, *supra* note 5.

<sup>22</sup> Rules of a registered clearing agency are required to be filed with the Commission under section 19(b) of the Act. See 15 U.S.C. 78s(b) (1988).

information pursuant to paragraph (d) of Rule 17Ad-16.

**F. Rule 17Ad-16(f): Appropriate Qualified Registered Securities Depository**

Proposed Rule 17Ad-16(f) defines the term "appropriate qualified registered securities depository" as a qualified registered securities depository that, as of the most recent record date, is the largest holder of record of all qualified registered securities depositories or such other qualified registered securities depository designated by the Commission by order. The purpose of this section is to identify the appropriate recipient of the transfer agent's notice under Rule 17Ad-16(a) and Rule 17Ad-16(b). As proposed, Rule 17Ad-16(f) would not have permitted the Commission to designate the "appropriate qualified registered securities depository." The Commission, in the Proposing Release, invited comments regarding the designation by the Commission of the appropriate qualified registered securities depository.

Three commenters addressed proposed Rule 17Ad-16(f). First Chicago believed that the proposed rule presents no problem as drafted since the proper depository is generally known and, when doubt exists, the notice could be sent to all securities depositories. DTC and the CTAA recommended that DTC be designated as the appropriate qualified registered securities depository. DTC argued that its designation as the appropriate qualified registered securities depository would eliminate uncertainty about where notices must be sent and reduce unnecessary costs and administrative burdens resulting from that uncertainty. In addition, DTC noted that it has consulted with MSTC and Philadep, and both organizations have authorized DTC to advise the Commission of their support for this approach.

DTC is the largest holder of record among qualified registered securities depositories for the vast majority of issues. At year-end 1993, DTC held securities on behalf of its participants that equaled \$7.5 trillion, more than 98.8% of the total market value of securities held by the three registered securities depositories that handle corporate securities.<sup>23</sup>

The Commission is modifying proposed Rule 17Ad-16(f) to authorize the Commission to designate by order the appropriate qualified registered

securities depository.<sup>24</sup> In the absence of such designation, the appropriate qualified registered securities depository will be the qualified registered securities depository with the largest position as of the last record date. In addition, Rule 17Ad-16(e) requires a qualified registered securities depository to file a proposed rule change under Section 19 of the Act detailing how it intends to maintain, update, and provide appropriate access to the information it receives. As part of the rule filing, the Commission believes it is appropriate for a qualified registered securities depository to seek Commission approval to designate another to carry out its primary responsibilities provided that the other qualified registered securities depository agrees.<sup>25</sup>

**IV. Regulatory Flexibility Act Certification**

In the Proposing Release, the Commission noted that former Chairman Richard C. Breeden certified, pursuant to section 605(b) of the Regulatory Flexibility Act, that proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities. No comments concerning regulatory flexibility matters were received.

**V. Burden on Competition**

As required by section 23(a) of the Act, the Commission has specifically considered the impact that these rules would have on competition. The Commission believes that the rule will not have a significant impact on transfer agent competition. Transfer agents only have to send a notice when there is a change of transfer agent providing services on behalf of an issuer or a name or address change. Even when a transfer agent is required to send notice of a change, the cost of compliance is insignificant. Moreover, the burden of sending such notices should fall mainly on larger transfer agents that have more issues because these agents are more likely to have changes that would require them to send notices under the rule. Thus, the Commission finds that the rules would not impose a burden on competition not necessary or appropriate in furtherance of the

<sup>24</sup> Concurrent with the adoption of the Rule, the Commission is delegating to the Director of the Division of Market Regulation authority to designate by order the appropriate qualified registered securities depository.

<sup>25</sup> DTC included in its comment letter the forms that DTC will suggest transfer agents use to comply with the Rule. The Commission believes mandating such a form is unnecessary at this time.

purposes of the Act and, in particular, section 17A of the Act.

**VI. Paperwork Reduction Act Submission**

An authorization request (SF 83) for the reporting requirement was prepared and submitted to the Office of Management and Budget which approved the request without comments.

**VII. Effective Date**

The Commission has determined that § 200.30-3(a)(56) is a procedural rule related solely to the agency's organization, procedure, or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking, opportunities for public participation, and prior publication<sup>26</sup> are not applicable.

**VIII. Statutory Basis**

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3, 17, 17A, and 23(a) thereof, 15 U.S.C. 78c, 78q, 78q-1, and 78w(a), the Commission amends Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below.

**List of Subjects**

**17 CFR Part 200**

Administrative practice and procedure, Authority delegations (Government agencies), Organizations and functions (Government organizations).

**17 CFR Part 240**

Reporting and recordkeeping, Securities.

**Text of the Amendments**

**PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS**

1. The authority citation for part 200, subpart A continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d-1, 78d-2, 78w, 78ll(d), 79t, 77sss, 80a-37, 80b-11, unless otherwise noted.

\* \* \* \* \*

2. Section 200.30-3 is amended by adding paragraph (a)(56) to read as follows:

**§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.**

\* \* \* \* \*

(a) \* \* \*

(56) Pursuant to § 270.17Ad-16 of this chapter, to designate by order the

<sup>23</sup> DTC, *Annual Report 1993* at 5.

<sup>26</sup> 5 U.S.C. 553.

appropriate qualified registered securities depository.

\* \* \* \* \*

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

1. The authority citation for Part 240 continues to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, and 80b-11, unless otherwise noted.

\* \* \* \* \*

2. Section 240.17Ad-16 is added to read as follows:

**§ 270.17Ad-16 Notice of Assumption or Termination of Transfer Agent Services.**

(a) A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities, including a registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities because of a merger or acquisition by another transfer agent, shall send written notice of such termination to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such termination or the day the transfer agent is notified of the effective date of such termination. Such notice shall include the full name, address, telephone number, and Financial Industry Number Standard ("FINS") number of the transfer agent ceasing to perform the transfer agent services for the issuer; the issuer's name; the issue or issues handled and their CUSIP number(s); and if known, the name, address, and telephone number of the transfer agent that thereafter will provide transfer services for the issuer. If no successor transfer agent is known, the notice shall include the name and address of a contact person at the issuer.

(b) A registered transfer agent that changes its name or address or that assumes transfer agent services on behalf of an issuer of securities, including a transfer agent that assumes transfer agent services on behalf of an issuer of securities because of a merger or acquisition of another transfer agent, shall send written notice of such to the appropriate qualified registered securities depository on or before the later of ten calendar days prior to the effective date of such change in status or the day the transfer agent is notified of the effective date of such change in status. A notice regarding a change of name or address shall include the full name, address, telephone number, and FINS number of the transfer agent and the location where certificates are received for transfer. A notice regarding the assumption of transfer agent services on behalf of an issuer of securities, including assumption of transfer agent services resulting from the merger or acquisition of another transfer agent, shall include the full name, address, telephone number, and FINS number of the transfer agent assuming the transfer agent services for the issuer; the issuer's name; and the issue or issues handled and their CUSIP number(s).

(c) The notice described in paragraphs (a) and (b) of this section shall be delivered by means of secure communication. For purposes of this section, secure communication shall include telegraph, overnight mail, facsimile, or any other form of secure communication.

(d)(1) The appropriate qualified registered securities depository that receives notices pursuant to paragraphs (a) and (b) of this section shall deliver within 24 hours a copy of such notices to each qualified registered securities depository. A qualified registered securities depository that receives notice pursuant to this section shall deliver a copy of such notices to its own participants within 24 hours.

(2) A qualified registered securities depository may comply with its notice

requirements under paragraph (d)(1) of this section by making available the notice of all material information from the notice within 24 hours in a manner set forth in the rules of the qualified registered securities depository.

(3) A qualified registered securities depository shall maintain such notices for a period of not less than two years, the first six months in an easily accessible place. Such notice shall be made available to the Commission or other persons as the Commission may designate by order.

(4) A registered transfer agent that provides notice pursuant to paragraphs (a) and (b) of this section shall maintain such notice for a period of not less than two years, the first six months in an easily accessible place.

(e) For purposes of this section, a *qualified registered securities depository* shall mean a clearing agency registered under Section 17A of the Act (15 U.S.C. 78q-1) that performs clearing agency functions as described in Section 3(a)(23)(A)(i) of the Act (15 U.S.C. 78c(a)(23)(A)(i)) and that has rules and procedures concerning its responsibility for maintaining, updating, and providing appropriate access to the information it receives pursuant to this section.

(f) For purposes of this section, an *appropriate qualified registered securities depository* shall mean the qualified registered securities depository that the Commission so designates by order or, in the absence of such designation, the qualified registered securities depository that is the largest holder of record of all qualified registered securities depositories as of the most recent record date.

Dated: December 1, 1994.

By the Commission.

**Margaret H. McFarland,**  
*Deputy Secretary.*

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