

antifraud measure. We do not believe it would be prudent, especially in an antifraud provision, to establish different standards for transfer agents based on the number of certificates they process or the number of transfers they make within a given period, particularly when, as noted below in Section VII.C, approximately one-half of the transfer agents may be viewed as small entities. Considering that the underlying concern here is the protection of public investors from certificate fraud, we believe that the requirements of Rule 17Ad-19 are appropriate for all transfer agents that are in the business of processing securities certificates.

### C. Small Entities Subject to the Rule

A transfer agent is a small entity if it: (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 Exchange Act Rule 0-10; (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 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 Exchange Act Rule 0-10.<sup>69</sup> We note that approximately 470 registered transfer agents out of a population of about 900 apparently qualify as "small entities" for purposes of the RFA and will be subject to the requirements of Rule 17Ad-19.

In the Proposing Release, the Commission summarized, and requested comment on, the Initial Regulatory Flexibility Analysis ("IRFA"). We did not receive any comments specifically responding to the IRFA. However, we did receive comments related to small business, which are summarized above in Section VII.B.

### D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Rule 17Ad-19 requires all transfer agents to establish and implement written procedures for the cancellation, storage, transportation, destruction, or other disposition of securities certificates. Such written procedures and their implementation are subject to examination by each transfer agent's appropriate regulatory agency.

Additionally, the amendments to Rules 17f-1 and 17Ad-12 clarify that these two rules apply broadly to securities certificates, including cancelled securities certificates.

### E. Agency Action To Minimize Effect on Small Entities

As required by Section 603 of the RFA, the Commission has considered the following alternatives to minimize impact of the proposed rules and rule amendments on small entities: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>70</sup> As part of our consideration of the proposed rules, the staff conducted a survey of a few small transfer agents. The consensus among small transfer agents is that Rule 17Ad-19 will essentially codify their existing practices (based to some extent on trade association guidelines in effect since the mid-1990s) and will have minimal effect on them as transfer agents. We also considered alternatives that would exempt small transfer agents from some portions of the rule, but given that the rule is designed in large measure to protect public investors from certificate fraud, we do not believe a size exemption for transfer agents would be appropriate.

The Commission has considered significant alternatives to the proposed rules that would adequately address the problem posed by cancelled securities certificates. The Commission believes that the establishment of different requirements for small entities is neither necessary nor practical because the proposal is designed to provide general standards that will protect the public and members of the financial community from certain types of securities fraud, and the proposal will include an exemption procedure that will be available to small entities on a case by case basis. Moreover, the FRFA concludes that the Commission believes that the proposal, if adopted, will not adversely affect small entities. Finally, the FRFA addresses each of the other requirements set forth under 5 U.S.C. 603. A copy of the FRFA may be obtained by contacting Jerry W. Carpenter or Thomas C. Etter, Jr., at (202) 942-0178, Division of Market

Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1001.

## VIII. Statutory Basis and Text of Amendments

### Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3(b), 17(a), 17(f)(1), 17A(d), and 23(a) thereof, 15 U.S.C. 78q-1(d) and 78w(a), the Commission is adopting § 240.17Ad-19 and amendments to Rules 17f-1, 17Ad-7, and 17Ad-12 of Title 17 of the Code of Federal Regulation in the manner set forth below.

### List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements; Securities.

### Text of Rules

■ In accordance with the foregoing, the Commission is amending part 240 of chapter II of title 17 of the Code of Federal Regulations 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, 7202, 7241, 7262, and 7263; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

■ 2. Section 240.17f-1 is amended by:

- a. Adding paragraphs (a)(6), (a)(7) and (a)(8);
- b. Revising the phrase "lost in transit" to read "lost, missing, or stolen while in transit" in paragraph (c)(2)(i);
- c. Redesignating paragraphs (c)(2)(ii) and (c)(2)(iii) as paragraphs (c)(2)(iii) and (c)(2)(iv) respectively;
- d. Adding new paragraph (c)(2)(ii); and
- e. Adding paragraph (d)(3) to read as follows:

### § 240.17f-1 Requirements for reporting and inquiry with respect to missing, lost, counterfeit or stolen securities.

(a) \* \* \*

(6) The term *securities certificate* means any physical instrument that represents or purports to represent ownership in a security that was printed by or on behalf of the issuer thereof and shall include any such instrument that is or was:

- (i) Printed but not issued;
- (ii) Issued and outstanding, including treasury securities;

<sup>69</sup> 17 CFR 240.0-10.

<sup>70</sup> 5 U.S.C. 603(c).