

Integrated Fund Services ("IFS") argued that the general requirement that an escrow agent be independent of both the transfer agent and the third party software provider is overly burdensome to transfer agents and software developers and that sufficient legal and regulatory remedies exist that provide the Commission access to the software should the transfer agent fail to do so. IFS believes that these factors discourage transfer agents from using electronic records management systems.

The Records Management Division of the Nebraska Secretary of State contended that (1) electronic documents are not as widely accepted as evidence in state and federal judicial proceedings compared to paper and microfilm records, (2) in addition to the software, the hardware (including printers and ink cartridges) necessary to retrieve and reproduce hard copy images of the records should also be kept in escrow, (3) paper and microfilm are easier to access than electronic records, and (4) paper and microfilm records should be subject to the same performance requirements as electronic records, specifically that they should be indexed, kept in duplicate, and kept safe and secure (*e.g.*, from heat and sunlight).

While we will consider these two commenters' observations and suggestions as we continue to assess the effectiveness of the transfer agent recordkeeping rules, their comments do not address the issues presented in the Proposing Release, which was to clarify that (1) electronic records may be maintained in lieu of paper records and (2) a third party may escrow the required software on behalf of a transfer agent. These comments relate more to the previously adopted amendments to Rule 17Ad-7 that allow transfer agents to use electronic storage media to maintain their records.¹¹

EquiServe supported the proposed amendments. EquiServe stated that the proposed amendments will resolve an ambiguity, especially with respect to cancelled certificates, whether hard copy records need to be maintained if they are also stored electronically pursuant to the requirements set forth in Rule 17Ad-7. In addition, EquiServe agreed with the need to make clear that third parties may escrow the source code on behalf of transfer agents.

After careful consideration of the comment letters, we are adopting the proposed amendments to Rule 17Ad-7(f) as proposed.

III. Paperwork Reduction Act

The 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")¹² and therefore 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 for Rule 17Ad-7(f) (OMB Control No. 3235-0136) when the Commission proposed amendments for Rule 17Ad-7(f) in 1999.¹³

IV. Costs and Benefits of the Proposed Rule Amendments

The Commission has identified certain costs and the benefits of the amendments to Rule 17Ad-7(f) as described below. Commenters did not provide any quantitative or other specific data relating to the costs or benefits of the proposed rule. We expect that registered transfer agents will choose to adopt electronic or micrographic recordkeeping if it is cost effective for them to do so.

A. Benefits

The amendments to Rule 17Ad-7(f) should also provide specific benefits to U.S. investors, issuers, transfer agents, and other financial intermediaries. The proposed software escrow provision should enable transfer agents to more conveniently comply with the current Rule 17Ad-7(f)(5)(ii) requirement that a copy of the electronic storage system the transfer agent utilizes to store its records be placed in escrow with an independent third party. Transfer agents that choose to exclusively adopt electronic or micrographic-based records systems in lieu of paper records may realize cost-savings and reduce certain risks associated with paper-based recordkeeping. While these benefits are not readily quantifiable in terms of dollar value, the use of electronic and storage media should reduce storage burdens (*e.g.*, the need for storage space) that transfer agents currently face in maintaining paper records. By further clarifying the ramifications of each records format system, transfer agents might now choose to use a broader range of storage methods. In addition, transfer agents that decide to store records electronically or micrographically will no longer have the facility or

operational costs of a traditional paper based system. Transfer agents could then pass the cost savings to issuers who can, in turn, see a similar reduction in their transfer agent service fees. Also, by eliminating any legal uncertainty whether electronically and micrographically-retained records may serve as a substitute for hard copy records, registered transfer agents will be free to assess which storage method will best suits their business needs. Should they choose to benefit from advances in electronic recordkeeping technology, the time and labor in maintaining and accessing records should be reduced, resulting in operational and financial efficiencies. Other benefits include:

- Increased efficiency of recordkeeping operations by reducing the need to maintain records in hard copy format;
- Reduced likelihood that documents will be lost or misfiled;
- Ability to retrieve documents more quickly;
- Audit trails can be automated;
- Reduction of risk for natural disasters;
- File centralization is automatic (file and records need not be removed from their storage in order to reference them);
- Multiple persons can view the same document simultaneously;
- Access authorization can be automated;
- Space required for document storage is drastically reduced;
- Document indexing and cross-referencing can be automatic; and
- Documents can be copied, faxed, printed, and e-mailed without the paper originals.

B. Costs

The amendments to Rule 17Ad-7(f) should not impose costs on any particular person or entity because compliance with this provision would apply only to those transfer agents that choose to store any of their records exclusively in electronic form. Nevertheless, transfer agents that elect to use micrographic media or electronic storage media may incur some costs in destroying or otherwise disposing hard copy records that they elect to dispose or destroy. Any costs related to the use of micrographic or electronic storage media should be at least partly offset by the resulting elimination of the need to maintain and store records in hard copy format. This cost is likely to depend upon the volume of hard copy records

¹¹ See *supra* note 2 and accompanying text.

¹² 44 U.S.C. 3501 *et seq.*

¹³ Securities Exchange Act Release No. 41442 (May 25, 1999), 64 FR 29608 (June 2, 1999). Subsequently, OMB approved the extension of this paperwork collection.