

SUPPORTING STATEMENT
for the Paperwork Reduction Act Information Collection Submission for
Rule 17Ad-3(b)

A. Justification

1. Information Collection Necessity

As a result of the “paperwork crisis” that occurred in the late 1960’s during which the number of securities transactions exceeded the securities industry’s capacity to process those transactions, Congress enacted the Securities Acts Amendments of 1975. To facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, Congress established a scheme of regulation to ensure that the transfer agents who process securities meet the statutory goal. Those amendments to the Securities Exchange Act of 1934 (“Act”) and the Commission’s rules thereunder require transfer agents to meet minimum performance and recordkeeping standards designed to protect the public interest and investors.

Section 17A(d)(1)(A) of the Act, in general, prohibits any registered agent from engaging in any transfer agent activity in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. In addition, subsections 17(a)(1) and (3) of the Act require every registered transfer agent to file reports as the Commission or other appropriate regulatory agencies (“ARAs”) prescribe by rule as necessary or appropriate in furtherance of the purposes of the Act.

In order to provide an early warning system designed to alert the ARA that a registered transfer agent is not meeting the performance standards set forth in the Commission’s rules, the Commission, pursuant to sections 2, 17, 17A, and 23(a) of the Act, 15 U.S.C. 78b, 78q, 78q-1, and 78w(a), adopted rules 17Ad-2(c), (d), and (h) on June 16, 1978. Rules 17Ad-2(c), (d), and (h) enable those agencies to take timely preventive and remedial measures to protect the public interest and investors. Similarly, the Commission also adopted Rule 17Ad-3(b) to alert issuers when their transfer agents fail to meet the minimum performance standards set forth in Rule 17Ad-3(b).

Rule 17Ad-3(b) requires a registered transfer agent to send a copy of the notice required pursuant to Rule 17Ad-2(c), (d), and (h) to all the issuers for whom that transfer agent acts when for two consecutive months the transfer agent has failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad-2(a) or to process at least 75% of all items in accordance with the requirements of Rule 17Ad-2(b). The transfer agent is required to send the notice within twenty business days after the close of the second month to the chief executive officer of each issuer for which such registered transfer agent acts.

2. Information Collection Purpose and Use

The issuer uses the information contained in the notices: (1) as an early warning of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents; and (2) to become aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's issues. If the issuer does not receive notice of a registered transfer agent's failure to comply with the Commission's minimum performance standards, then the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. The Commission may also use this information in its examination and inspection program.

3. Consideration Given to Information Technology

Given the low volume of notices sent to issuers, the Commission does not contemplate specifying the use of any particular electronic system.

4. Duplication

There is no duplication of information.

5. Effect on Small Entities

For purposes of the Regulatory Flexibility Act, a transfer agent is considered a small business or entity if it: (i) receives less than 500 items for transfer and less than 500 items for processing during the preceding six months; (ii) transfers items only of issuers that would be deemed small businesses or small organizations; (iii) maintains master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year; and (iv) is not affiliated with any person that is not a small business or small organization. These transfer agents are exempt from the provisions of Rule 17Ad-3(b).

6. Consequences of Not Conducting Collection

If the information were not collected or collected less frequently, effective regulation of transfer agent conduct and activity would not be possible. Specifically, the transfer agent rules and regulations are designed to assure the continuous prompt processing of securities presented for transfer. If this information is provided less often, issuers could not properly assure that transfer agents promptly process all securities presented for transfer.

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

There are no special circumstances. This collection is consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Consultations Outside the Agency

The required Federal Register notice with a 60-day comment period soliciting comments on this collection of information was published. No public comments were received.

9. Payment or Gift

Not applicable. There is no payment or gift provided to respondents.

10. Confidentiality

There is nothing in Rule 17Ad-3(b) that provides that the notice required to be sent to the registered transfer agent's issuers shall be kept confidential by issuers.

11. Sensitive Questions

No questions of a sensitive nature are asked. The information collection does not collect any Personally Identifiable Information ("PII").

12. Information Collection Burden

The estimated annual cost to respondents is minimal. The Commission receives approximately two Notices of Non-Compliance annually from registered transfer agents pursuant to Rule 17Ad-2(c), (d), and (h). Pursuant to Rule 17Ad-3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad-2 will only be required to send a copy of that notice to issuers it services when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items. The Commission estimates that of the transfer agents that file the Notice of Non-Compliance, only one transfer agent annually will meet the requirements of Rule 17Ad-3(b), and such transfer agent is simply sending a copy of a notice to issuer-clients that has already been processed by the Commission under Rule 17Ad-2(c) or (d).

While not a cost burden under Item 13, the Commission staff estimates that compliance staff work at registered transfer agents to comply with the third party disclosure requirement will result in an internal cost of compliance, at an estimated hourly wage of \$283, of \$1,128 per year per transfer agent (4 hours x \$283 per hour = \$1,128 per year).¹ Therefore, the aggregate annual internal cost of compliance for the

¹ The estimated hourly wages used in this analysis were derived from reports prepared by the Securities Industry and Financial Markets Association. See Securities Industry and Financial Markets

approximately one registered transfer agent each year to comply with Rule 17Ad-3(b) is also \$1,128.

13. Costs to Respondents

Not applicable: (a) it is not anticipated that respondents will have to incur any capital and start up cost to comply with the rule, and (b) it is not anticipated that the 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. Cost to Federal Government

Not applicable. The notice requirement under the rule is a third party notice.

15. Changes in Burden

The burden increased due to a change in the Commission staff's estimate of the time it will take a transfer agent to send a copy of the notice to issuer-clients.

16. Information Collections Planned for Statistical Purposes

Not applicable. The information collection is not used for statistical purposes.

17. Approval to Omit OMB Approval Date

The Commission is not seeking approval to omit the expiration date.

18. Exceptions to Certification for Paperwork Reduction Act Submissions

This collection complies with the requirements in 5 CFR 1320.9.

B. Collection of Information Employing Statistical Methods

This collection does not involve statistical methods.