

agents to use electronic storage media⁴ to maintain records that they are required by Rule 17Ad-6 to retain and (2) modified the requirements for using micrographic media⁵ as a method of record storage. Specifically, Rule 17Ad-7(f), as amended, requires transfer agents that use electronic or micrographic media to store records to:

- Use electronic or micrographic storage mechanisms that are designed to ensure the accessibility, security, and integrity of the records, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records;
- Create an index of the records that are electronically or micrographically stored and store the index with the underlying records;
- Keep a duplicate of all records and indexes that are stored using electronic or micrographic storage media;
- Be able to promptly download electronically or micrographically stored records to an alternate medium such as paper, microfilm, or microfiche; and
- Keep in escrow an updated copy of the software or other information that is necessary to access and download electronically stored records.

Those amendments to Rule 17Ad-7 did not require transfer agents that wish to continue to maintain their records in hard copy format to maintain their records any differently from the way they stored them prior to the rule change. The amendments apply only to those transfer agents that choose to retain their records electronically or micrographically. The purpose of those amendments was to increase the flexibility and efficiency of transfer agent recordkeeping while maintaining necessary controls over accuracy, integrity, and access to transfer agent records.

Notwithstanding the Commission's intent in adopting the amendments to Rule 17Ad-7, there appears to be some uncertainty whether (1) Rule 17Ad-7 allows transfer agents to rely exclusively on electronic or micrographic records for purposes of the Commission's transfer agent recordkeeping rules and to no longer maintain hard copy records, including cancelled certificates and (2) a third party on behalf of the transfer agent may deposit with an independent escrow agent a copy of all the documentation required under Rule

17Ad-7(f)(5)(ii) for the purpose of complying with Rule 17Ad-7(f)(5)(ii).⁶ In order to eliminate this uncertainty, we propose to amend Rule 17Ad-7(f).

II. Proposed Rule Language

We are proposing to amend paragraph (f) of Rule 17Ad-7 to clarify that records, including cancelled securities certificates, stored electronically or micrographically in accordance with the provisions of Rule 17Ad-7 may serve as a substitute for hard copy records required to be maintained pursuant to Rule 17Ad-6. Accordingly, this "substitution" provision would allow, but would not mandate, the destruction of hard copy records, including securities certificates, after electronic or micrographic records have been created in conformity with Rule 17Ad-7(f).⁷

In addition, we are proposing to amend paragraph (f)(5)(ii) of Rule 17Ad-7 to clarify that a transfer agent may fulfill its software escrow obligation by having a third party deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad-7(f)(5)(ii) on behalf of the transfer agent.⁸ A transfer agent using a third party vendor to maintain its records would be allowed under the proposed amendment to have the third party vendor place in escrow a copy of the vendor's proprietary source code on behalf of the transfer agent using the vendor's services. This proposed amendment would also allow a third party vendor maintaining the records of more than one transfer agent to place in escrow one copy of the vendor's proprietary source code for all the transfer agents for which it acts.⁹

⁶ Under Rule 17Ad-7(f)(5)(ii), transfer agents that choose to use electronic storage media must, among other things, "place in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code and the appropriate documentation and information necessary to access records and indexes. * * *

⁷ The Commission has proposed new Rule 17Ad-19 that would require transfer agents to establish and implement written procedures for the cancellation, storage, transportation, and destruction of securities certificates. Securities Exchange Act Release No. 43401 (Oct. 2, 2000); 65 FR 59766 (Oct. 6, 2000). In addition, while Rule 17Ad-7 would permit the destruction of paper records for purposes of our recordkeeping requirements, a transfer agent may have an obligation to preserve such paper records under other applicable law or rules.

⁸ One situation that calls for this clarifying amendment is when a software provider licenses its electronic records storage system software to a transfer agent but does not grant a license for the source code. As a result, the transfer agent does not have access to the source code.

⁹ Rule 17Ad-7(f)(5)(ii) requires the third party to file a written undertaking with the Commission

III. Request for Comments

We request comment from all interested persons on whether the proposed rule amendments accomplish our goals of clarifying that (1) registered transfer agents may use electronic, microfilm, and microfiche media as a substitute for hard copy records for purposes of complying with the Commission's transfer agent recordkeeping rules and (2) a third party may place into escrow the required software information on behalf of a registered transfer agent.

We also invite commenters to provide views and data relating to the costs and benefits associated with the proposed changes discussed above. If possible, commenters should provide empirical data to support their views. Comments should be submitted by July 21, 2003.

IV. Paperwork Reduction Act

The proposed amendments to Rule 17Ad-7(f) do not contain new "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹⁰ Accordingly, the PRA is not applicable to the proposed amendments because they do not impose any new collection of information requirements that would require approval of the Office of Management and Budget ("OMB"). OMB initially approved the paperwork burden analysis for Rule 17Ad-7(f) (OMB Control No. 3235-0136) when the Commission proposed amendments for Rule 17Ad-7(f) in 1999.¹¹

V. Costs and Benefits of the Proposed Rule Amendments

The Commission is considering the costs and the benefits of the proposed amendment to Rule 17Ad-7(f) as described below. We encourage comments that address any additional costs or benefits that we may have not considered. Commenters should provide analysis and empirical data to support their views on the costs and benefits associated with the proposed amendment.

A. Benefits

The proposed amendments to Rule 17Ad-7(f) should provide specific benefits to U.S. investors, issuers, transfer agents, and other financial

stating that it agrees to furnish the Commission with the appropriate documentation and information necessary to access the records and indexes promptly upon request.

¹⁰ 44 U.S.C. 3501 *et seq.*

¹¹ Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608 (June 2, 1999). Subsequently, OMB approved the extension of this paperwork collection.

⁴ Under Rule 17Ad-7(f)(1)(ii), the term "electronic storage media" refers to any digital storage medium or system.

⁵ Under Rule 17Ad-7(f)(1)(i), the term "micrographic media" refers to microfilm or microfiche or any similar medium.