

SUPPORTING STATEMENT - RULE 17Ad-11

A. Justification

(1) Necessity for Information Collection

As a result of the “paperwork crisis” that occurred in the late 1960s where the number of securities transactions exceeded the securities industry’s capacity to process those transactions, Congress enacted the Securities Acts Amendments of 1975.¹ This statute intended for the Commission to establish a national system for the prompt and accurate clearance and settlement of securities transactions and included a new regulatory system for the transfer agent industry. Specifically, the 1975 amendments to the Securities Exchange Act of 1934 (“Exchange Act”) require transfer agents to meet minimum performance standards as established by the Commission in furtherance of the purposes of the Exchange Act.

Transfer agents play an integral role in the national system for the clearance and settlement of securities transactions. Transfer agents cancel certificates presented for transfer, issue new certificates to the transferee and record the change of record ownership of securities on the issuer's securityholder records. They also prepare, maintain, and certify securityholder records, disburse dividend and interest payments, and mail security-owner communications such as proxy material and annual reports to shareholders.

To the extent that transfer agents fail to perform their activities promptly, accurately, and safely, the entire clearance, settlement, and transfer process suffers. For example, substandard performance by transfer agents can affect the accuracy of an issuer’s securityowner records and therefore could disrupt communication between issuers and securityholders. Moreover, poor performance by transfer agents could systemically affect issuers, broker-dealers, banks, other financial intermediaries, the investing public, and the securities markets.

In 1983, the Commission adopted Rule 17Ad-11 in order to require registered transfer agents to report certain information to issuers and the transfer agent’s appropriate regulatory agency in the event that “aged record differences” exceed certain dollar value thresholds. An “aged record difference” occurs when an issuer’s records do not agree with those of securityholders as indicated, for instance, on certificates presented to the transfer agent for purchase, redemption, or transfer. In addition, the rule requires registered transfer agents to report to their appropriate regulatory agency in the event of a failure to post certificate detail to the master securityholder file within five business days of the time required by Rule 17Ad-10.

The purposes of Rule 17Ad-11 are: (1) to provide issuers with the information necessary to make informed decisions about whether the transfer agent is performing its recordkeeping functions in a satisfactory manner and whether the amount of aged record differences is

¹ Pub. L. No. 94-29, 89 Stat. 97 (June 4, 1975).

sufficiently serious to be material and therefore require disclosure to securityholders and (2) to provide regulatory authorities with information concerning the source and extent of aged record differences and information regarding transfer agents that are experiencing difficulties in creating and maintaining securityholder records.

The reports required by 17Ad-11, in conjunction with transfer agent reports required under Rule 17Ad-2 (notices of noncompliance with the turnaround and processing performance standards), provide regulatory authorities with information regarding those transfer agents that are not performing their functions promptly or accurately. Under Rule 17Ad-11, however, the regulatory authorities are only informed when the threshold is breached. When this occurs, regulatory authorities can focus their attention on those transfer agents whose performance may represent potential harm to investors or a threat to the smooth operation of the national system for clearance and settlement.

The Commission adopted Rule 17Ad-11 pursuant to authority under Sections 17, 17A and 23(a) of the Exchange Act.²

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

The reports required to be sent by transfer agents to issuers under Rule 17Ad-11 are used by issuers in determining whether and what corrective action is necessary to resolve the operational difficulties disclosed by the transfer agent performing functions for the issuer's securities. The reports required to be sent to the appropriate regulatory agency under the rule are used by the agency in fulfilling its regulatory and oversight responsibilities under the Exchange Act. Without this information, regulatory authorities would not be informed as to those transfer agents that are not performing their functions promptly and accurately. Transfer agents that are not properly performing their operations pose potential harm to investors who depend on an efficient operation of the national system of clearance and settlement.

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

Most transfer agent processing systems are automated and those automated systems enable transfer agents to easily identify when reports must be made under the rule. There are no legal or technical obstacles that, if removed, would reduce burdens.

(4) Efforts to Identify Duplication

No other reporting requirement with respect to the information required to be reported under the rule currently exists.

(5) Effect on Small Entities

² 15 U.S.C. 78q, 78q-1 and 78w(a).

Because the information is already available to transfer agents, any collection burden for small businesses is minimal.

(6) Consequences of Less Frequent Collection

Less frequent reporting under the rule would allow transfer agents experiencing operational difficulty and financial liability to continue operating in such a manner, with a potential for further operational deterioration, without informing issuers or appropriate regulatory agencies. Such a situation would greatly increase risks to public investors and to the national system for clearance and settlement.

(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

When adopting Rule 17Ad-11, the Commission communicated with, and requested the views of, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation. The Commission communicates on a continuous basis with these organizations and has not received any indication of major problems with Rule 17Ad-11. The Commission also communicates with many registered transfer agents on a continuous basis and has not discovered any major problems with Rule 17Ad-11.

(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

Based on experience with Rule 17Ad-11, the Commission estimates that 25 respondents will file a total of approximately 100 reports annually. The Commission estimates that each report can be completed in 30 minutes, resulting in a total of 50 hours annually (30 minutes multiplied by 100 reports). The burden was estimated based on reports filed with the

Commission and Commission staff conversations with transfer agents.

(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 respondents will have to incur any additional operational or maintenance cost (other than provided for in item no. 12) to comply with the rule.

(14) Estimate of Cost to Federal Government

Federal Government costs from Rule 17Ad-11 are appropriate regulatory agency staff time and related overhead needed to review transfer agent reports. Although the number of reports filed and staff time needed to review each report are difficult to predict, the Commission estimates that 100 reports are filed with all the appropriate regulatory agencies and, on average, 1 hour of staff time is needed to review each report. Based on an average hourly cost of \$50, the estimate of cost to the federal government is \$5,000. This figure is based on our computation of the value of staff time devoted to this activity and the related overhead valued at 35% of the value of staff time.

(15) Explanation of Changes in Burden

There are no changes in burden.

(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 collections of information.