

NEWS

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

(202) 755-4846



TRANSFER AGENTS MEET THE SEC

Address by

John R. Evans
Commissioner
Securities and Exchange Commission

Southern Chapter
Western Stock Transfer
Association
Los Angeles, California
October 9, 1975

On June 4, 1975, the President signed into law the Securities Acts Amendments of 1975. These Amendments, which embody the most comprehensive revisions of the Securities Exchange Act since 1934, contain a Congressional mandate that the Securities and Exchange Commission "facilitate the establishment of a national system for the prompt and accurate clearing and settlement of transactions in securities"

In the early 1970's when Congress examined the securities clearing and settlement process because the industry's inability to process the unprecedented volume of securities transactions had caused substantial losses to public investors, it was found that structural limitations and a lack of planning prevented securities processing participants from moving towards a uniform, coordinated, and nationwide processing system.

Although changes and improvements have occurred since that time as the result of industry initiative and SEC action, the securities processing industry is still composed of several separate and uncoordinated clearing and settlement systems with different standards and operating procedures. A major purpose of the 1975 Amendments is to provide a rational, regulatory framework within which all components and participants can be correlated into an efficient securities processing system.

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Before the 1975 Amendments, the Commission had direct regulatory authority over brokers, dealers, and exchanges, and we exercised authority over clearing agencies and depositories because they had developed as facilities of exchanges. The 1975 Amendments granted the Commission direct authority over clearing agencies and depositories, and, in order to facilitate the development of a coordinated system, extended the regulatory jurisdiction of the SEC and the federal bank regulatory agencies to include the only link in the securities processing chain which was not previously regulated--the transfer agents. This extension of regulatory jurisdiction did not occur without opposition. Indeed, during consideration of the legislation by Congress, witnesses representing transfer agents testified that governmental regulation was unnecessary, could be counterproductive, and could result in improper involvement of the federal government in the internal operations of transfer agents.

In view of the burdensome and stifling effect of governmental regulation in some industries, it is not surprising that transfer agents would be apprehensive. Moreover, the White House, members of Congress, and the general public have suggested that much of the bureaucratic regulation by federal regulatory agencies is unwarranted, costly, and detrimental to the public interest. Nevertheless, realizing that regulation would result in the imposition by

governmental authorities of new requirements and additional costs on transfer agents, Congress determined that it was appropriate.

It is our responsibility and your responsibility to assure that improper regulation is avoided, that the benefits of regulation outweigh the burdens, and that costs of regulation are held to an absolute minimum, consistent with the protection of investors and the public interest. How successful we are in accomplishing these goals will depend to a great degree on communication, understanding, and cooperation between the SEC and your industry, and a sensitivity and willingness on our part to tailor registration, recordkeeping, and reporting requirements, as well as performance standards and other regulations, to different types of transfer agents and to investor and public needs.

Perhaps the most basic requirement of the recent legislation affecting transfer agents is that they be registered by December 1, 1975. Transfer agents which are banks or subsidiaries of banks will register with the appropriate federal bank regulatory agency and all other transfer agents will register with the Commission. To implement registration, the Commission issued on August 28 proposed Rule 17Ac2-1 which would require each transfer agent for which the Commission is the appropriate regulatory agency to file an application for registration on proposed

Form TA-1.^{1/} Concurrently, each of the federal bank regulatory agencies published a substantially similar rule and an identical registration form for transfer agents subject to their jurisdiction. The public comment period on our proposals expired on September 29, 1975, but comments received after that date but prior to final Commission action on the proposals will also be considered.

The uniform proposed form for the registration of all transfer agents was developed through consultation and cooperation between the SEC and bank regulators in order to establish comparable requirements for bank and non-bank transfer agents. The form is uncomplicated and requests only what we believe to be the basic information necessary to carry out regulatory responsibilities under the Act. Furthermore, while the Act requires every bank transfer agent who files Form TA-1 with a bank agency to file a copy with the Commission, we agreed to eliminate the burden of multiple filings by requesting bank transfer agents to file copies of the registration form and amendments just with the appropriate federal bank agency which will transmit a copy to the Commission.

The transfer agent legislation requires registration only of persons who perform transfer agent functions with respect to securities registered under Section 12 of the

^{1/}Securities Exchange Act Release No. 11622, 40 Fed.Reg. 40858 (Sept. 4, 1975).

Securities Exchange Act or which would be required to be so registered except for the exemptions which relate to securities of certain investment companies and insurance companies. Form TA-1 requires basic information such as the name of the registrant, the address of the principal place of the registrant's business, the address of the registrant's principal office or offices for transfer agent activities, the name of the person in charge of the registrant's transfer agent activities, the registrant's form of organization, the types of transfer agent activities engaged in by the registrant, the names of issuers for which the registrant acts as transfer agent or co-transfer agent or registrar or co-registrar, the nature and extent of the registrant's insurance coverage relating to transfer agent activities, the identity of any state which regulates or examines registrant's transfer agent activities, whether the registrant is audited, whether the audit includes a review of internal controls related to transfer agent activities, as well as certain operational data.

In addition, as indicated in the instructions to Form TA-1, a registrant is required to file amendments to update the Form if certain information becomes inaccurate, misleading or incomplete for any reason. The registration form is designed to identify and provide basic information

about transfer agents and to aid in the development of appropriate regulatory standards.

Regulation is a two-way street. If not approached prudently, it can result in head-on collisions between the regulators and the regulated, disruption of legitimate business activities, and unnecessary costs. These adverse consequences can be avoided and maximum benefits obtained only if the regulator and the regulated understand each other and act in good faith. As we begin this new relationship, there are naturally many unanswered questions and perhaps some anxiety as to what the future holds. Just as we must be well-informed in order to formulate appropriate and meaningful regulations, a knowledge of Commission attitudes and procedures can be helpful to those dealing with the Commission.

If I were in your position, I would be most concerned about the effect regulation would have on my business operations. I would want to know how the Commission operates, what regulatory proposals are being considered, how I could make my views known, and whether it would be worth my efforts to do so. If I were a small transfer agent, I would wonder if minimum standards for capital, recordkeeping, and reporting might be established on the basis of large transfer agent operations without consideration of whether those standards are necessary or even desirable for all transfer agents. If

I were a transfer agent somewhat remote from securities market centers, I would be concerned that turn-around time standards for processing transfers could be established that would make it impossible for me to continue in business. I would like to know whether the costs of new requirements would be weighed against the probable benefits. In short, I would like to know what kind of a relationship I could expect with the SEC and how much the Commission would be involved in my business.

As a member of the Commission, I would like to discuss our procedures and explain briefly what you might expect from the Commission. I also hope that I will be able to answer some of your questions. The SEC has the reputation of being an agency that is not controlled or influenced by the self-interests of those it regulates. In fact, it has been suggested by some who are subject to our regulation that the Commission is antagonistic and acts contrary to the industry's interests. Although the Commission believes that a healthy securities industry is important, it has never been our responsibility, nor do I believe it desirable, to protect firms or organizations subject to our jurisdiction from competitive market forces.

In both theory and from practical experience, it is evident that to do so would foster inefficiency, higher costs, practices which do not respond to changing needs, and

eventually a decline in demand for the services being offered and a weakening of the firms involved. Our responsibility is to protect investors and the public interest by assuring full and fair disclosure of material facts, to prevent inequitable and unfair practices in our securities markets, and to facilitate the establishment of a national market system. We cannot fulfill these responsibilities without having an impact on participants in our securities markets, and we realize that the impact on some participants may be adverse.

Nevertheless, I believe strongly that by protecting investors, preventing inequitable and unfair practices in our markets, and facilitating a more efficient market system, the Commission encourages public trust and confidence in our markets, fosters better capital markets, and in the long run acts in the interests of the securities industry. Individual firms and organizations must bear the responsibility of planning and adjusting their operations to attract customers and remain profitable. What this means for transfer agents is that you can expect the Commission to become familiar with the operations of all types of transfer agents and to set standards which will permit broad participation in the transfer agent business. But it would be a mistake for you to entertain the idea that any transfer agent operation, either large or small, will be protected from competitive

alternatives or that the Commission will not encourage innovations which would result in more efficient performance of transfer agent functions.

Because your participation is necessary in order to formulate and establish appropriate rules and regulations, you should understand the Commission's procedures so that you can make your views known. Meetings with industry groups provide an opportunity for an exchange of views and, of course, letters and telegrams to the Commission or the staff are always welcome. In addition, our staff will be visiting some of your firms to review your operations and obtain detailed information. On the basis of the information we obtain, the staff will recommend proposed rules and regulations to the Commission. The Commission may agree with the staff's recommendations, revise them or ask the staff to consider alternatives. When the Commission determines that a proposal has developed to a stage where public comments would be helpful, we solicit comments through the formal rule making procedures established by the Administrative Procedure Act.

The Administrative Procedure Act requires that a notice of proposed rule making and the text of the proposed rule be published in the Federal Register. This notice, which in most instances is the first indication to the public that the Commission is considering a proposed rule or rule change, must contain a statement of the nature of the rule

making proceedings, a reference to the authority under which the agency is acting, and a general explanation of the substance of the proposed rule.

These proceedings are also publicized in two Commission publications which can be obtained by subscription from the Superintendent of Government Documents in Washington, D.C. The SEC News Digest contains brief reports of significant Commission actions and is published on a daily basis. The SEC Docket is a weekly compilation of all Commission regulatory and enforcement actions and contains a complete text of all Commission releases. The Commission's past practice has been to send regulatory releases to entities registered under the statutes we administer, and that practice should apply to transfer agents once they are registered. In addition, private companies publish Commission releases on a rather timely basis and report generally on various Commission developments.

The Administrative Procedure Act requires, with some exceptions, that regulatory agencies afford interested persons an opportunity to submit views and comments regarding proposed rules. The Commission usually allows thirty days or more after the announcement of a proposed rule for public comments to be submitted. Moreover, in some instances, when a proposed rule would bring about fundamental changes, the Commission may hold hearings so that interested persons may express their views orally.

After considering the relevant data submitted both in written and oral comments, the Commission may withdraw a proposal, adopt it permanently in the form proposed or with revisions, or, if major changes seem appropriate, the proposal will be exposed for another public comment period with respect to such changes. I believe you will find it worth the effort to give your views on such proposals because all comments are considered. While I cannot assure you that we will accept and agree with every recommendation suggested, many of them will be accepted, and they will result in better rules and regulations. In addition to these proceedings, the Administrative Procedure Act allows any interested person the right to petition an agency such as the Commission for the issuance, amendment or repeal of a rule. Furthermore, the Commission's rules are always subject to judicial review in a court of law.

The procedures which I have outlined are being followed with respect to our proposed registration rule and form for transfer agents, and the Commission and bank regulatory agencies have received more than fifty public responses, including letters from some of you and your Association. The responses have pointed out defects, suggested additions, deletions and clarifications, and recommended alternative approaches. I believe that the Commission will substantially alter the rule and form proposals as a result of these comments. After the staff has completed its

analysis of the comments received and has consulted with the bank agencies, it will submit its analysis and recommendations, along with the comment letters, to the Commission. Upon review, the Commission will make a final determination on the proposal, and that decision will be published in the Federal Register and the Commission publications.

The 1975 Amendments grant broad regulatory powers over transfer agents to the Commission. Although it is too early to have developed a comprehensive regulatory program because we have not yet become sufficiently familiar with your industry, you can expect the Commission, within the next few months, to propose rules which would establish minimum performance standards for transfer agents in such areas as maximum processing time for transfers, safekeeping of certificates and records, bonding requirements, recordkeeping requirements, early warning reports, and possibly qualification examinations for transfer agent employees.

In proposing such standards, consideration will be given to the existing capacities of transfer agents and the effect that such standards would have. It is possible that the standards may differentiate between transfer agents with heavy volume and those with a single issue to transfer. Perhaps issuer transfer agents should have different requirements than non-issuer transfer agents, and there may be exemptions from some standards on certain terms or

conditions. The obvious purpose of setting minimum standards is to upgrade transfer agent performance. Although it is very unlikely that well-operated transfer agents will have any difficulty in complying with the minimum standards eventually adopted by the Commission, it will, no doubt, be necessary for some transfer agents to improve their operations.

There are other provisions of the 1975 Amendments which may ultimately impact upon transfer agent operations. Transfer agents are a vital link in the communication network between issuers and shareholders, and changes for the purpose of improving corporate communications could affect your operations. In this regard, the new law directs the Commission to study the practice of registering securities in a name other than that of the beneficial owner. While this practice facilitates the prompt transfer of ownership, it makes communication between corporations and their shareholders more difficult. The study is to determine what impact this practice has on the purposes of sections of the Securities Exchange Act dealing with registration of certain issues, proxy solicitations, reporting requirements for officers, directors, and principal stockholders of certain companies, and the establishment of a nationwide system for the prompt and accurate clearance and settlement of securities transactions. Congress also expressed the hope that the study would provide a basis for recommendations which would

make it possible to retain the benefits of registration in "nominee" or "street" name while assuring that the regulatory purposes of Exchange Act provisions are not evaded through the use of such a practice and improving communication between issuers and beneficial owners of securities.

Our preliminary findings must be reported to the Congress by December 1, 1975, and our final conclusions and recommendations are to be reported no later than one year from that time. The preliminary report will probably consist of two parts. The first part will discuss the Congressional objectives sought by the sections of the Securities Exchange Act to which I have already referred and whether the use of a street or nominee name is consistent with those objectives. It is anticipated that a second part of the preliminary report will contain suggestions for assuring that the purposes of the Securities Exchange Act are met and for improving the issuer-shareholder communication process. Hopefully, these suggestions will stimulate public discussion and comments which can be used by the Commission in developing its final conclusions and recommendations.

At the present time, the staff is gathering data which includes, among other things, comments and suggestions of interested persons. The comments received thus far represent a number of conflicting interests. Some beneficial owners complain that they do not receive their proxies and

other mailings in a timely fashion. Others appear to value the convenience in trading securities which such registration provides more than the timely receipt of information from issuers. During the hearings on beneficial ownership conducted by the Commission a year ago, some witnesses testified that publicly-owned companies frequently fail to give sufficient notice of record dates and meetings; other witnesses suggested that broker-dealers failed to respond to issuer inquiries in a timely manner. On the other hand, some persons have suggested that the present system of issuer-shareholder communications works reasonably well and that significant changes are not needed.

The Commission, acting pursuant to its traditional proxy authority, recently published for public comment Rule 14b-1 and amendments to Rule 14a-3 which are designed to improve communications to shareholders. These rules would impose obligations upon brokers and issuers to make appropriate and timely inquiries regarding the number, names, and addresses of beneficial owners and to transmit promptly such materials as proxy statements and annual reports. The thrust of the rules is to place affirmative requirements upon those who have the ability to obtain such information and effect such communications in order that shareholders may meaningfully participate in corporate decisionmaking. These proposals reflect the Commission's strong belief that improvements in

the communication process should be undertaken. The comment period for these proposed rules terminates on November 30, 1975, and transfer agents may be affected by whatever conclusions the Commission reaches.

The 1975 Amendments contain another provision which will affect transfer agents. Section 17(f) of the Securities Exchange Act grants the Commission authority to adopt rules to require that participants in the securities market report information about missing, lost, counterfeit or stolen securities. This information, which is to be stored and available to participants upon payment of a reasonable fee, should be helpful in isolating and avoiding these problem securities. Currently, transfer agents receive the type of information mandated to be reported by the legislation in the form of "stops" when securities are lost, missing or stolen. Additionally, transfer agents will receive information from non-regulated entities such as individuals regarding lost or stolen securities. For these reasons, transfer agents may be crucial reporting entities for providing information which would otherwise not get into the system.

Recognizing the fact that in most cases securities which will be reported as lost or stolen to the Commission under the mandate of the legislation, will also be reported to the transfer agent in order to issue "stops," one of the principles of a system will be the prevention of duplicative

reporting. In these cases, it might be appropriate to require either the broker or bank from whose possession or control the security is missing, or the transfer agent to report the event, but not both. Under the Commission's rule making authority, rules may be adopted as necessary or appropriate to require market participants to make reasonable inquiries to determine whether securities in their custody or control or in which they are effecting, clearing or settling transactions have been reported as missing, lost, counterfeit or stolen. It seems to me that this section will probably not require any additional action by transfer agents. If a comprehensive list of stops paralleling the information required by the Commission is maintained, transfer agents would just continue to follow their current procedure of checking certificates against their stop list before transferring ownership.

Among the questions which must be considered with respect to this provision, and about which we hope you will give us the benefit of your experience, are:

1. Should all securities held by persons involved in the securities handling process be checked against the central facility?

2. Should certain types of securities or transactions be exempt from the inquiry process?

3. At what point in the securities transaction process should inquiry be made?

4. What effect will the ability to conveniently inquire as to a particular security's status as being lost, missing, stolen or counterfeit have on the holder in due course or bona fide purchaser status of financial institutions?

I realize that no one desires to be subject to governmental rules and regulations with their requirements and costs, but the Commission has been given the responsibility to facilitate the establishment of a more efficient, effective, and safe securities processing system, and the regulation of transfer agents is an important part of that responsibility. I have explained Commission attitudes and procedures so that you would understand us better and know that we believe that your participation is necessary in the formulation of appropriate rules and regulations. Our primary goal is to act in the public interest and for the protection of investors, but you can be sure that in striving for that goal, the Commission also desires to minimize the burden of regulation on those who are subject to our jurisdiction. Working together I am confident that we will be successful in this endeavor.