

VIII. Summary of Regulatory Flexibility Analysis

The Commission has prepared an initial regulatory flexibility analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 17Ad-7(f) to determine whether the proposed rule amendments will have a significant economic impact on a substantial number of small entities.

A. Reasons for Proposed Action

The IRFA states that despite recent amendments to Rule 17Ad-7, there appears to be some uncertainty concerning the scope of the current rule with respect to electronic recordkeeping and the ability of a third party to deposit certain documentation with an independent escrow agent.

B. Objectives and Legal Basis

In order to eliminate this uncertainty, the Commission is proposing to amend Rule 17Ad-7(f). The proposed amendments are designed to make clear that transfer agents may use electronically and micrographically retained records to comply with the Commission's transfer agent recordkeeping requirements. In addition, proposed amendments to paragraph (f)(5)(ii) of Rule 17Ad-7 are designed 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.

Amendments to Rule 17Ad-7 are proposed under the Commission's authority set forth in Sections 17, 17A, and 23 of the Act.

C. Small Entities Subject to the Rule

The IRFA states that, for purposes of Commission rulemaking, Rule 0-10(h) under the Act defines the term "small business" or "small organization" to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) transferred items only of issuers that would be deemed "small business" or "small organizations" as defined in Rule 0-10 under the Act; (3) maintained 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 (or in the time that it has been in business, if shorter); and (4) is not affiliated with any person (other than a natural person) that is not

a small business or small organization under Rule 0-10.¹⁸ The IRFA states that we estimate that 180 registered transfer agents qualify as small entities and would be subject to the proposed amendment to Rule 17Ad-7(f).

D. Reporting, Recordkeeping, and Other Compliance Requirements

The IRFA states that the proposed amendments would not impose any new reporting, recordkeeping, or other compliance costs or requirements on any particular person or entity because compliance with this provision would be purely voluntary. Nevertheless, transfer agents that elect to exclusively use micrographic media or electronic storage media may incur some costs in destroying or otherwise disposing hard copy records. However, the Commission believes that this cost is minimal.

The IRFA notes that the proposed amendment to Rule 17Ad-7(f) would apply only to registered transfer agents that choose to exclusively use electronic or micrographic storage media. The IRFA notes further that some small transfer agents will not be able to afford the costs involved with storing records electronically and therefore will not choose to use electronic or micrographic storage media. The IRFA states that the proposed amendments to Rule 17Ad-7(f) should not have a significant economic impact on a substantial number of small entities.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed amendments.

F. Significant Alternatives

The IRFA states that we believe that it is not feasible to further clarify, consolidate, or simplify the proposed amendments for small entities. The IRFA also states that the Commission believes that the use of performance standards rather than design standards is not applicable to the proposed amendments.

The IRFA states that we believe that creating an exemption from the requirements of the proposed amendments would not reduce the impact of the proposed amendments on small entities. The IRFA notes that Rule 17Ad-4(b) under the Act¹⁹ already exempts small transfer agents from many of the recordkeeping requirements of Rules 17Ad-6 and 17Ad-7. In addition, the IRFA notes that any burden imposed by the proposed

amendments would apply only to those transfer agents that choose to use electronic or micrographic storage media. The IRFA states that we believe that there are no rules that duplicate, overlap, or conflict with the proposed alternative versions of the rule.

G. Solicitation of Comments

The IRFA contains information concerning the solicitation of comments with respect to the IRFA. In particular, the IRFA requests comment on whether the proposed amendments to Rule 17Ad-7(f) would have a significant economic impact on a substantial number of small entities and requests that any such comments be accompanied by specific empirical data. A copy of the IRFA may be obtained by contacting David Karasik, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

XI. Statutory Authority

The Commission is proposing amendments to § 240.17Ad-7 of Chapter II of Title 17 of the *Code of Federal Regulations* pursuant to sections 17, 17A(a)(2), 17A(d), and 23(a)²⁰ of the Act in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities, Transfer agents.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7202 unless otherwise noted.

2. Section 240.17Ad-7 is amended by:

a. Adding introductory text to paragraph (f); and

b. In the first sentence of paragraph (f)(5)(ii), revise the phrase "Place in escrow" to read "Place, or have a third party place on your behalf, in escrow".

The addition reads as follows:

¹⁸ 17 CFR 240.0-10(h).

¹⁹ 17 CFR 240.17Ad-4(b).

²⁰ 15 U.S.C. 78q, 78q-1(a)(2), 78q-1(d) and 78w(a)