

Rule 17Ad-13

A. Justification

(1) Necessity for Information Collection

As a result of the paperwork crisis of the late 1960's, 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 In order to establish a national system for the prompt and accurate clearance and settlement of securities transactions, Congress established a regulatory scheme for the transfer agent business. The amendments to the Securities Exchange Act of 1934 ("Exchange Act") require transfer agents to meet minimum standards as established by the Commission in furtherance of the purposes of the Exchange Act and generally to protect investors.

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 issuers' records. Transfer agents also prepare, maintain, and certify securityholder records, disburse dividend and interest payments and mail securityowner communications such as proxy materials 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. Substandard performance by transfer agents can affect the accuracy of an issuer's securityowner records, which in turn could interrupt the channels of communication between issuers and shareowners. Moreover, the absence of adequate internal accounting controls in the operation of transfer agents and procedures for the safeguarding of funds and securities in the possession or control of transfer agents can provide the opportunity for significant financial loss to securityholders, issuers, financial intermediaries, and securities depositories.

Based on the experience of the transfer agent regulatory program, the Commission adopted Rule 17Ad-13, which was designed to require certain registered transfer agents to obtain an annual report prepared by an independent accountant that discusses the adequacy of the transfer agent's "system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds." Because the safe and accurate flow and recording of a large volume of securities transfers is dependent upon the adequacy, accuracy, and reliability of those controls and procedures, the Commission believed that an adequate system of internal accounting controls and procedures for safeguarding funds and securities was critical to the establishment of an accurate and safe clearance and settlement system for securities transactions.

The report required by the rule must be prepared by an independent public accountant and filed with the appropriate regulatory agency. The report is required to be prepared on the

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basis of an annual examination of the internal accounting controls and procedures for safeguarding funds and securities used in the transfer agent's operations. The accountant must report and comment on any material weakness found to exist as of the date of the examination in the system of internal accounting controls and in the procedures for safeguarding funds and securities.

If the accountant's report specifies any "material weaknesses," the transfer agent receiving the report must indicate in writing to the appropriate regulatory agency and to the accountant, within thirty calendar days of receipt of the accountant's report, the corrective action that is has taken or plans to take. Sixty calendar days thereafter, the transfer agent must obtain from the accountant and forward to the appropriate regulatory agency a written statement regarding whether the corrective action has been implemented. If no corrective action has been taken, the transfer agent must give reasons for this.

The rule requires that the accountant's report and all other documents required by the rule be maintained for at least three years, the first year in an easily accessible place.

Rule 17Ad-13 exempts issuers that perform transfer agent functions solely for their own securities and certain transfer agents that qualify under the rule as "small" transfer agents from the requirements of the rule. The rule also permits the federal bank regulatory agencies to exempt bank transfer agents subject to their jurisdiction that are not otherwise exempt as small transfer agents or issuer-transfer agents, provided that a report similar in scope to the report required by Rule 17Ad-13 is prepared by the bank's internal auditors for the bank's board of directors or an audit committee of the board of directors.

The Commission believes that the benefits of this rule to the transfer agent community, public investors, and the federal regulatory agencies far outweigh the compliance costs placed on approximately 150 transfer agents subject to the the rule. Transfer agents are fully informed of the adequacy of their systems of internal accounting controls and their procedures for safeguarding funds and securities that come into their possession or custody. That information facilitates transfer agent efforts to establish and to maintain sufficient controls and procedures. In addition, public investors, who must use the services of transfer agents to become record owners of securities issues, also should experience fewer delays and inaccuracies in receiving their securities and related distributions from and in the recording of ownership interests by transfer agents.

Furthermore, while the study by the independent accountant will not replace examinations by the federal regulatory agencies charged with inspecting registered transfer agents, those agencies can enhance their ability to focus on those transfer agents that are experiencing serious difficulties. More importantly, the federal regulatory agencies can rely, in the first instance, on the efforts of transfer agents and their accountants to remedy any problems without extensive government involvement.

The Commission adopted Rule 17Ad-13 pursuant to authority under Sections 17, 17A, and 23(a) of the Act, 15 U.S.C. 78q, 78q-l and 78w(a).

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

The report required under Rule 17Ad-13 is used by transfer agents to evaluate and, where necessary, improve the adequacy of their internal accounting controls and procedures for the safeguarding of funds and securities in their possession or control. The report also is used by the appropriate regulatory agency in examinations of transfer operations. The Commission believes that if the accountant reports were not prepared, serious transfer agent deficiencies in the safeguarding of securities and funds could go undetected and unremedied and result in substantial losses to public investors.

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

There are no legal or technical obstacles which if removed would reduce burdens.

(4) Efforts to Identify Duplication

For transfer agents affected by Rule 17Ad-13, the information required by the rule is not otherwise available.

(5) Effects on Small Entities

Small transfer agents as defined by 17 C.F.R. 240.17Ad-4(b) are exempt from Rule 17Ad-13.

(6) Consequences of Less Frequent Collection

The Commission believes that less frequent audits would greatly increase risks posed to public investors and the securities industry by transfer agent deficiencies in the safeguarding of securities and funds or operational difficulties.

(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

Prior to promulgated Rule 17Ad-13, 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 with many transfer agents about the effectiveness of Rule 17Ad-13.

(9) Payment of Gift to Respondents

Not applicable.

(10) Assurances 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

Approximately 150 independent, professional transfer agents must file the accountant's report annually. The Commission estimates that each report can be completed in an average of 120 hours resulting in a total of 18,000 hours annually (120 hours times 150 reports). This burden estimate was based the Commission's transfer agent records, such as periodic reports that transfer agents file with the Commission that indicate whether they are subject to Rule 17Ad-13.

(13) Estimate of Total Annualized Cost Burden

The time required to prepare the accountant's report varies with each transfer agent depending on the size and nature of the transfer agent's operations. The Commission estimates that on average 120 hours are needed to perform the study, prepare the report, and retain the required records on an annual basis. Assuming an average hourly rate of an independent accountant of \$60, the average total cost of the report is \$7,200. The total cost for the approximate 150 respondents is approximately \$1,080,000.

(14) Estimated Cost to Federal Government

The cost to the federal government is based on agency staff time and related overhead devoted to review the Rule 17Ad-13 reports. Although staff time necessary for review will vary with each report, the Commission estimates that on average one hour of staff time is needed to review each of the approximate 150 reports received annually. Based on these estimates and the GSA Guide to Estimating Reporting Costs (1973), the cost to the Federal Government totals \$5,140.

(15) Explanation of Changes in Burden

The reduction in the estimated respondent reporting and total annualized cost burdens from the previous submission in 2006 stems from the decreased number of registered transfer agents that are subject to Rule 17Ad-13 (approximately 200 in 2006 to approximately 150 in 2009) and from the decrease in the average number of hours that the staff estimates it will take for the independent accountant to complete the study (175 hours in 2006 to 120 hours in 2009).

(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.