

SUPPORTING STATEMENT

A. Justification

(1) Necessity for Information Collection

Congress enacted Section 206 of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Enforcement Act"), 15 U.S.C. § 78q-9(d)(5), which gives the Securities and Exchange Commission ("Commission") explicit authority to implement rules to facilitate the equitable treatment by transfer agents of financial institutions that issue signature guarantees. The Commission adopted Rule 17Ad-15 under the Securities Exchange Act of 1934 ("Act"). Rule 17Ad-15 implements Section 17A(d)(5) of the Act, as amended by Section 206 of the Enforcement Act.¹ Congress enacted Section 206 of the Enforcement Act to prohibit inequitable treatment of financial institutions that issue signature guarantees of endorsers of securities. Section 206 of the Enforcement Act reflects Congressional concern regarding the differential treatment of various financial institutions (i.e., banks, brokers, dealers, savings and loan associations, and credit unions) which may require non-exchange member brokers and dealers, savings and loan associations, and credit unions or their customers to seek a guarantee from a bank or an exchange member broker or dealer, with whom they may have no prior relationship, in order to effect the transfer of ownership of securities. This practice imposes unnecessary burdens on financial institutions facilitating transactions by and on behalf of investors. Rule 17Ad-15 implements a Congressional directive to ameliorate inequitable treatment of eligible guarantor institutions and requires transfer agents to establish written standards for the acceptance of signature guarantees.

Signature guarantees are essential to the transfer of registered-form securities. To effect a transfer of ownership of the registered-form security, the security certificate must be endorsed by the registered owner. Because it is not possible for an issuer, or its transfer agent, to know all registered securities owners, the issuer or its transfer agent must rely on a financial intermediary to guarantee that the endorsement on the certificate is genuine and effective. Thus, a signature guarantee transfers the risk of, and liability for, forged endorsements or unauthorized transfers from the issuer or its transfer agent to the guarantor. Because the acceptance of a signature guarantee requires the transfer agent to determine whether the guarantor has sufficient financial strength to satisfy any future claims in the event of a wrongful transfer of the security, state law permits issuers and transfer agents to require signature guarantees by entities reasonably believed to be responsible. State law further permits issuers and transfer agents to adopt financial responsibility standards for guarantors, if those standards are not manifestly unreasonable.

Transfer agents generally accept the signature guarantees of institutions that have traditionally offered signature guarantee services to their customers. However, as a result of legislative reforms over the past several years, the number of institutions that offer these services has grown dramatically in recent years. Consequently, approximately 7,200 financial institutions are currently authorized to provide signature guarantee services.

¹ Enforcement Act, Pub. L. No. 101-429, § 206, 104 Stat. 941 (1990).

Despite the authorization of credit unions and savings and loan associations to provide signature guarantee services, transfer agents, for a variety of reasons, rarely accept their signature guarantees. Absent a regulatory solution that provides a mechanism for acceptance of signature guarantees from savings and loans and credit unions, many transfer agents would continue to reject signature guarantees from such financial institutions.

Rule 17Ad-15 requires transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are also required to establish procedures, including written guidelines where appropriate, to ensure that those standards are used by the transfer agent in determining whether to accept or reject guarantees from eligible guarantor institutions. Rule 17Ad-15 requires registered transfer agents to maintain a copy of their standards and procedures in an easily accessible place. Transfer agents also are required to maintain, for a period of three years following the date of the rejection, a record of all transfers rejected, along with the reason for the rejection, the identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

(2) Purpose of and Consequences of Not Requiring the Information Collection

The information collected from the transfer agent allows the Commission to determine whether the transfer agents are treating guarantee signature institutions equitably.

(3) Role of Improved Information Technology and Obstacles to Reducing Burden

Not applicable.

(4) Efforts to Identify Duplication

The rule does not require substantially more than is required under the fair and reasonable standards of the state Uniform Commercial Code requirements. The information required by the rule is not located elsewhere.

(5) Effect on Small Entities

While the requirements of the rule increase the recordkeeping burden of all transfer agents, including small transfer agents, this detriment is more than outweighed by the decreased risk of a failed signature guarantee and its associated liability.

(6) Consequences of Less Frequent Collection

Since the information required by the rule needs to be collected only once and then updated periodically, the collection of this information could not be conducted less frequently.

(7) Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)

The collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

(8) Consultations Outside the Agency

In developing the rule, the staff consulted with the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and other bank regulatory agencies. In addition, public comment was solicited.

(9) Payment of Gift to Respondents

Not applicable.

(10) Assurance of Confidentiality

This rule does not involve the collection of confidential information.

(11) Sensitive Questions

No questions of a sensitive nature are asked.

(12) Estimate of Respondent Reporting Burden

There are approximately 760 registered transfer agents. The staff estimates that each transfer agent will spend about 40 hours annually to comply with Rule 17Ad-15, or a total of 30,400 hours for all transfer agents (760 transfer agents multiplied by 40 hours).

(13) Estimate of Total Annualized Cost Burden

Not applicable; (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule; (b) it is not anticipated that the respondents will have to incur any additional operational or maintenance cost (other than provided for in item number 12) to comply with the rule.

(14) Estimate of Cost to the Federal Government

Costs to the Federal Government in administering Rule 17Ad-15 result from appropriate regulatory staff time and related overhead costs devoted to assuring compliance by transfer agents with the requirements of the rule. Costs to the Federal Government also include staff time devoted to responding to questions from transfer agents regarding the rule. The staff estimates that approximately 80 hours of staff time per year are devoted to Rule 17Ad-15, at a cost of \$4,000 per year (80 hours times \$50). In addition, the staff estimates overhead expenses at \$1400. This figure is based on our computation of staff time devoted to this activity and related overhead at 35 percent of the value of staff time. This estimate has been computed based on

GSA, Guide to Estimating Reporting Costs (1973). Therefore, the total annual cost to the Federal Government is \$5,400.

(15) Explanation of Changes in Burden

The changes in burden result from a decrease in the number of registered transfer agents and a reevaluation of the hourly burden on the number of transfer agents affected by the rule.

(16) Information Collection Planned for Statistical Purposes

Not applicable.

(17) Explanation as to Why Expiration Date Will Not be Displayed

Not applicable.

(18) Exceptions to Certification

Not applicable.

B. Collection of Information Employing Statistical Methods

No statistical methods are employed in connection with the collection of information.