

by altering the Kenai, Alaska, transition area by adding additional controlled airspace to protect IFR aircraft utilizing the Kenai VORTAC 8 DME arc to transition to the final approach course for the ILS runway 19 or VOR runway 19 approaches to Kenai. The additional controlled airspace would encompass the present Soldotna, Alaska, transition area and therefore the need for a separate Soldotna transition area no longer exists. Interested persons were invited to participate in the rulemaking proceeding by submitting written comments on the proposal to the FAA. The comments received expressed no objections.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (45 FR 445) is amended, effective 0901 GMT, December 25, 1980, as follows:

Under § 71.181—Kenai, Alaska, the text is deleted and "That airspace extending upward from 700 feet above the surface within an 17.5-mile radius of the Kenai Municipal Airport (latitude 60°34'21"N., longitude 116°14'44"W.), extending clockwise from the 007° to the 290° bearing from the airport" is substituted therefor.

Soldotna, Alaska, the text is deleted. (Sec. 307(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

**Note.**—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 1134, February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, and anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Anchorage, Alaska, on August 28, 1980.

Robert L. Faith,

Director, Alaska Region.

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 241

[Release No. 34-17111]

#### Regulation of Transfer Agents

AGENCY: Securities and Exchange Commission

#### ACTION: Interpretations of rules.

**SUMMARY:** The Commission has authorized the issuance of a release that sets forth in a summary manner the interpretations of its staff regarding rules that establish minimum performance standards and other requirements for all registered transfer agents. The purposes of the release are to aid interested persons in understanding how these rules have been interpreted, to resolve certain recurring issues that have arisen under these rules, and to provide uniform interpretations of these rules for the benefit of those persons subject to their requirements.

**DATE:** September 2, 1980.

**FOR FURTHER INFORMATION CONTACT:** Lisa Gessow Michelson, Branch Chief, or Thomas V. Sjoblom, Staff Attorney, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 272-2895, or (202) 272-2910, respectively.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission, in order to facilitate the establishment of a national system for the clearance and settlement of transactions in securities under Section 17A of the Securities Exchange Act of 1934 (the "Act"), adopted Rules 17Ad-1 to 17Ad-7 (17 CFR 240.17Ad-1 to 17Ad-7) (the "turnaround rules"), which, among other things, establish minimum performance standards and recordkeeping requirements for all registered transfer agents.<sup>1</sup> Numerous oral and written requests for interpretations of the turnaround rules have been presented to the Commission's staff. To provide guidance on the subjects and problems raised by such requests and on other significant recurring issues under those rules, the Commission has authorized the issuance of this release, which sets forth the views of its Division of Market Regulation.

Although many of the issues which have arisen under the turnaround rules have previously been addressed by the staff in interpretive and no-action letters that are publicly available, the staff has further clarified, and in certain instances revised, some of the positions expressed in those letters. Attention in this regard is directed particularly to Questions (4), (8), (9), (14), (26), (34), (40), (41) and (100) herein. To the extent that views expressed in previously issued interpretive and no-action letters are not discussed in this release, those views

may still be considered to represent the staff's position on the question raised therein.

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<sup>1</sup> Securities Exchange Act Release No. 13636 (June 16, 1977) (hereinafter cited as "Release No. 13636") (42 FR 32404) (Vol. 12, No. 9 SEC Docket 853 (June 28, 1977) (hereinafter cited as "SEC Docket"))

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I. Rule 17Ad-1: Definitions<sup>2</sup>

A. *Item*—Rule 17Ad-1(a): The term "item" means (1) a certificate or certificates of the same issue of securities covered by on ticket (or, if there is no ticket, presented by one presenter) presented for transfer, or (2) an instruction to a transfer agent which holds securities registered in the name of the presenter to transfer or to make available all or a portion of those securities. (3) In the case of an outside registrar, each certificate to be countersigned is an item.

(1) *Question*: Does the term "item," as the basic unit upon which performance standards and other requirements are formulated, apply only to securities registered under Section 12 of the Act?

*Answer*: No. Under Section 17A(c)(1) of the Act, a transfer agent must be registered with its appropriate regulatory agency if it uses the mails or any means or instrumentality of interstate commerce to perform any transfer agent function with respect to any security either registered under Section 12 of the Act,<sup>3</sup> or which would be required to be registered except for the exemptions provided by Sections 12(g)(2)(B) (securities issued by registered investment companies) or 12(g)(2)(G) (securities issued by certain insurance companies) of the Act ("qualifying securities"). Once a transfer agent is registered, the turnaround rules apply to all securities, including securities which are not qualifying securities, for which the registered transfer agent performs transfer agent functions. Accordingly, the term "item," and the use of the word "securities" in defining an "item," refers to *all* securities for which a registered transfer agent performs transfer agent functions, whether or not all such securities are qualifying securities.

<sup>2</sup> The captions used hereinafter are not intended and must not be construed as interpretations of the substance of each rule. The captions are used for reference only.

<sup>3</sup> See generally Sections 12(a), 12(b) and 12(g)(1) of the Act.

*Illustration (a)*: Facts: A registered transfer agent performs transfer agent functions for an issue of qualifying securities. It also performs transfer agent functions for nine other issues of securities which are not qualifying securities. Interpretation: The turnaround rules apply to all ten issues of securities.

*Illustration (b)*: Facts: A registered bank transfer agent performs transfer agent functions for the securities of an open-end, management company registered under the Investment Company Act of 1940 ("mutual fund shares") and for its own shares which are not qualifying securities. Interpretation: The certificates and instructions for transfer pertaining to the bank's own shares and the mutual fund shares are "items" for purposes of the turnaround rules. Accordingly, the turnaround rules apply to the bank's own shares even though the bank's shares are not qualifying securities. In addition, except as provided in Rule 17Ad-4(a), the turnaround rules apply to the mutual fund shares.

(2) *Question*: What are the essential elements in determining whether an "item" has been received by the transfer agent?

*Answer*: In addition to certificates to be countersigned by an outside registrar, Rule 17Ad-1(a) refers to two general categories of "items": certificates and instructions.

The first part of the definition of "item" refers to *certificates*. An "item" exists for purposes of the turnaround rules if the certificates are (i) of the *same issue* of securities, (ii) covered by *one ticket*, or if there is no ticket, presented by *one presenter*, and (iii) presented for *transfer*, as defined in Rule 17Ad-1(d).

The second part of the definition of "item" concerns *instructions*. An "item" exists if the instruction requests a transfer agent (i) that holds securities registered in the name of the presenter, (ii) to *transfer* (as defined in Rule 17Ad-1(d)) or to *make available* (as defined in Rule 17Ad-1(c)), (iii) all or a portion of the securities held in its possession or custody. For example, a shipment control list ("SCL") containing instructions from a depository to a transfer agent holding, under a transfer agent custodian or other arrangement, a balance certificate registered in the name of the depository's nominee to withdraw by transfer under the Fast Automated Securities Transfer ("FAST") program some of those securities and to make them available to the depository would constitute an "item."<sup>4</sup>

<sup>4</sup> See Release No. 13636. (SEC Docket, at 855.)

(3) *Question*: If a registered transfer agent is requested to replace a lost certificate, is the request an "item" presented for transfer?

*Answer*: No. In this instance, the transfer agent replaces a lost certificate upon receipt of an indemnity bond. No certificate has been presented for transfer, and the transfer agent is not making available any securities which are registered in the name of the presenter and are being held by the transfer agent.

(4) *Question*: When several certificates of the same issue of securities have been presented for transfer on several occasions during the same day by the same presenter, has only one item been presented for transfer?

*Answer*: No. Each time a single certificate is presented for transfer by one presenter, one item has been presented for transfer. Similarly, when there is no ticket, each time certificates of the same issue of securities are presented for transfer at the same time by one presenter, one item has been presented for transfer. In the latter case, certificates presented at different times must not be aggregated as one item, even though all certificates are of the same issue of securities and even though the same person was the presenter.

*Illustration*: Facts: At 2:00 p.m. on a business day, a messenger for a broker-dealer presents at the "window" of the transfer agent's premises two 10 share certificates of Company A's Class A common stock. At 10:30 a.m. on the next business day, the same messenger from the same broker-dealer presents at the "window" of the transfer agent's premises two more 10 share certificates of Company A's Class A common stock. Interpretation: Pursuant to Rule 17Ad-2(a), both presentments were received on the same business day. However, two items were presented for transfer because the presentments occurred at different times, even though the certificates were of the same issue of securities and even though the presenter was the same in both instances.

(5) *Question*: Is there a maximum number of certificates of the same issue of securities which may be presented for transfer at a single time and still be considered a single "item"?

*Answer*: No. Only one item is presented for transfer, regardless of the number of certificates, as long as all the certificates presented at the same time are (a) of the same issue of securities, and (b) covered by one ticket, or if there is no ticket, presented by one presenter.

(6) *Question*: How many certificates of the same issue of securities may be "covered by one ticket"?

**Answer:** If all certificates are of the same issue of securities, there is no limit to the number of certificates which may be covered by one ticket.

(7) **Question:** When the presenter includes certificates representing securities of nine different issues under one ticket, to be registered in the name of the presenter's nominee, how many items have been presented for transfer?

**Answer:** Nine. Since the certificates represent nine different issues, nine items have been presented for transfer.

(8) **Question:** Is each broker-originated-window-ticket contained in or attached to an SCL a separate item?

**Answer:** No. An SCL, not each broker-originated-window-ticket attached thereto, is a separate item.

(9) **Question:** Is the entire SCL one item or is each line on an SCL considered a separate item?

**Answer:** The entire SCL, and not each line thereon, is a single "item."<sup>5</sup>

(10) **Question:** When a transfer agent receives certificates covered by one instruction from one presenter to transfer the shares to a number of shareholders, resulting in the issuance of a greater number of separate certificates, how many items have been presented for transfer?

**Answer:** Assuming that all certificates presented for transfer are of the same issue of securities, only one item has been presented for transfer since there is only one presenter.

**Illustration:** Facts: A transfer agent receives five certificates from one broker under one transmittal letter requesting that the total amount of shares be transferred to ten shareholders in 20 separate certificates. Interpretation: There is only one presenter. Therefore, assuming all five certificates are of the same issue of securities, only one item has been presented for transfer.

(11) **Question:** Do either of the following constitute an "item" presented for transfer:

(a) A bond called for partial reduction only?

**Answer:** No. If there is only a partial reduction of the bond, *i.e.*, the bond is subject to a series of partial cash redemptions and has been presented for one of them, the bond is not an "item" subject to the turnaround rules. As stated in Question (2) above, one of the elements of an "item," when a certificate is involved, is that the certificate be "presented for transfer."

<sup>5</sup> The entire SCL is a single item, regardless of whether some certificates or instructions pertaining to any line on an SCL may be classified as "routine," and other certificates or instructions attached to the SCL may be classified as "non-routine." See Question (34) and note 29 *infra*.

"Transfer" is defined in Rule 17Ad-1(d) to include, among other things, cancellation of a certificate and issuance of a new one. However, when a bond is presented for partial redemption only, the certificate presented is not cancelled and a new certificate is not issued. Accordingly, since there is no "transfer," the certificate has not been "presented for transfer" as required by Rule 17Ad-1(a) and, therefore, is not an "item."

(b) A bond called for partial reduction and transfer?

**Answer:** Yes. If the bond has been presented for both partial reduction and transfer, then it is an "item."<sup>6</sup>

(12) **Question:** Does an issuer's instruction to effect a stock dividend payable from previously authorized but unissued shares constitute an "item"?

**Answer:** No. Since no certificates are presented for transfer, and since the transfer agent does not hold the securities as registered in the name of the issuer-presenter, a stock dividend issued from previously authorized but unissued shares (*i.e.*, original issue securities) is not an item.

(13) **Question:** Is an issuer's instruction to a registered transfer agent to issue shares pursuant to the company's stock purchase plan considered an "item" subject to the turnaround rules?

**Answer:** If the shares issued pursuant to a stock purchase plan are original issue securities, the instruction to issue certificates for those shares is not an "item," since no certificates are presented for transfer and since the instruction does not relate to securities registered in the name of the issuer-presenter and already in the transfer agent's possession.

However, if treasury shares are used, the instruction relates to securities held by the transfer agent and registered in the name of the presenter-company. Accordingly, the instruction constitutes an item subject to the turnaround rules.<sup>7</sup>

(14) **Question:** When the transfer agent, pursuant to a transfer agent custodian or other arrangement, holds a balance certificate registered in the name of the depository's nominee, do deposits of certificates by a depository, and do fanfold instructions attached to an SCL to withdraw by transfer under the FAST program any shares and to reduce the balance certificate constitute "items"?

<sup>6</sup> However, because the transaction includes a partial redemption, the item is "non-routine" under Rule 17Ad-1(i)(5). Cf. Question (43) *infra*.

<sup>7</sup> When any additional instruction is necessary before transfer can be effected, the item is considered non-routine under Rule 17Ad-1(i)(3). See Question (38) *infra*.

**Answer:** Yes. Under the first part of the definition of an "item,"<sup>8</sup> certificates deposited by the depository constitute items. The third element—"presented for transfer"—is met because "transfer," as defined in Rule 17Ad-1(d), includes registration of the change of ownership without the physical issuance of certificates.

Under the second part of the definition of an "item,"<sup>9</sup> if the transfer agent receives an SCL with fanfold instructions from the depository to withdraw by transfer under the FAST program any shares and effects transfer by reducing the balance certificate and by issuing certificates, the SCL with such instructions would also constitute an "item."

**B. Outside Registrar—Rule 17Ad-1(b):** The term "outside registrar" with respect to a transfer item means a transfer agent which performs only the registrar function for the certificate or certificates presented for transfer and includes the persons performing similar functions with respect to debt issues.

(15) **Question:** Do the federal securities laws prohibit a registered transfer agent from performing the functions of both a transfer agent and a registrar?

**Answer:** No. The federal securities laws do not prohibit a single transfer agent from performing both functions, nor do the federal securities laws require an issuer to engage two separate entities for purposes of performing transfer agent and registrar functions.<sup>10</sup>

**C. Made Available—Rule 17Ad-1(c):** An item is "made available" when (1) In the case of an item for which the services of an outside registrar are not required, or which has been received from an outside registrar after processing, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the presenter or a person designated by the presenter, or (2) In the case of an item for which the services of an outside registrar are required, the transfer agent dispatches or mails the item to, or the item is awaiting pick-up by, the outside registrar, or (3) In the case of an item for which an outside registrar has completed processing, the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent.

<sup>8</sup> See Rule 17Ad-1(a) and Question (2) *supra*, and Release No. 13636. [SEC Docket, at 855].

<sup>9</sup> *Id.*

<sup>10</sup> This matter is largely governed by state law. In addition, the various national securities exchanges may require separate entities. See *e.g.*, NYSE Company Manual, Section A1, Agencies, at A-5.

(16) *Question:* What is the meaning of "dispatched" for purposes of Rule 17Ad-1(c)?

*Answer:* An item is considered "dispatched" when it leaves the premises where transfer agent functions are performed and is sent to the receiving party or to a location from which it is picked up by the receiving party.<sup>11</sup>

(17) *Question:* When is an item considered "mailed" for purposes of Rule 17Ad-1(c)?

*Answer:* An item is considered "mailed" either when it is delivered to a location from which it is collected by the U.S. Postal Service or when it is being delivered to the U.S. Postal Service.<sup>12</sup>

(18) *Question:* When a transfer agent, after completing its performance of both the transfer and registrar functions, delivers *by noon* on the third business day a completed item in a properly addressed envelope to its on-premises mail room from which the mail is picked up daily at 5:30 p.m. by the U.S. Postal Service, is the item considered to have been made available when it reaches the mail room?

*Answer:* Yes. Rule 17Ad-1(c)(1) indicates that an item is "made available" when the transfer agent "mails" the item to the presenter or a person designated by the presenter. In this instance, the mail room serves as a designated drop area from which the U.S. Postal Service makes daily pickups. More importantly, since the completed item was delivered to the mail room *by noon* of the third business day as required by Rule 17Ad-2(a),<sup>13</sup> the item is considered to have been mailed<sup>14</sup> and, accordingly, "made available."

(19) *Question:* After the transfer agent completes transfer, the items are placed into an outgoing mail basket from which they are picked-up by an in-house mail carrier. The carrier then delivers the items to the transfer agent's central mail facility, located several miles away, which, in turn, delivers the items to the U.S. Postal Service. When are the items "made available"?

*Answer:* The transfer agent makes the items available when the central mail facility "mails the item[s] to \* \* \* the presenter." Thus, in this instance, the items are "made available" when they are being delivered to the U.S. Postal Service.<sup>15</sup>

<sup>11</sup> See Release No. 13636. (SEC Docket, at 855).

<sup>12</sup> *Id.*

<sup>13</sup> The result would be different if the item is not delivered to the mail room by noon on the third business day as required by Rule 17Ad-2(a).

<sup>14</sup> See note 12 *supra* and Question (17).

<sup>15</sup> *Id.* Any delay occurring before the item reaches the U.S. Postal Service must be recorded on the record maintained under Rule 17Ad-6(a)(1).

**D. Transfer—Rule 17Ad-1(d):** (There are two parts to, or methods which describe, the definition of "transfer.") The "transfer" of an item is accomplished (1) when, in accordance with the presenter's instructions, all acts necessary to cancel the certificate or certificates presented for transfer and to issue a new certificate or certificates, including the performance of the registrar function, are completed and the item is made available to the presenter by the transfer agent, or (2) when, in accordance with the presenter's instructions, a transfer agent which holds securities registered in the name of the presenter (a) completes all acts necessary to issue a new certificate or certificates representing all or a portion of those securities and makes available the new certificate or certificates to the presenter or a person designated by the presenter, or (b) with respect to those transfers of record ownership to be accomplished without the physical issuance of certificates, completes registration of change in ownership of all or a portion of those securities.

(20) *Question:* What is the status of an item rejected at the window of the transfer agent's premises?

*Answer:* Items presented for transfer but rejected at the window are not received for transfer and, accordingly, are not subject to the turnaround rules.<sup>16</sup>

(21) *Question:* How should a transfer agent treat an item which, after some internal circulation and review, is rejected as unacceptable for transfer?

*Answer:* The item should be considered as rejected. Since the transfer agent, pursuant to Rule 17Ad-6(a)(1), made a record showing the date the item was received from the presenter, that record should indicate that the item was subsequently rejected, so that the item does not appear as an "open" item on the transfer agent's records. In addition, if an internal control ticket was prepared prior to the time of rejection, the ticket must be traceable to any rejection notice sent to the presenter.

The item should not be considered non-routine under Rule 17Ad-1(i)(3) and should not be logged in as a non-routine item under Rule 17Ad-6(a)(2)(iv).

Finally, since these items are considered rejected, they are not included in the records required by Rule 17Ad-6(a)(2) and (a)(4) used to compute the number of items turned around pursuant to Rule 17Ad-2(a).

(22) *Question:* When a transfer agent, pursuant to a transfer agent custodian or other arrangement, holds a balance certificate representing securities

registered in the name of a depository's nominee, does "transfer" occur when the transfer agent either (a) issues new certificates representing a portion of those securities and makes the certificates available to the depository, or (b) registers a change in ownership from the name of a participant in a depository to the name of the depository's nominee without a physical issuance of securities?

*Answer:* In either case, such transfers fall within the second method of "transfer." Thus, although a "transfer" usually will involve cancelling old certificates and issuing new certificates, no physical issuance of certificates need occur—*e.g.*, when a depository is the presenter and it requests the transfer agent, which holds a balance certificate, to complete registration of a change of ownership from the name of the depositor's participant to the name of the depository's nominee.<sup>17</sup>

**E. Turnaround—Rule 17Ad-1(e):** The "turnaround" of an item is completed (1) when transfer is accomplished, or (2) when an outside registrar is involved, the transfer agent in accordance with the presenter's instructions completes all acts necessary to cancel the certificate or certificate presented for transfer and to issue a new certificate or certificates, and the item is made available to an outside registrar.

(23) *Question:* If an outside registrar is involved, when is turnaround completed?

*Answer:* Turnaround is completed when the item is made available to the outside registrar after the transfer agent has cancelled the old certificate and has issued the new certificate in accordance with the presenter's instructions.

(24) *Question:* Is turnaround completed when the transfer agent makes the item available to an outside registrar, even if the outside registrar performs its function on the transfer agent's own premises?

*Answer:* Yes. Rule 17Ad-1(c)(2), in describing how an item is "made available" to an outside registrar, does not specify *where* the transfer agent must dispatch or mail the item. In addition, Rule 17Ad-1(b) does not specify *where* an outside registrar must perform its function. Thus, turnaround is completed when a transfer agent makes the item available to an outside registrar, regardless of whether the registrar performs its function on or off the transfer agent's premises.<sup>18</sup>

<sup>17</sup> *Id.*

<sup>18</sup> However, the transfer agent must maintain, pursuant to Rule 17Ad-6(a)(1)(ii), records showing clearly when the item was made available to the outside registrar.

<sup>16</sup> See Release No. 13636. (SEC Docket, at 856).

**Illustration: Facts:** A New York transfer agent has a subsidiary transfer agent operation located in Chicago, which receives the items for transfer. The cancelled certificate is forwarded to the New York transfer agent for issuance of the new certificate. A bank in New York, acting as outside registrar, daily performs its functions on the New York transfer agent's premises.

**Interpretation:** The New York transfer agent completes "turnaround" when the new certificate is made available to the outside registrar's employees on the New York transfer agent's premises.

(25) **Question:** Is an item made available and, therefore, turnaround completed, when, after the old certificate is cancelled and the new one issued, the item is placed by noon on the third business day following its receipt in the mail room of the transfer premises for the only daily pick-up at 5:30 p.m. by the U.S. Postal Service?

**Answer:** Yes. Turnaround is completed either (a) when transfer is accomplished in accordance with Rule 17Ad-1(d), which requires as the last step in the transfer of the item making it available to the presentor (or a person designated by the presentor), or (b) when an outside registrar is involved, the item is made available to the outside registrar.

Under Rule 17Ad-1(c), an item is "made available" when, among other things, the transfer agent "mails" the item. The item is considered mailed when it is placed by noon of the third business day following its receipt in the mail room on the transfer premises from which it is collected by the U.S. Postal Service.<sup>19</sup>

**F. Receipt—Rule 17Ad-1(g):** The "receipt" of an item or a written inquiry or request occurs when the item or written inquiry or request arrives at the premises at which the transfer agent performs transfer agent functions, as defined in Section 3(a)(25) of the Act.

(26) **Question:** Are the following considered items received for transfer and, accordingly, subject to the turnaround rules:

(a) Items addressed to another transfer agent but inadvertently delivered to the subject transfer agent?

**Answer:** No. The transfer agent does not perform transfer agent functions for such items.

(b) Items addressed to the subject transfer agent, but for which the transfer agent does not perform transfer agent functions?

**Answer:** No, since the transfer agent does not perform transfer agent functions for such items.

(c) Items for which the transfer agent is the appropriate transfer agent but, because of nonpayment of fees, refuses to transfer such securities?

**Answer:** If these items are promptly returned to the presentor, they would not be considered received for transfer.<sup>20</sup>

(27) **Question:** Has "receipt" occurred when the item arrives in the mail room at the transfer premises?

**Answer:** Yes. Since the item arrived at the premises at which the transfer agent performs transfer agent functions, receipt has occurred for purposes of the turnaround rules.<sup>21</sup> The fact that the item was received in the mail room instead of the actual office or department where transfer agent functions are performed is immaterial. Thus, when the mail room is located in the same building as, or in a building connected to, the transfer premises, receipt occurs when the item arrives at the mail room. In this connection, the transfer agent must minimize delays which are subject to its control. It will be in the transfer agent's interest, therefore, to ensure that a received item is promptly forwarded from the mail room to the transfer department.<sup>22</sup>

(28) **Question:** Has "receipt" occurred when items arrive at a "drop" located a significant distance from the transfer premises?

**Answer:** No. The items have not been received, for purposes of the turnaround rules, until they arrive at the actual premises where transfer agent functions are performed. Thus, since the items have not arrived at the actual transfer premises when they arrive at such a "drop," they are not considered as having been received under Rule 17Ad-1(g).<sup>23</sup> However, when items are received at a "drop," a registered transfer agent must have, pursuant to Rule 17Ad-2(f), appropriate procedures to assure, and must assure, that items are promptly forwarded to the actual transfer premises.

(29) **Question:** In those cases where the named transfer agent for an issue contracts with a service bureau,<sup>24</sup> which

<sup>19</sup> If the transfer agent retains the item, it must be considered "received" for transfer but may be classified as "non-routine." See Question (40) *infra*.

<sup>21</sup> See Release No. 13636. (SEC Docket, at 656).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> As used in this release, the terms "named transfer agent" and "appointed transfer agent" refer to the registered transfer agent engaged by the issuer to perform the transfer agent functions for an issue of securities. Except where the term "outside service bureau" is used, the term "service bureau" refers to an entity that performs the transfer agent functions for that issue for the named transfer agent and is a registered transfer agent. A service bureau arrangement is sometimes also referred to as a "private label service."

also is a registered transfer agent, to perform the transfer agent functions for the issue, including transferring the certificates and maintaining the security holder records, does receipt of an item occur when it arrives at the premises of the named transfer agent?

**Answer:** No. An item is "received" when it arrives at the premises of the transfer agent that actually performs the transfer agent functions. Under the facts as presented, the named transfer agent does not perform the transfer agent functions; rather, those activities are performed at the premises of the service bureau. Accordingly, for purposes of the turnaround rules, receipt of the item occurs when it arrives at the service bureau's premises.

However, pursuant to Rule 17Ad-2(f), both the service bureau and named transfer agent must have appropriate procedures to assure, and must assure, that items are promptly forwarded to the premises of the service bureau.

**Illustration: Facts:** Both Company A and Company B are registered with their appropriate regulatory agency as transfer agents. Company A is the named transfer agent for an issue. Company A has contracted with Company B, a service bureau, to perform on behalf of Company A the transfer agent activities for that issue. Company A does not maintain or update the securityholder records. When an item is presented for transfer to Company A, Company A promptly forwards the item to Company B. Company B date-stamps the item upon receipt, completes turnaround, and makes the item available directly to the presentor. Company B daily sends to Company A a print-out of transfers completed by Company B. **Interpretation:** Company A and B must have appropriate procedures to assure, and must assure, that the item is promptly forwarded to Company B's premises. Receipt occurs, for the purposes of the turnaround rules, when the item arrives at Company B's premises. In addition, Company B must maintain the appropriate records<sup>25</sup> and meet the required turnaround performance.

**G. Business Day—Rule 17Ad-1(h):** A "business day" is any day during which the transfer agent is normally open for business and excludes Saturdays, Sundays and legal holidays or other holidays normally observed by the transfer agent.

(30) **Question:** Would any of the following circumstances give rise to a determination that a given day not be considered a "business day" for purposes of the turnaround rules:

<sup>25</sup> See Rules 17Ad-6 and 17Ad-7.

<sup>19</sup> See Question (17) *supra*.

(a) Days when, because of severe inclement weather, city government and other businesses are forced to close down, virtually all forms of transportation are not available and ordinary commerce is suspended, but a bank transfer agent nevertheless opens its transfer department with a skeleton staff only?

*Answer:* Yes. Such days are not considered "business days" for purposes of the turnaround rules.

(b) Days when various public transportation systems have ceased to operate because of union or other strikes?

*Answer:* No. In these circumstances, most businesses, including transfer agents, are still "normally open for business." Transit strikes do not terminate basic business operations, even though it may be more difficult for employees to get to work.<sup>26</sup>

(c) Days when businesses are requested or required to close by order of a city, municipal or state government?

*Answer:* Yes. Such days would not be considered business days for purposes of the turnaround rules, since most, if not all, businesses would not normally be open.

**H. Routine—Rule 17Ad-1(i):** (The definition of a "routine" item is stated in the negative—i.e., an item received for transfer will be deemed routine unless it falls within the specified exceptions enumerated in Rule 17Ad-1(i)(1)-(8).)<sup>27</sup>

(31) *Question:* When should a transfer agent classify an item as "routine" or "non-routine"?

*Answer:* The decision that an item is routine or non-routine must be made as soon as the item is reviewed upon receipt at the transfer premises. Once a transfer agent determines that an item is "routine," the item generally retains that classification throughout the completion of turnaround. Thus, an otherwise routine item does not become non-routine by virtue of internal delays in the turnaround of the item.

(32) *Question:* Once an item is determined to be "non-routine," does it remain so, even after additional documentation has been received and reviewed and the item can be transferred?

*Answer:* Yes. An item that is determined to be "non-routine" retains

<sup>26</sup> A 10% margin in the turnaround and processing standards exists in Rule 17Ad-2 (a) and (b). If, despite this margin, a transfer agent still fails to meet the turnaround or processing requirement, it should explain the circumstances in its notice of non-compliance filed pursuant to Rule 17Ad-2 or (d).

<sup>27</sup> The various subparagraphs of Rule 17Ad-1(i) are set forth below preceding the interpretations thereunder.

that classification until turnaround is completed.

(33) *Question:* What is the effect under the turnaround rules when an item is classified as non-routine?

*Answer:* Some of the turnaround rules apply only to routine items. For example, the three business day turnaround requirement in Rule 17Ad-2(a) applies only to routine items. If the item is non-routine, Rule 17Ad-2(e) requires that the item receive "diligent and continuous attention" and must be turned around "as soon as possible."

Other rules, while applying to both routine and non-routine items, distinguish between the two. For example, the recordkeeping rules in Rule 17Ad-6 contain separate requirements depending on whether the item is routine or non-routine.

Thus, every transfer agent is encouraged to examine carefully each turnaround rule.

(34) *Question:* Is an SCL which has attached thereto some certificates or instructions that might be denominated non-routine treated partially as a non-routine item?

*Answer:* No. An SCL is a single,<sup>28</sup> routine item, regardless of whether some of the certificates or instructions attached thereto pertain to a line on the SCL that may be classified as non-routine.<sup>29</sup>

**1. Requisitioning Certificates—Rule 17Ad-1(i)(1):** An item is "routine" if it does not require requisitioning certificates of an issue for which the transfer agent, under the terms of its

<sup>28</sup> See note 5 *supra* and Question (9).

<sup>29</sup> Generally, before the SCL is presented to the transfer agent, securities depositories review the certificates and instructions and retain those items which are non-routine. In those instances where an SCL does contain both routine and non-routine certificates or instructions, transfer agents might consider using the following procedure: Notify the depository; photocopy the SCL; transfer those certificates, and effect transfers pursuant to those instructions, capable of being transferred, and make them available to the depository together with the SCL and a memorandum containing information as to why non-routine certificates or instructions were not transferred; and return to the depository in a separate envelope all non-routine certificates or instructions not transferred, unless the depository instructs otherwise. This is merely a suggested procedure; other procedures may be used. However, this procedure does not suggest or imply that the SCL, as a single routine item, has now been broken down into several items—some routine and some non-routine; the SCL remains a single, routine item in all respects.

In all cases, appropriate documentation satisfying Rule 17Ad-6 must be prepared and maintained. If the transfer agent returns any certificates or instructions because they are non-routine and cannot be transferred, the record required by Rule 17Ad-6(a)(1)(i) for the SCL should contain either a notation for that line, such as "returned to presenter," or an indication of the number of lines not transferred, such as "3 lines returned to presenter."

agency, does not maintain a supply of certificates.

(35) *Question:* May a registered transfer agent, which, under the terms of its agency, is obligated to maintain a supply of certificates for an issue of securities, treat as "non-routine" items received for transfer if the transfer agent has exhausted its supply of certificates for that issue?

*Answer:* No. A transfer agent, which is required to maintain under the terms of its agency a working supply of unissued certificates, must treat items received for transfer as "routine," even though it must requisition additional certificates from the issuer or another source before transfer may be effected. There is no exception from the definition of "routine" in such cases, even if the transfer agent had earlier made a timely request for more certificates and they were not forthcoming, or even if there was an unusually large volume of trading and resulting transfers that exhausted its supply of certificates earlier than anticipated. The absence of such an exception encourages the implementation of effective inventory control and efficient reorder procedures.<sup>30</sup>

**2. No Additional Documents, Explanations or Endorsements Required—Rule 17Ad-1(i)(3):** An item is "routine" if it does not require any additional certificates, documentation, instructions, assignments, guarantees, endorsements, explanations or opinions of counsel before transfer may be effected.

(36) *Question:* A bond is presented for transfer to the trustee. The trustee subsequently forwards to the bond registrar the bond, a bond transfer sheet and instructions to prepare and execute the bond as shown on the bond transfer sheet. Is the bond a non-routine item?

*Answer:* No. The bond registrar is not required to perform any additional act in effecting the transfer of the bond which it would not otherwise perform had the bond been presented directly to the bond registrar. The bond is not transformed into a "non-routine" item merely because it is first presented to the bond trustee. Thus, unless the item otherwise qualifies as non-routine under Rule 17Ad-1(i), it is a routine item for purposes of the turnaround rules.

(37) *Question:* When the registered transfer agent, as trustee and authenticating agent for a bond issue, must forward, pursuant to the Indenture Agreement, the bonds to the issuer for signature by an officer in his corporate capacity before the certificate may be

<sup>30</sup> See Release No. 13636. (SEC Docket, at 656-57).

made available to the presenter, is the item non-routine?

**Answer:** Yes. Such items may be treated as non-routine because the trustee, in order to effect transfer, must obtain additional signatures from the corporate officer.

**(38) Question:** A transfer agent receives an instruction from the issuer-presenter to use treasury shares, which are registered in the name of the issuer and being held by the transfer agent, to issue certificates under the issuer's stock purchase plan. However, transfer can be accomplished only after an authorization letter is received from the issuer. Is such an instruction a non-routine item?

**Answer:** Yes. If the transfer agent must await the receipt of an authorization letter from the issuer-presenter before accomplishing transfer, the instruction qualifies as a non-routine item, since additional instructions must first be obtained from the issuer.

**Illustration: Facts:** A company submits stock certificate transmittal forms to its transfer agent. These forms supply information necessary to issue one certificate per form and designate participants eligible to receive shares of the company pursuant to its stock purchase plan. Three days later, the transfer agent receives a general transmittal letter confirming the number of stock certificate transmittal forms previously sent and indicating the number of shares to be issued. The transfer agent thereafter receives an authorization letter, signed by an officer of the company, instructing the transfer agent to draw against treasury shares, which are registered in the name of the company and are being held by the transfer agent, to fulfill the transmittal forms. Although the transfer agent begins issuing the new certificates as soon as it receives the stock certificate transmittal forms, transfer can be accomplished only after the authorization letter is received. **Interpretation:** Since the transfer agent must await additional instructions from the company via the authorization letter before transfer can be accomplished, the instruction is a non-routine item.

**(39) Question:** May a service bureau, which is a registered transfer agent, classify items that are received from and subsequently returned to the named transfer agent for performance of the registrar function as non-routine?

**Answer:** No. The service bureau must classify the items as routine, even though two separate entities perform part of the transfer function—the transfer activity by the service bureau and the registrar activity by the named transfer agent. No additional documents

or endorsements of the type contemplated by Rule 17Ad-1(i)(3) are required. This example is similar to any other situation where both a transfer agent and outside registrar are involved.

**Illustration: Facts:** The named transfer agent for an issue receives the certificates, totals and logs them. The certificates are then forwarded to the service bureau, which issues new certificates and creates transfer journals. Thereafter, the certificates are returned to the named transfer agent, which performs the registrar function, countersigns the certificates and makes them available to the presenter. **Interpretation:** the service bureau must consider these items as routine.

**(40) Question:** If a transfer agent retains items received for transfer pending receipt of payment of transfer fees rather than returning them to the presenter for non-payment, may such items be classified as non-routine?

**Answer:** Yes. If the transfer agent decides to retain items at its premises even though transfer fees for such items have not been paid, the items have been "received."<sup>31</sup> However, such items may be classified as "non-routine" because the transfer agent must await additional instruments by which payment of transfer fees is to be effected. In such cases, pursuant to Rule 17Ad-2(e), the transfer agent is then obligated both to give such non-routine items "diligent and continuous attention," which includes, among other things, frequent and assiduous notification to the presenter that the item is being retained pending receipt of transfer fees, and, after receipt of payment, to turn around such items "as soon as possible."

**(41) Question:** May an item presented for transfer be classified as "non-routine" when, in the course of effecting transfer, the transfer agent is required to compute its transfer fee and fill in several blank checks attached to the item with the appropriate amount?

**Answer:** No. When a blank check is attached to the item and the transfer agent can compute its transfer fee and enter the appropriate amount on the check, the item must be classified as "routine." Thus, if a single certificate is presented for transfer with a blank check attached, the item is routine. Similarly, if several certificates of the same issue under one ticket are presented for transfer with blank checks attached, the item is routine. And, if an SCL is submitted with several vouchers attached, the item (*i.e.*, the SCL) is routine. The transfer agent need not obtain any further documentation or endorsements, within the meaning of

Rule 17Ad-1(i)(3), which would transform such routine items into non-routine items.

**3. No Review of Certain Supporting Documentation Required-Rule 17Ad-1(i)(4):** An item is "routine" if it does not require review of supporting documentation other than assignments, endorsements, stock powers, certified corporate resolutions, signature or other common and ordinary guarantees or appropriate tax or tax waivers.

**(42) Question:** Are all items referred to counsel for review considered non-routine?

**Answer:** No. Items referred to counsel are not automatically non-routine under Rule 17Ad-1(i)(4). If the item requires no more than a review by counsel of the documents listed in Rule 17Ad-1(i)(4), the item is considered routine. If that review, however, requires counsel to examine other documentation, to obtain the information listed in Rule 17Ad-1(i)(3), or to render a legal opinion, the item would be considered non-routine.

**4. Transfers Not in Connection with a Reorganization, Tender Offer, Exchange, Redemption or Liquidation-Rule 17Ad-1(i)(5):** An item is "routine" if it does not involve a transfer in connection with a reorganization, tender offer, exchange, redemption or liquidation.

**(43) Question:** When a portion of a registered bond issue is called, and the bond registrar remits new bonds and cash to the bondholder as well as pays on uncashed coupons, is the item non-routine?

**Answer:** Yes. Under rule 17Ad-1(i)(5), the item involves a partial cash redemption and, accordingly, is not routine.

**5. Recent Registered Public Offerings Not of a Continuing Nature-Rule 17Ad-1(i)(8):** An item is "routine" if it does not include a security of an issue which within the previous 15 business days was offered to the public, pursuant to a registration statement effective under the Securities Act of 1933, in an offering not of a continuing nature.

**(44) Question:** When does the 15 business day period start to run?

**Answer:** For purposes of determining whether an item is non-routine under this exception, the 15 business day period begins from the closing date of the public offering, *i.e.*, the date on which the securities are delivered to the underwriter for the issue.

**(45) Question:** Pursuant to a registration statement effective under the Securities Act of 1933, securities are sold to the public in an offering not of a continuing nature. Thirty to forty-five days elapse before the certificates are presented for transfer, and they are

<sup>31</sup> Compare note 20 with Question (26)(c) *supra*.

presented in large quantities. May the transfer agent treat such certificates as "non-routine" items?

*Answer:* No. The securities were not offered to the public within the previous 15 business days, and the offering was not of a continuing nature. Thus, any such items received for transfer are "routine." The increase in the volume of transfers, because of both the offering and the quantity of certificates presented, does not entitle the transfer agent to treat such items as non-routine.

(46) *Question:* Would the answer to Question (45) be different if the securities are initially registered in the name of nominees that, more than 15 business days later, present in large quantities certificates for breakdown and transfer to individual securityholders?

*Answer:* No. If more than 15 business days have elapsed since the securities were initially offered to the public in an offering not of a continuing nature, the items remain routine. The classification of items is not altered merely because the securities were initially registered in nominee name or were presented in large quantity for breakdown and transfer to individual holders.

## II. Rule 17Ad-2: Turnaround, Processing and Forwarding of Items.

### A. General.<sup>32</sup>

(47) *Question:* Must a registered transfer agent report to its appropriate regulatory agency that it is meeting the turnaround or processing requirements of Rule 17Ad-2?

*Answer:* No. Rule 17Ad-2 (a) and (b) does not require that a transfer agent report its compliance with the performance standards of that rule.

(48) *Question:* Is there an exemption from the turnaround, processing and forwarding requirements of Rule 17Ad-2 when a registered transfer agent converts its transfer operations to an "on-line" <sup>33</sup> system?

*Answer:* No. No exemption from the requirements of Rule 17Ad-2 is provided for a registered transfer agent that converts from a "batch" <sup>34</sup> system to an "on-line" system. There are several reasons for reaching this conclusion. First, in order to protect investors, it is

<sup>32</sup>The following questions and answers have general application to some or all provisions in Rule 17Ad-2. The text of various paragraphs in Rule 17Ad-2 is set forth below preceding the interpretations thereunder.

<sup>33</sup>When a transfer agent uses an "on-line" system, the master shareholder files and records are updated immediately upon transfer.

<sup>34</sup>Under the "batch" method of updating the shareholder records, changes to the master files are not entered until after close of the normal business day, when all items transferred that day are inputted into the books and records.

important that transfer agents meet the performance standards in Rule 17Ad-2 (a) and (b) to avoid any lag in the transfer and processing of securities transactions and to prevent any backlog from occurring. Second, Rule 17Ad-6 imposes requirements that recordkeeping be "current." If transfer operations are shut down to allow for conversion from one system to another, potential problems in maintaining "current" records may occur. Finally, Rule 17Ad-2 provides a 10% margin for turnaround and processing of items. Accordingly, a registered transfer agent must comply with the turnaround rules when converting from the "batch" method to an "on-line" system, and all performance standards of Rule 17Ad-2 must still be met.

(49) *Question:* A registered transfer agent has located in several cities satellite offices performing various transfer agent functions. May such transfer agent separately compute the performance statistics for each satellite office?

*Answer:* No. The transfer agent must aggregate figures from all of its operations when calculating turnaround and processing performance statistics for purposes of determining compliance with Rule 17Ad-2 and for purposes of recordkeeping under Rule 17Ad-6. In addition, aggregate figures must be used in computing volume when determining the availability of the exemption in Rule 17Ad-4(b).

(50) *Question:* How should a registered transfer agent that accepts a new appointment treat items that are received for transfer between the effective date of the appointment and the date on which the shareholder records and stop files are received?

*Answer:* Once the appointment is effective, a registered transfer agent is obligated to perform its contracted transfer agent activities for those new issues in compliance with the Act and the rules thereunder. Hence, all items arriving after the effective date of the appointment, regardless of whether the transfer agent has all the necessary books and records to effect transfer or processing, are treated as items received for transfer subject to the turnaround rules. Accordingly, a registered transfer agent should not make its appointment effective under its agency agreement until it has custody and possession of all shareholder records, stop files, unissued blank certificates and other materials necessary to effect transfer or processing. To avoid the possibility of a transfer agent falling into noncompliance with the turnaround rules, it is recommended that registered transfer agents remind issuers and

others from whom transfer agents receive such records of the obligations imposed upon transfer agents by the turnaround rules.<sup>35</sup>

(51) *Question:* Does a transfer agent satisfy the 90% standard in Rule 17Ad-2(a) and (b) by applying that standard cumulatively to a 12 month period, *i.e.*, by turning around or processing 90% of all items received for the year by the end of that year?

*Answer:* No. The 90% standard in Rule 17Ad-2(a) and (b) must be applied to *each month* separately. A transfer agent is not permitted to aggregate the percentage of items turned around or processed for each 12 consecutive months to arrive at an *annual* percentage rate of 90% to establish compliance with that rule.

*B. Turnaround Requirement for Registered Transfer Agents—Rule 17Ad-2(a):* Every registered transfer agent (except when acting as an outside registrar) shall turnaround within three business days of receipt at least 90 percent of all routine items received for transfer during a month. For the purposes of Rule 17Ad-2(a), items received at or before noon on a business day shall be deemed to have been received at noon on that day, and items received after noon on a business day or received on a day not a business day shall be deemed to have been received at noon on the next business day.

(52) *Question:* Does a bond registrar comply with the turnaround rules if it transfers a registered bond within three business days of receipt?

*Answer:* Yes. The person who performs the transfer function for a bond issue is called a "bond registrar." Since it performs the "transfer" function for the bond issue, a bond registrar is treated the same as any other registered transfer agent for purposes of the turnaround rules, including Rule 17Ad-2(a).<sup>36</sup> Accordingly, the transfer of bonds by a bond registrar is subject to the three business day turnaround requirement of Rule 17Ad-2(a).

(53) *Question:* May a transfer agent that uses an outside registrar choose to calculate its turnaround performance as if it performed the registrar function, *i.e.*, by recording the dates on which each item is received from and made available to the *presentor* (rather than by recording the date on which each item is made available to the outside

<sup>35</sup> See generally Release No. 13636. (SEC Docket, at 857).

<sup>36</sup> A bond registrar is not an "outside registrar," which is defined in Rule 17Ad-1(b) as a transfer agent that performs only the registrar function or similar functions with respect to debt issues and which must process items within one business day under Rule 17Ad-2(b).



registrar, as contemplated by Rule 17Ad-1(c)(2) and required by Rule 17Ad-6(a)(1)(ii)?

**Answer:** Yes. The effect of this election is to treat the outside registrar as if the registrar function were performed in-house. Generally, when an outside registrar is involved, a registered transfer agent has three business days under Rule 17Ad-2(a) to "turnaround" the item, which is defined under Rule 17Ad-1(e) to include making the item available to the outside registrar pursuant to Rule 17Ad-1(c)(2). The outside registrar, pursuant to Rule 17Ad-2(b), then has one business day to "process" the item, which, under Rule 17Ad-1(f), is defined as performing the registrar function and making the item available to the presenting transfer agent pursuant to Rule 17Ad-1(c)(3). The transfer agent, in turn, must make the item available to the presenter, as required by Rule 17Ad-1(c)(1). Thus, the entire procedure, from the time of receipt by the transfer agent until the item is made available to the presenter, normally takes four business days.

However, if the transfer agent elects to treat the outside registrar as an in-house registrar, the item must be made available to the presenter within three business days. When an outside registrar is not involved, "turnaround" of an item is completed, under Rule 17Ad-1(e), when "transfer" is accomplished. "Transfer," by definition under Rule 17Ad-1(d), includes performing the registrar function as well as making the item available to the presenter. Thus, turnaround of an item does not involve the additional business day which would otherwise occur.

If the requirements of Rules 17Ad-2(a) (turnaround within three business days), 17Ad-1(e) (completing turnaround by accomplishing transfer), 17Ad-1(d) (transfer, including the registrar function), and 17Ad-1(c)(1) (making the item available to the presenter) are met, the transfer agent is required under Rule 17Ad-6(a)(1) to prepare records showing the business days on which each item is received from and made available only to the presenter.

The transfer agent's election to comply with the turnaround rules and to calculate its turnaround performance under Rule 17Ad-6(a) in this manner must be set forth in a written undertaking and sent to the Commission and the transfer agent's appropriate regulatory agency. In addition, the written undertaking must provide that a failure to comply with the turnaround performance standards under Rule 17Ad-2(a) will be charged to the transfer agent, irrespective of whether

the delays were caused by the transfer agent or by the outside registrar.

**(54) Question:** What is the effect of the noon cut-off provision when an item is received before noon in the transfer agent's mail room but not forwarded until after noon to the transfer department where dating of the item occurs?

**Answer:** Items received in the transfer agent's mail room, located on the premises where the transfer activities are actually performed, are considered "received" under Rule 17Ad-1(g).<sup>37</sup> Thus, under Rule 17Ad-2(a), items received in the mail room at or before noon on a business day are deemed received by the transfer agent at noon on that same business day, even though the items may not be forwarded until after noon to the transfer department.

When the items are dated by the transfer department and not by the mail room, the transfer agent first must determine the cut-off time by which all items received at or before noon in the mail room will be forwarded to the transfer department. Then the transfer agent must observe this cut-off time for date-stamping items received in the transfer department. To implement this procedure, the transfer department must receive a commitment from the mail room that all items received at or before noon by the mail room will be forwarded by that specified cut-off time to the transfer department. Finally, the transfer agent must periodically check to ensure that the mail room is meeting its commitment.

**Illustration: Facts:** An item is received by the mail room at the transfer premises at 11:45 a.m. on Monday, a business day. The item is not date or time-stamped at that time by the mail room. By 2:00 p.m. on Monday, all items received by the mail room at or before noon (including the item received at 11:45 a.m.) are brought to the transfer department where they are date-stamped. **Interpretation:** The item was received before noon and must be date-stamped accordingly. In addition, since the item was received before noon on a business day, it must be turned around by noon on Thursday, the third next business day.

**(55) Question:** When, due to inclement weather, airports close for several days suspending the delivery of items, is an exemption from the requirements of Rule 17Ad-2(a) available to a transfer agent for the large quantity of back items received after the airports reopen and deliveries recommence?

<sup>37</sup> See Question (27) *supra*, and Release No. 13636. (SEC Docket, at 656).

**Answer:** No. The turnaround rules do not provide automatic exemptions for inclement weather or other acts of God. A transfer agent is required to meet the turnaround requirements for all items received, even if an unusually large quantity of items is presented on a given day. This question illustrates why Rule 17Ad-2 (a) and (b) provides a 10% margin. Nevertheless, if a transfer agent is unable to meet the turnaround or processing requirements of Rule 17Ad-2 (a) or (b) because of weather conditions, the notice required to be filed by Rule 17Ad-2 (c) or (d) should state such circumstances.

**(56) Question:** When must the remaining 10% of routine items presented and received for transfer be turned around?

**Answer:** Rule 17Ad-2(e) requires that routine items not turned around within three business days of receipt must be turned around "promptly," which, under usual circumstances, means within one additional business day.<sup>38</sup>

**C. Processing Requirement for Outside Registrars—Rule 17Ad-2(b):** Every registered transfer agent acting as an outside registrar shall process<sup>39</sup> at least 90 percent of all items received during a month (1) by the opening of business on the next business day, in the case of items received at or before noon on a business day, and (2) by noon of the next business day, in the case of items received after noon on a business day. For the purposes of paragraphs (b) and (d) of Rule 17Ad-2, "items received" shall not include any item enumerated in Rule 17Ad-1(i) (5), (6), (7) or (8) or any item which is not accompanied by a debit or cancelled certificate. For the purposes of this paragraph, items received on a day not a business day shall be deemed to have been received before noon on the next business day.

**(57) Question:** If the transfer agent and outside registrar have so agreed, may an outside registrar satisfy the processing requirements of Rule 17Ad-2(b) by notifying the presenting transfer agent that an item is available for pick-up, if the item is in fact available for pick-up?

**Answer:** Yes. To accomplish processing, which is defined in Rule 17Ad-1(f),<sup>40</sup> the outside registrar is required to perform the registrar function and to make available to the

<sup>38</sup> See Release No. 13636. (SEC Docket, at 659).

<sup>39</sup> Rule 17Ad-1(f) provides: "The term 'process' means the accomplishing by an outside registrar of all acts necessary (1) to perform the registrar function and to make available to the presenting transfer agent the completed certificate or certificates or (2) to advise the presenting transfer agent, orally or in writing, why performance of the registrar function is delayed or may not be completed."

<sup>40</sup> *Id.*

presenting transfer agent the completed certificate or certificates.

Rule 17Ad-1(c)(3) provides that an item is "made available," in the case of an item for which an outside registrar has completed processing, when "the outside registrar dispatches or mails the item to, or the item is awaiting pick-up by, the presenting transfer agent." The understanding between the outside registrar and the presenting transfer agent will govern which of the alternative methods permitted by Rule 17Ad-1(c)(3) will be used. If the parties have agreed that the presenting transfer agent will "pick-up" the processed item and that the outside registrar will notify the transfer agent when the item is available for pick-up, then the item is processed when the outside registrar completes the registrar function and notifies the presenting transfer agent that the completed certificate is in fact awaiting pick-up.

The outside registrar must be consistent in clocking the completion of its processing with the alternative agreed upon—in this case, notification that the item is awaiting pick-up. To accomplish processing, notification that an item is awaiting pick-up must be given to and received by the presenting transfer agent no later than the time period within which processing must be accomplished under Rule 17Ad-2(b). Thus, in the case of an item received at or before noon on a business day, notification that the item is awaiting pick-up must be given by the opening of business on the next business day; and, in the case of an item received after noon on a business day, by noon of the next business day.

(58) *Question:* Within what time period must the remaining 10% of items be processed?

*Answer:* Rule 17Ad-2(e) requires that items not processed within the periods prescribed by Rule 17Ad-2(b) shall be processed "promptly," which in usual circumstances means by the end of the business day following the day of receipt.<sup>41</sup>

**D. Notice of Non-Compliance—Rule 17Ad-2(c):** Any registered transfer agent which fails to comply with paragraph (a) of Rule 17Ad-2 with respect to any month shall, within ten business days following the end of such month, file with the Commission and the transfer agent's appropriate regulatory agency, if it is not the Commission, a written notice in accordance with paragraph (h) of Rule 17Ad-2. Such notice shall state the number of routine items and the number of non-routine items received for transfer during the month, the

number of routine items which the registered transfer agent failed to turn around in accordance with the requirements of paragraph (a) of Rule 17Ad-2, the percentage that such routine items represent of all routine items received during the month, the reasons for such failure, the steps which have been taken, are being taken or will be taken to prevent a future failure, and the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month have been in its possession for more than four business days and have not been turned around.

(59) *Question:* For purposes of the notice requirement, must routine items not turned around within the prescribed time period and in a transfer agent's possession be reported only in the month they were received, or must they be reported on a cumulative basis?

*Answer:* Rule 17Ad-2(c) requires a registered transfer agent that does not comply with Rule 17Ad-2(a) with respect to any month to file a written notice stating, among other things, "the number of routine items which the registered transfer agent failed to turn around" in accordance with Rule 17Ad-2(a). This requirement applies only to routine items received for transfer during that particular month which were not turned around in three business days; it does not refer to all outstanding items, regardless of the month in which they were received.

However, Rule 17Ad-2(c) also requires that the notice state "the number of routine items, aged in increments of one business day, which as of the close of business on the last business day of the month, have been in (the transfer agent's) possession for more than four business days and have not been turned around."<sup>42</sup> If routine items received for transfer in a previous month and not turned around within three business days are still in the transfer agent's possession as of the close of business on the last business day of the current month,<sup>43</sup> those items

<sup>42</sup>This requirement of Rule 17Ad-2(c) should be read in conjunction with Rule 17Ad-6(a)(2)(vi), which requires a registered transfer agent to make and keep current a record showing for each month "the number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day)." In this case, a cumulative record of aged items must be made of all routine items not turned around within three business days during all months in which those items were outstanding. See Release No. 13636, n. 18. (SEC Docket, at 864 n. 18).

<sup>43</sup>It should be noted, however, that Rule 17Ad-2(e) requires all routine items not turned around

must be included in the current month's notice of non-compliance. Accordingly, this aspect of the notice is cumulative.

*Illustration: Facts:* Ten routine items are received for transfer in January. Eight of those items are turned around within three business days. *Interpretation:* A written notice, reporting the two items, is required to be filed for the month of January.

*Facts:* In February, ten routine items are received for transfer. Eight of those items are turned around within three business days. However, as of the close of business on the last business day in February, the transfer agent had not turned around within three business days the remaining two items received in February, and, when aged in increments of one business day, had them in its possession for more than four business days. In addition, the transfer agent had not yet turned around the two items received in January.

*Interpretation:* The transfer agent has not met turnaround under Rule 17Ad-2(a) and must file for the month of February a notice of non-compliance which will include the two outstanding routine items for February. In addition, the notice of non-compliance filed for the month of February must include, as aged items, the two items received in January but not yet turned around. In such a case, however, the transfer agent has violated Rule 17Ad-2(e).<sup>44</sup>

**E. Turnaround and Processing of Remaining Routine and All Non-Routine Items—Rule 17Ad-2(e):** All routine items not turned around within three business days of receipt and all items not processed within the periods prescribed by paragraph (b) of Rule 17Ad-2 shall be turned around or processed promptly, and all non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible.

(60) *Question:* What are the time requirements regarding the turnaround of "non-routine" items?

*Answer:* The turnaround rules do not impose a specific time period within which turnaround of non-routine items must occur. However, Rule 17Ad-2(e) requires that all "non-routine items shall receive diligent and continuous attention and shall be turned around as soon as possible." This is a flexible standard dependent on the facts and circumstances of each case. If experience indicates that a specific standard is necessary, the Commission

within three business days of receipt to be turned around "promptly," which, in the usual case, means within one additional business day. Accordingly, routine items received in the previous month must be given precedence over, and turned around before, items received in the current month.

<sup>41</sup>See Release No. 13636. (SEC Docket, at 859).

will consider proposing such a requirement.

**F. Receipt of Items Off the Transfer Premises—Rule 17Ad-2(f):** A registered transfer agent which receives items at locations other than the premises at which it performs transfer agent functions shall have appropriate procedures to assure, and shall assure, that items are forwarded to such premises promptly.

(61) **Question:** When the named transfer agent for an issue contracts with a service bureau, which is also a registered transfer agent, to perform for it the transfer agency functions, when is the item considered received for transfer?

**Answer:** Items are received for transfer when they arrive at the premises of the service bureau, even if the items were first sent to the named transfer agent. However, both the named transfer agent and the service bureau, as registered transfer agents, must have appropriate procedures to assure that items which are received by the named transfer agent are forwarded promptly to the service bureau.

### III. Rule 17Ad-4: Exemptions From Certain Turnaround Rules.

**A. Exempt Transfers—Rule 17Ad-4(a):** Rules 17Ad-2, 17Ad-3 and 17Ad-6(a) (1) through (7) and (11) shall not apply to interests in limited partnerships, to redeemable securities of investment companies registered under Section 8 of the Investment Company Act of 1940, or to interests in dividend reinvestment programs.

(62) **Question:** If the issuer acts as its own transfer agent for its only issue of securities, which are interests in joint ventures, are transfers of those interests exempt from the turnaround rules under Rule 17Ad-4(a)?

**Answer:** Yes. Rules 17Ad-2, 17Ad-3 and 17Ad-6(a) (1) through (7) and (11) do not apply to the transfer of interests in joint ventures; provided that the certificates are legended and there are restrictions on transferability, such as the existence of stop-transfer instructions on the shareholder records and the requirement of consent by the issuer or other authorized person before transfer can be effected, so that no such item would be routine as defined in Rule 17Ad-1(i); and provided that the securities are neither traded on any securities exchange or in the over-the-counter market nor the subject of market-making activity by any broker-dealer. However, transfers of interests in joint ventures remain subject to Rules 17Ad-3; 17Ad-4; 17Ad-5; 17Ad-6(a) (8),

(9) and (10); 17Ad-6 (b) and (c); and 17Ad-7.<sup>45</sup>

(63) **Question:** Does the issuance, redemption or transfer of interests in a unit investment trust registered under Section 8 of the Investment Company Act of 1940 fall within the exemption provided in Rule 17Ad-4(a)?

**Answer:** Yes. The exemption contained in Rule 17Ad-4(a) includes the issuance, redemption or transfer of redeemable securities of registered unit investment trusts.<sup>46</sup>

**B. Exempt Transfer Agents—Rule 17Ad-4(b):** Except as provided in paragraph (c) of Rule 17Ad-4, Rules 17Ad-2 (a), (b), (c), (d) and (h), 17Ad-3 and 17Ad-6(a)(2) through (7) and (11) shall not apply to any registered transfer agent (1) which during any six consecutive months shall have received fewer than 500 items for transfer and fewer than 500 items for processing and (2) which, within ten business days following the close of the sixth such consecutive month, shall have filed with its appropriate regulatory agency<sup>47</sup> a notice certifying to that effect (hereinafter an "exempt transfer agent").

(64) **Question:** Based on the number of Certificates received for transfer, may a registered transfer agent for an issue obtain an exemption under Rule 17Ad-4(b), even though the outside registrar for that same issue remains ineligible for the exemption?

**Answer:** Yes. To qualify for an exemption, a transfer agent must receive fewer than 500 items for transfer and fewer than 500 items for processing. An "item" with respect to an outside registrar is defined in Rule 17Ad-1(a) as "each certificate to be countersigned." An "item" with respect to a transfer agent that performs transfer activities, however, is defined, in pertinent part, as "a certificate or certificates of the same issue of securities covered by one ticket (or, if there is no ticket, presented by one presenter) presented for transfer \* \* \*." Consequently, in order to qualify for an exemption under Rule 17Ad-4(b), an outside registrar must receive fewer than 500 certificates for countersigning and for processing during any consecutive six month period. However, the transfer agent for the same issue may have received fewer than 500 items covering more than 500 certificates during the consecutive six month period and, accordingly, qualify for the exemption.

(65) **Question:** May a registered transfer agent qualify as an "exempt

transfer agent" when it performs both the transfer agent activities for some issues and the processing activities as an outside registrar for other issues?

**Answer:** Yes. If, during any consecutive six month period, a transfer agent receives fewer than 500 items for transfer for those issues for which it performs transfer activities and fewer than 500 certificates for countersigning and processing for those issues for which it acts as an outside registrar, it will qualify as an "exempt transfer agent."

(66) **Question:** May a transfer agent that has recently assumed the transfer agent functions for an issue be eligible for an exemption under Rule 17Ad-4(b), even though it has not performed the transfer agent functions for the requisite six month period, by tacking onto its period of performance the performance by the prior transfer agent for that issue?

**Answer:** Yes. The new transfer agent qualifies as an exempt transfer agent under Rule 17Ad-4(b), provided it can demonstrate, through appropriate records and documentation, that the previous transfer agent in fact received fewer than 500 items for transfer and fewer than 500 items for processing during the immediately preceding six consecutive months.<sup>48</sup>

**Illustration: Facts:** For the period December 1 through May 31, an issuer's transfer agent received 60 items for transfer. On June 1, after its registration as a transfer agent became effective, the issuer assumed the transfer agent functions for its securities. On June 7, the issuer-transfer agent filed with the Commission a notice certifying that it received fewer than 500 items for transfer and fewer than 500 items for processing for the six consecutive months ending May 31 and, accordingly, that the issuer qualified as an exempt transfer agent. Interpretation: Since the previous transfer agent received fewer than 500 items for transfer and fewer than 500 items for processing during the preceding six month period, the issuer qualifies as an exempt transfer agent under Rule 17Ad-4(b), provided it can demonstrate through appropriate records and documentation that the prior transfer agent received, in fact, fewer than 500 items for transfer during December 1, through May 31.

(67) **Question:** In order not to exceed the requirement in Rule 17Ad-4(b) that the transfer agent receive fewer than 500

<sup>45</sup> Although such tacking is permitted, if the number of items received for transfer by the transfer agent seeking to qualify as an exempt transfer agent together with the number of items received by the prior transfer agent exceeds 500 for the preceding six consecutive month period, exempt status would not be available.

<sup>46</sup> See generally Release No. 13636. (SEC Docket, at 855 and 862).

<sup>47</sup> See Release No. 13636. (SEC Docket, at 861).

<sup>48</sup> Rule 17Ad-2(h) states with which regulatory agency the notice must be filed.

items for transfer and processing, may a transfer agent combine several items of the same issue received from several presentors in order to qualify as an exempt transfer agent?

*Answer:* No. If there is no ticket, an "item" is defined by Rule 17Ad-1(a) to mean certificates of the same issue of securities presented for transfer at the same time by *one presenter*. Thus, certificates of the same issue presented by several presentors must be treated as separate items and must not be combined when determining the availability of the exemption under Rule 17Ad-4(b), even though all certificates relate to the same issue of securities.

(68) *Question:* For purposes of determining whether a transfer agent qualifies as an exempt transfer agent, must a transfer agent, which has satellite offices located throughout the country, aggregate the total number of items received for transfer and for processing by all of its offices, even if one or more satellite offices perform transfer agent or registrar activities only for securities which are not qualifying securities?

*Answer:* Yes. A transfer agent must aggregate the total number of items received by all of its offices when computing volume for purposes of Rule 17Ad-4(b).<sup>49</sup> Once a transfer agent becomes registered with its appropriate regulatory agency, the turnaround rules apply to all of its transfer and processing activities, including those involving non-qualifying securities. Accordingly, the term "item" includes both qualifying and non-qualifying securities.<sup>50</sup> Thus, a registered transfer agent must aggregate the total number of items (including both qualifying securities and non-qualifying securities) received by it and its satellite offices for purposes of determining whether it qualifies as an "exempt transfer agent."

**C. Loss of Exempt Transfer Agent Status—Rule 17Ad-4(c):** Within five business days following the close of each month, every exempt transfer agent shall calculate the number of items which it received during the preceding six months. Whenever any exempt transfer agent receives 500 or more items for transfer or 500 or more items for processing during any six consecutive months, it shall, within ten business days after the end of such month, file with its appropriate regulatory agency a notice to that effect. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the registered transfer agent shall no longer

be exempt under paragraph (b) of Rule 17Ad-4 from the requirements of Rules 17Ad-2 (a), (b), (c), (d), and (h), 17Ad-3 and 17Ad-6(a) (2) through (7) and (11). Any registered transfer agent which has ceased to be an exempt transfer agent shall not qualify again for exemption until it has conducted its transfer agent operations pursuant to the foregoing rules for six consecutive months following the month in which it filed the notice required by this paragraph.

(69) *Question:* Must a registered transfer agent, which has filed the appropriate notice certifying that it is an exempt transfer agent under Rule 17Ad-4(b), file on a monthly basis additional notices to retain its exempt status?

*Answer:* No. A transfer agent that has filed a notice certifying its exempt status under Rule 17Ad-4(b) should not file any additional exemption notices, as long as it continues to receive fewer than 500 items for transfer and fewer than 500 items for processing during any consecutive six-month period.

However, Rule 17Ad-4(c) requires every exempt transfer agent to test continuously for the availability of the exemption by determining, within the first five business days of each month, the number of items received for transfer and the number of items received for processing during the immediately preceding six months. Whenever any exempt transfer agent has received 500 or more items for transfer or 500 or more items for processing during any six consecutive months, Rule 17Ad-4(c) requires it to file a notice to that effect within ten business days after the end of the sixth month. Thereafter, beginning with the first month following the month in which such notice is required to be filed, the transfer agent no longer is exempt.

*Illustration:* A transfer agent that has submitted by July 15, 1980 (the tenth business day in July) an exemption notice based upon its operations from January 1st through June 30th, must determine by August 7th (the fifth business day in August) the number of items received for transfer and the number of items received for processing for the period February 1st through July 31st; and by September 8th (the fifth business day in September), it must make the same determination for the period March 1st through August 31st; and so on.

If the calculation performed by August 7th demonstrates that the transfer agent received during the six-month period, from February 1st through July 31st, 500 or more items for transfer or 500 or more items for processing, the transfer agent would be required to file the requisite notice by August 14th (the tenth

business day after July 31st). Finally, its exempt status would terminate as of the close of business on August 31st.

(70) *Question:* What is the definition of "item" for purposes of determining under Rule 17Ad-4(c) the continuing availability of the Rule 17Ad-4(b) exemption to a transfer agent that does not act as an outside registrar?

*Answer:* A transfer agent that does not act as an outside registrar does not receive items for "processing," as that term is defined in Rule 17Ad-1(f). Accordingly, for purposes of determining the continuing availability of exempt transfer agent status under Rules 17Ad-4 (b) and (c), such a transfer agent need only compute whether fewer than 500 items have been received for transfer during the preceding six consecutive months.

(71) *Question:* Does an exempt transfer agent lose its exempt status by issuing a stock dividend of original issue securities, if the additional certificates issued increase the number of items to more than 500 for a six consecutive month period?

*Answer:* No. Since stock dividends of original issue securities are not items received for transfer,<sup>51</sup> the issuance of the new certificates is not included in the calculation of items transferred and processed for purposes of Rule 17Ad-4(c).

#### IV. Rule 17Ad-5: Written Inquiries and Requests.

##### A. General.<sup>52</sup>

(72) *Question:* If a co-transfer agent receives a written inquiry or request subject to Rule 17Ad-5 to which the principal transfer agent is responsible for responding, and the co-transfer agent promptly forwards such communication to the principal transfer agent, when is the inquiry or request considered "received"?

*Answer:* For purposes of determining the required time period within which a response must be made under the various paragraphs of Rule 17Ad-5, a written inquiry or request is "received," under Rule 17Ad-1(g), when it arrives at the premises of the transfer agent responsible for making the response<sup>53</sup>—in this case, the principal transfer agent.

(73) *Question:* If a transfer agent, which is not the issuer, receives a written inquiry subject to Rule 17Ad-5 and refers the inquiry to one of its special departments or to the issuer for

<sup>49</sup> See Question (12) *supra*.

<sup>52</sup> The following questions and answers have general application to some or all of the provisions in Rule 17Ad-5. The various paragraphs in Rule 17Ad-5 are set forth below preceding the interpretations thereunder.

<sup>53</sup> See also Questions 28 and 29 *supra*.

<sup>49</sup> See Question (49) *supra*.

<sup>50</sup> See Question (1) *supra*.

response, has the transfer agent met its obligations under Rule 17Ad-5?

**Answer:** No. A response has not been made and the requirements of Rule 17Ad-5 have not been satisfied, when the transfer agent sends, in accordance with its internal procedures, the inquiry out of the transfer department to another department or to the issuer for response. Rather, the transfer agent still must make the required response within the time periods specified in Rule 17Ad-5.

(74) **Question:** In counting the number of business days in which a transfer agent is required to respond to written inquiries and requests under Rule 17Ad-5, should the transfer agent treat inquiries received at or before noon on a business day as having been received at noon on that day, and treat inquiries received after noon on a business day or received on a non-business day as having been received at noon on the next business day?

**Answer:** No. The noon-to-noon cut-off applicable for computing turnaround under Rule 17Ad-2 is not relevant to the calculation of time periods under Rule 17Ad-5. Rather, timely compliance is measured in terms of business days, as defined in Rule 17Ad-1(h).

(75) **Question:** If an inquiry relates to activities of a prior transfer agent whose duties have recently been assumed by the successor transfer agent, and if the successor transfer agent is unable to respond because it does not have the necessary records, how can it comply with Rule 17Ad-5?

**Answer:** The successor transfer agent complies with Rule 17Ad-5 when it responds, within the required time period, that it has recently been appointed the transfer agent for the issue and that additional time is necessary to research and answer the question. Once the transfer agent is able to respond, it must do so as promptly as possible.<sup>54</sup>

However, registered transfer agents are immediately subject to the turnaround rules upon appointment and should remind others of the obligations imposed on them by these rules. Accordingly, appointment should not be made effective until the transfer agent has possession of all necessary records.<sup>55</sup>

**B. Requests Regarding Status of Items Presented for Transfer—Rule 17Ad-5(a):** When any person makes a written inquiry to a registered transfer agent concerning the status of an item presented for transfer during the preceding six months by such person or

anyone acting on his behalf, which inquiry identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security) presented, the approximate date of presentment and the name in which it is registered, the registered transfer agent shall, within five business days following receipt of the inquiry, respond, stating whether the item has been received; if received, whether it has been transferred; if received and not transferred, the reason for the delay and what additional matter, if any, is necessary before transfer may be effected; and, if received and transferred, the date and manner in which the completed item was made available, the addressee and address to which it was made available and the number of any new certificate which was registered and the name in which it was registered. If a new certificate is dispatched or mailed to the presenter within five business days following receipt of an inquiry pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(76) **Question:** When a registered transfer agent does not know why transfer of an item has been delayed, may it respond by stating that it will research the question and respond after an answer can be determined?

**Answer:** No. Such a response does not satisfy the requirements of Rule 17Ad-5(a), which requires, in the case of an item received but not transferred, a statement of "the reason for the delay and what additional matter, if any, is necessary before transfer may be effected \* \* \*." However, if the transfer agent, after a good faith and diligent effort to research the question, must respond in order to meet the time requirement of five business days, no violation of the rule will occur from the occasional response that further research is necessary; provided, the transfer agent does, in fact, send within a reasonable time follow-up correspondence containing an appropriate and complete response; and further provided, this is not a recurring practice of the transfer agent.

**C. Certain Broker-Dealer Requests—Rule 17Ad-5(b):** When any broker-dealer requests in writing that a registered transfer agent acknowledge the transfer instructions and the possession of a security presented for transfer by such broker-dealer or revalidate a window ticket<sup>56</sup> with

respect to such security and the request identifies the issue, the number of shares (or principal amount of debt securities or number of units if relating to any other kind of security), the approximate date of presentment, the certificate number and the name in which it is registered, every registered transfer agent shall within five business days following receipt of the request, in writing, confirm or deny possession of the security, and, if the registered transfer agent has possession, (1) acknowledge the transfer instructions or (2) revalidate the window ticket. If a new certificate is dispatched or mailed to the presenter within five business days following receipt of a request pertaining to that certificate, no further response to the inquiry shall be required pursuant to this paragraph.

(77) **Question:** Does Rule 17Ad-5(b) apply to a bank which submits a written inquiry requesting the transfer agent either to acknowledge the transfer instructions and the possession of a security presented for transfer or to revalidate a window ticket with respect to that security?

**Answer:** No. Rule 17Ad-5(b) is limited to written requests received specifically from broker-dealers. However, Rule 17Ad-5(a) covers the type of inquiry in question; it applies to "any person," including a bank.

(78) **Question:** Must a registered transfer agent respond in writing within five business days following receipt of a broker-dealer's request to acknowledge transfer instructions and possession of a security or to revalidate a window ticket, regardless of the fee arrangement between the transfer agent and the broker-dealer for providing such information?

**Answer:** Yes. Rule 17Ad-5(b) does not authorize a registered transfer agent either to charge a fee or to condition its response upon receipt or assurance of payment of a fee.<sup>57</sup> Thus, a registered transfer agent must make a timely written response whether or not it has charged or received a fee.<sup>58</sup>

is requested to 'revalidate a window ticket' when the presenter desires acknowledgment in some fashion (e.g., by time-stamping again a copy of the window ticket) that the item is in the transfer agent's possession pursuant to the presenter's transfer instructions." Release No. 13636, n. 17. (SEC Docket, at 863 n. 17).

<sup>57</sup>References to a fee appear in Rule 17Ad-5(c) and (d) (17 CFR 240.17Ad-5(c) and (d)). See also Release No. 13636. (SEC Docket, at 863).

<sup>58</sup>Registered transfer agents should be aware of a broker-dealer's obligations under Rule 15c3-3(c)(3) 17 CFR 240.15c3-3(c)(3)), regarding a broker-dealer's control of customer securities, and Rule 17a-13(b)(3) 17 CFR 240.17a-13(b)(3)), regarding quarterly security counts by broker-dealers. Rule 17Ad-5(b) was written to complement those rules.

<sup>54</sup>The Commission understands that the phrase "revalidate a window ticket" has a generally accepted meaning in the industry. "A transfer agent

<sup>54</sup> See also Question (76) *infra*.

<sup>55</sup> See Question (50) *supra*.

**D. Inquiries or Requests Which May Not Meet Rule 17Ad-5(a) through (d)—Rule 17Ad-5(e):** When any person makes a written inquiry or request which would qualify under paragraph (a), (b), (c) or (d) of Rule 17Ad-5 except that it fails to provide all of the information specified in those paragraphs, or requests information which refers to a time earlier than the time periods specified in those paragraphs, a registered transfer agent shall confirm promptly receipt of the inquiry or request and shall respond to it as soon as possible.<sup>59</sup>

**(79) Question:** Does Rule 17Ad-5(e) apply to a written inquiry or request that would otherwise satisfy the requirements of a particular paragraph of Rule 17Ad-5, but concerns an issue for which the entity no longer acts as transfer agent?

**Answer:** Yes. In these cases, Rule 17Ad-5(e) requires that the registered transfer agent promptly confirm receipt of the inquiry or request and respond as soon as possible that it no longer acts as transfer agent for the issue.

#### V. Rule 17Ad-6: Recordkeeping.

**A. Certain Records Required to Monitor Compliance—Rule 17Ad-6(a):** (Every registered transfer agent is required by Rule 17Ad-6(a) to "make and keep current" the records enumerated in subparagraphs (1)-(11)).

**(80) Question:** What types of recordkeeping system and forms are required under Rule 17Ad-6?

**Answer:** No specific type of system and no particular forms are required,<sup>60</sup> as long as all the information required under Rule 17Ad-6 is captured. Thus, each registered transfer agent may adopt a recordkeeping and record retention system suitable to its own operations, provided that the records contain the requisite information.

**(81) Question:** May a registered transfer agent that acts in its own name as a transfer agent on behalf of issuers and that also performs contractual services for other transfer agents maintain separate records of its performance for each contractual arrangement?

**Answer:** No. The records and performance statistics of a registered transfer agent, whether acting in its own name or under contract (e.g., a "private label service"), must be aggregated for all purposes under the turnaround rules.

**(82) Question:** Does Rule 17Ad-6 require a registered transfer agent to file

any notice with its appropriate regulatory authority that it is fulfilling its obligations under the turnaround rules?

**Answer:** No. Rule 17Ad-6 does not require a registered transfer agent to file any notice stating, or any records showing, that it is complying with the turnaround rules.

**1. Records Showing Date of Receipt and Availability of Items—Rule 17Ad-6(a)(1):** Every registered transfer agent shall make and keep current a receipt, ticket, schedule, log or other record showing the business day each routine item and each non-routine item is (i) received from the presenter and, if applicable, from the outside registrar and (ii) made available to the presenter and, if applicable, to the outside registrar.

**(83) Question:** What type of receipt or ticket is required?

**Answer:** No particular form of receipt or ticket is required, provided the ticket identifies the item involved and the relevant business day (i.e., the year, month, and day, as determined under Rule 17Ad-1(h)) the item was received and made available. A transfer agent that uses a batch method for handling transfer items would use an "other record" by recording the required information for each batch of items.<sup>61</sup>

**(84) Question:** Does Rule 17Ad-6(a)(1) require that a registered transfer agent be able to identify the specific dates on which a particular item is received and made available?

**Answer:** Yes. A transfer agent's records must show the business day each item is received from and made available to the presenter and the outside registrar, if applicable, and the entries on such records must be traceable to the specific item.

**(85) Question:** How many dates must be recorded on a Rule 17Ad-6(a)(1) record when an outside registrar is involved?

**Answer:** Four, in the usual case.<sup>62</sup> The record must state the business day each item was (i) received from the presenter, (ii) made available to the outside registrar, (iii) received from the outside registrar and (iv) made available to the presenter.

**(86) Question:** How should a transfer agent indicate on its Rule 17Ad-6(a)(1) records receipt of items tendered in connection with a record date?

**Answer:** In order to record accurately receipt of an item under Rule 17Ad-6(a)(1)(i) while still complying with record date requirements, the ticket, receipt or other record should include

the calendar date and time the item was actually received.

**(87) Question:** May the records required by Rule 17Ad-6(a)(1) be maintained in a fragmentary manner—for example, partially in a log and partially on tickets?

**Answer:** No. Either all the information for a particular item should be compiled in one record or all the pieces of paper capturing the required information should be attached together. Thus, even though Rule 17Ad-6 neither requires a particular recordkeeping system nor prescribes a particular form of records, a registered transfer agent must establish a recordkeeping system and develop forms of records that integrate and centrally locate all the information required by Rule 17Ad-6.

**2. Monthly Records Relating to Transfer Agent Turnaround—Rule 17Ad-6(a)(2):** Every registered transfer agent must make and keep current a log, tally, journal, schedule or other record showing for each month:

(i) The number of routine items received;

(ii) The number of routine items received during the month that were turned around within three business days of receipt;

(iii) The number of routine items received during the month that were not turned around within three business days of receipt;

(iv) The number of non-routine items received during the month;

(v) The number of non-routine items received during the month that were turned around;

(vi) The number of routine items that, as of the close of business on the last business day of each month, have been in such registered transfer agent's possession for more than four business days, aged in increments of one business day (beginning on the fifth business day); and

(vii) The number of non-routine items in such registered transfer agent's possession of the close of business on the last business day of each month.

**(88) Question:** Are the records required by Rule 17Ad-6(a)(2)(vi) and (a)(2)(vii) cumulative in nature?

**Answer:** Yes. These records contain cumulative information. Thus, any item recorded on the previous month's log that is still in the transfer agent's possession as of the last business day of the current month must be shown on the current month's log.<sup>63</sup>

<sup>59</sup> Rule 17Ad-5(e) was adopted by the Commission in Securities Exchange Act Release No. 14219 (December 1, 1977) (42 FR 62129).

<sup>60</sup> See Release No. 13636. (SEC Docket, at 863).

<sup>61</sup> Release No. 13636. (SEC Docket, at 863).

<sup>62</sup> But see Question (53) *supra*.

<sup>63</sup> See Release No. 13636, n. 18. (SEC Docket, at 864 n. 18). Footnote 18 in Release No. 13636 contains two typographical errors; the referenced paragraphs should be (a)(2)(vi) and (a)(2)(vii). See also Question (59) *supra*.

(89) *Question:* Does Rule 17Ad-6(a)(2)(vii) require aging of non-routine items in a transfer agent's possession?

*Answer:* No. Rule 17Ad-6(a)(2)(vii) requires only that the number and not the age of such items be recorded.<sup>64</sup>

3. *Records of Outside Registrar—Rule 17Ad-6(a)(3):* Every registered transfer agent shall make and keep current, with respect to items for which it acts as an outside registrar:

(i) A receipt, ticket, schedule, log or other record showing the date and time:

(A) Each item is (1) received from the presenting transfer agent and (2) made available to the presenting transfer agent;

(B) Each written or oral notice of refusal to perform the registrar function is made available to the presenting transfer agent (and the substance of the notice); and

(ii) A log, tally, journal, schedule or other record showing for each month:

(A) The number of items received;  
(B) The number of items processed within the time required by Rule 17Ad-2(b); and

(C) The number of items not processed within the time required by Rule 17Ad-2(b).

(90) *Question:* Must items processed within one-half day of receipt be recorded on the records required to be maintained by Rule 17Ad-6(a)(3)(ii)(B)?

*Answer:* Yes. The record required by Rule 17Ad-6(a)(3)(ii)(B) includes the number of items processed within the time periods specified in Rule 17Ad-2(b), including items processed in a shorter period of time. That is, Rule 17Ad-2(b) prescribes a maximum period within which items must be processed.

(91) *Question:* Where are items processed more quickly than required by Rule 17Ad-2(b) recorded?

*Answer:* In addition to the record required by Rule 17Ad-6(a)(3)(ii)(B), such items are recorded on the records required to be maintained by Rule 17Ad-6(a)(4) regarding calculations of processing performance under Rule 17Ad-2(b).

4. *Calculations of Performance—Rule 17Ad-6(a)(4):* Every registered transfer agent shall make and keep current a record of calculations demonstrating the registered transfer agent's monitoring of its performance under Rule 17Ad-2(a) and (b).

(92) *Question:* Is there any particular form which must be used to record calculations of turnaround or processing performance?

*Answer:* No. No specific form of record is required, provided the calculations monitoring performance are

actually shown.<sup>65</sup> For example, a record indicating the total number of routine items received in a month and turned around within three business days of receipt divided by the total number of routine items received in that month is sufficient.<sup>66</sup>

5. *Written Inquiries—Rule 17Ad-6(a)(6):* Every registered transfer agent shall make and keep current any written inquiry or request, including those not subject to the requirements of Rule 17Ad-5, concerning an item, showing the date received; a copy of any written response to an inquiry or request, showing the date dispatched or mailed to the presenter; if no response to an inquiry or request was made, the date the certificate involved was made available to the presenter; or, in the case of an inquiry or request under Rule 17Ad-5(a) responded to by telephone, a telephone log or memorandum showing the date and substance of any telephone response to the inquiry.

(93) *Question:* Under Rule 17Ad-6(a)(6), is a transfer agent required to keep only those inquiries subject to Rule 17Ad-5?

*Answer:* No. Rule 17Ad-6(a)(6) specifically requires that a transfer agent keep all written inquiries or requests received concerning an item, regardless of whether the inquiry falls within the parameters of Rule 17Ad-5.

(94) *Question:* Does Rule 17Ad-6(a)(6) require a named transfer agent that utilizes a service bureau, which is a registered transfer agent, to keep a copy of all written inquiries or requests?

*Answer:* Yes. The named transfer agent must keep a copy of all written inquiries and requests received, including those not subject to the requirements of Rule 17Ad-5, even though it forwards such requests and inquiries to a service bureau for response.

6. *Records Concerning the Appointment of a Transfer Agent—Rule 17Ad-6(a)(8):* Every registered transfer agent shall make and keep current any document, resolution, contract, appointment or other writing, and any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer.

(95) *Question:* Must an issuer that only maintains the official securityholder records and, accordingly,

is a registered transfer agent make and keep current the records required by Rule 17Ad-6(a)(8)?

*Answer:* Yes. Rule 17Ad-6(a)(8) specifically applies to a registered transfer agent acting "on behalf of itself as the issuer." An issuer that maintains the official securityholder records is acting on its own behalf. Therefore, it must make and keep current the records required by Rule 17Ad-6(a)(8).

7. *Records of Restrictions on Transfer—Rule 17Ad-6(a)(9):* Every registered transfer agent shall make and keep current any record of an active (*i.e.*, unreleased) stop order, notice of adverse claim or any other restriction on transfer.

(96) *Question:* May a registered transfer agent remove, on instruction from the issuer, stops or other restrictions on transfer of a security merely because the security has a *de minimus* market value?

*Answer:* No. The market value of a security subject to a stop is not a decisive factor in determining whether to permit removal thereof. A stop or other restriction on transfer remains active until a transfer agent receives instructions from an authorized person to release it.<sup>67</sup>

8. *Journals—Rule 17Ad-6(a)(10):* Every registered transfer agent shall make and keep current a copy of any transfer journal and registrar journal prepared by such registered transfer agent.

(97) *Question:* Is a registered transfer agent required, under Rule 17Ad-6(a)(10), to prepare a transfer or registrar journal?

*Answer:* No. Rule 17Ad-6(a)(10) does not require that a registered transfer agent prepare any transfer or registrar journal. However, if a registered transfer agent, in fact, maintains such a journal, Rule 17Ad-6(a) requires that it be kept current.

9. *Special Event Documentation—Rule 17Ad-6(a)(11):* Every registered transfer agent shall make and keep current any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under Rule 17Ad-1(i)(5) or (8).

<sup>67</sup> An unauthorized removal of a restrictive legend could lead to a violation of the Securities Act of 1933 and could expose the transfer agent to further liability. Also, an unauthorized removal of a stop transfer instruction could be inconsistent with the Commission's Lost and Stolen Securities Program. See Rule 17f-1 (17 CFR 240.17f-1).

<sup>65</sup> See Release No. 13636 (SEC Docket, at 863) and Question (80) *supra*.

<sup>66</sup> See Release No. 13636 (SEC Docket, at 864).

<sup>64</sup> See Release No. 13636. (SEC Docket, at 864).

(98) *Question:* Does Rule 17Ad-6(a)(11) require that the documents, upon which the determination is made that an item received for transfer is non-routine under Rule 17Ad-1(i)(5) or (8), be traceable to the particular certificates involved?

*Answer:* Yes. The documents required by Rule 17Ad-6(a)(11) must be traceable to the particular item received for transfer. Although the transfer agent need not explain on the certificate why the item has been determined to be non-routine, two suggested methods for complying with Rule 17Ad-6(a)(11) are: (1) Attaching the ticket and any appropriate documentation (e.g., shareholder transmittal form) to the item; or (2) referring directly on the ticket to the document which served as the basis for a determination that the item was non-routine.

*Illustration: Facts:* An issuer engages in a registered exchange offer. Shareholders tender their certificates together with a letter of transmittal to the issuer's exchange agent, a registered transfer agent. Based on the letter of transmittal, the transfer agent determines that the item is non-routine under Rule 17Ad-1(i)(5). *Interpretation:* To ensure proper accountability under Rule 17Ad-6(a)(11), the transfer agent should leave the letter of transmittal attached to the certificates tendered and subsequently cancelled.

*B. Records Regarding Control Logs for Each Issue—Rule 17Ad-6(b):* Every registered transfer agent which, under the terms of its agency, maintains security-holder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth (1) the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and (2) the total issued and outstanding pursuant to issuer authorization.

(99) *Question:* Where the issuer as a registered transfer agent maintains securityholder records only, and the service bureau, which also is a registered transfer agent, cancels and issues certificates as well as performs the registrar function, must the issuer-transfer agent retain the documentation required by Rule 17Ad-6(b) and (c)?

*Answer:* Yes. However, for purposes of the turnaround rules, the issuer need not keep documents (e.g., certificate of incorporation or amendments thereto) concerning the matters covered by Rule 17Ad-6(b).<sup>68</sup> Instead, the issuer must retain a record setting forth the total

number of securities authorized, issued and outstanding, as well as copies of each cancelled registered security referred to in Rule 17Ad-6(c) with accompanying documentation (except legal papers returned to the presenter).

*C. Cancelled Registered Certificates and Accompanying Documentation—Rule 17Ad-6(c):* Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain (1) each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and (2) all accompanying documentation, except legal papers returned to the presenter.

(100) *Question:* Does Rule 17Ad-6(c) apply only to registered bonds, debentures, shares, warrants, rights, other evidences of indebtedness and other certificates of ownership, which have been cancelled?

*Answer:* Yes. Rule 17Ad-6(c) specifically applies to "registered" securities; the word "registered" does not modify the word "bond" only.

#### VI. Rule 17Ad-7: Record Retention.

*A. Retention Periods for Records Regarding Transfer Agent's Appointment, Stops, Journals, and Control Logs—Rule 17Ad-7(c):* The records required by Rule 17Ad-6(a)(8), (9) and (10) and 17Ad-6(b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(101) *Question:* Does the language "continuance of the transfer agency and \* \* \* one year after termination of the transfer agency" refer to the transfer agent's period of appointment for a particular issue of securities?

*Answer:* Yes. This language refers to the period of time during which a transfer agent is appointed to perform transfer agent activities for a particular issue. The rule does not refer to the period of time during which a transfer agent is registered with its appropriate regulatory agency.

*B. Retention Periods for Cancelled Certificates and Accompanying Documentation—Rule 17Ad-7(d):* The records required by Rule 17Ad-6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(102) *Question:* May a registered transfer agent destroy cancelled share certificates after they have been retained for a period of six years?

*Answer:* Rule 17Ad-7(d) establishes a minimum retention period of six years

under the federal securities laws. Rule 17Ad-7(d) does not grant a registered transfer agent the right to destroy cancelled certificates after they have been retained for six years. Varying circumstances, other federal and state statutory provisions, as well as the by-laws of the issuing corporation, may require retention of cancelled certificates beyond six years.

*C. Microfilming of Records—Rule 17Ad-7(f):* The records required to be maintained pursuant to Rule 17Ad-6 may be produced or reproduced on microfilm and be preserved in that form for the time required by Rule 17Ad-7. If such microfilm substitution for hard copy is made by a registered transfer agent, it shall:

(1) At all times have available for examination by the Commission and the appropriate regulatory agency for such transfer agent, facilities for immediate, easily readable projection of the microfilm and for producing easily readable facsimile enlargements;

(2) Arrange the records and index and file the films in such a manner as to permit the immediate location of any particular record;

(3) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the Commission and the appropriate regulatory agency by their examiners or other representatives may request; and

(4) For the period for which the microfilmed records are required to be maintained, store separately from the original microfilm records a copy of the microfilm records.

(103) *Question:* Has a registered transfer agent complied with Rules 17Ad-6(c) and 17Ad-7(d) when it releases cancelled certificates if it maintains microfilm substitution for hard copies of the cancelled certificates in compliance with Rule 17Ad-7(f)?

*Answer:* Yes. Rule 17Ad-6(c) requires that the transfer agent retain cancelled certificates for which it maintains securityholder records under its agency agreement, and Rule 17Ad-7(d) requires that such certificates be maintained for a period of at least six years, the first six months in an easily accessible place. However, Rule 17Ad-7(f) provides that records, which must be maintained pursuant to Rule 17Ad-6 (e.g., cancelled certificates), may be microfilmed and preserved in that form for the appropriate period under Rule 17Ad-7, provided all four conditions of rule 17Ad-7(f) (1)-(4) are met. Thus, microfilm substitution for hard copy of the cancelled certificates, if all conditions of Rule 17Ad-7(f) are met, satisfies the recordkeeping requirement of Rule 17Ad-6(c) and, if preserved in

<sup>68</sup> See Release No. 13838. (SEC Docket, at 884-85).



that form for at least six years, satisfies Rule 17Ad-7(d).

(104) *Question:* Does Rule 17Ad-7(f)(4) require that a transfer agent keep the copy of microfilm records on premises that are physically separated from the location of the original microfilm records?

*Answer:* No. The rationale for requiring separate storage for the two sets of microfilm records is to minimize the possibility that a localized fire or other occurrence might destroy both sets of microfilm records. Consequently, compliance with Rule 17Ad-7(f)(4) depends upon the design and safeguards of the particular premises involved. If a separate building is available, the original and the copy of microfilm records should be stored in separate buildings. If there is only one building, such records should be stored on separate floors or in separate parts of the building.

*D. Records Maintained by a Third Party on Behalf of a Transfer Agent—Rule 17Ad-7(g):* If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of Rules 17Ad-6 and 17Ad-7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent, if it is not the Commission; and

(2) The outside service bureau, recordkeeping service or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(105) *Question:* When certain records are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, does the production and furnishing by such entity of an easily readable facsimile enlargement in paper copy form, which is reproduced from microfilm as permitted by Rule 17Ad-7(f), violate the "hard copy" requirement of Rule 17Ad-7(g)(2)?

*Answer:* No. Rule 17Ad-7(f) provides that records required to be maintained under Rule 17Ad-6 by a transfer agent may be reproduced on microfilm and

preserved in that form for the time period required by Rule 17Ad-7, provided that, among other things, easily readable facsimile enlargements are producible therefrom.

Pursuant to Rule 17Ad-7(g)(2), the registered transfer agent must obtain a written agreement from such entity that it will furnish, upon demand, "complete, correct and current hard copies of any and all such records." The purpose of Rule 17Ad-7(g) is to extend the record retention requirements of registered transfer agents to entities maintaining and preserving records on behalf of the registered transfer agent. The words "hard copy" in Rule 17Ad-7(g)(2) neither expand upon that responsibility nor increase the requirements of Rule 17Ad-7(f). Thus, an easily readable facsimile enlargement of records in paper copy form, which is reproduced from microfilm in accordance with Rule 17Ad-7(f) by an outside service bureau, other recordkeeping service or the issuer, satisfies Rule 17Ad-(g)(2).

*Illustration:* Facts: Pursuant to an agreement with the issuer, the registered transfer agent forwards, six months or more after cancellation, cancelled share certificates to the issuer. Upon receipt of the cancelled certificates, the issuer microfilms and then destroys the certificates. The issuer retains the microfilm copy for a period of not less than six years, as required under Rules 17Ad-6(c) and 17Ad-7(d). If the Commission or the transfer agent's appropriate regulatory agency requests a hard copy of a destroyed cancelled certificate, the issuer has agreed in writing to reproduce a paper copy thereof from the microfilm. Interpretation: This paper copy will satisfy the "hard copy" requirement of Rule 17Ad-7(g)(2).

*E. Transfer Agents that Cease to Perform Transfer Agent Functions—Rule 17Ad-7(h):* When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under Rule 17Ad-7 to retain the records required to be made and kept current under Rule 17Ad-6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(106) *Question:* What are the record retention requirements for a registered transfer agent that is in the process of terminating all of its stock transfer activities but has not yet withdrawn from registration as a transfer agent with its appropriate regulatory agency?

*Answer:* Rules 17Ad-6 and 17Ad-7 set forth, respectively, the recordkeeping and record retention requirements for registered transfer agents. In addition,

Rule 17b-1(g) prescribes record retention requirements in connection with the Commission's Lost and Stolen Securities Program. A registered transfer agent that is ceasing to perform transfer agent functions for either a particular issue or entirely may fulfill its obligations by delivering, pursuant to Rule 17Ad-7(g) or 17Ad-7(h), the records required to be maintained by the above rules to the issuer for which it was a transfer agent, to an outside service bureau, or to a successor transfer agent. If a transfer agent determines to fulfill its obligations by delivering such records to the issuer or an outside service bureau, it must obtain a written agreement from the issuer or the outside service bureau stating that the records will be retained for the required time periods and will be made available to the Commission and the appropriate regulatory agency for examination in accordance with Rule 17Ad-7(g). If the records are delivered to a successor transfer agent, however, no such written agreement is required by Rule 17Ad-7(h).

(107) *Question:* What obligations are imposed by the federal securities laws on transfer agents to retain transfer agent records after a transfer agent's withdrawal from registration with the Commission has become effective?

*Answer:* Rule 17Ac3-1<sup>69</sup> and related Form TA-W<sup>70</sup> prescribe the procedure to be followed by transfer agents withdrawing from registration as transfer agents with the Commission. Pursuant to the terms of withdrawal stated therein, the withdrawing transfer agent undertakes to preserve those records which it would otherwise be required to make and keep pursuant to Rules 17Ad-6 and 17f-2 for the remainder of the time periods specified in Rule 17Ad-7.

*Illustration:* Facts: A transfer agent, whose withdrawal from registration with the Commission has become effective, is storing cancelled certificates, transmittal letters and transfer journals. How long must the transfer agent continue to store these records? Interpretation: Pursuant to Rule 17Ad-7(d), cancelled certificates and transmittal letters are required to be retained for six years. Accordingly, the transfer agent must retain these records for the remainder of the six year period. Pursuant to Rule 17Ad-7(c), transfer journals must be retained during the continuance of the transfer agency and for one year after termination thereof. Accordingly, the transfer agent must retain its transfer journals for one year

<sup>69</sup> See 17 CFR 240.17Ac3-1.

<sup>70</sup> See 17 CFR 249b.101.

from the date of termination of its transfer agency with respect to that issue of securities.

(108) *Question:* After a transfer agent's withdrawal from registration with the Commission becomes effective, what records may be delivered to the issuer or the successor transfer agent?

*Answer:* Any records enumerated in Rules 17Ad-6 and 17Ad-7 may be delivered to the issuer pursuant to Rule 17Ad-7(g) or to the successor transfer agent pursuant to Rule 17Ad-7(h).

If the transfer agent chooses to deliver these records to the issuer, it should obtain a written agreement, in accordance with the transfer agent's undertaking in Form TA-W, that the issuer will retain the records for the applicable time periods and make them available to the Commission.

Accordingly, 17 CFR Part 241 is amended by adding thereto this interpretative release, Regulation of Transfer Agents.

By the Commission.

George A. Fitzsimmons,  
Secretary.

September 2, 1980.

[FR Doc. 80-27812 Filed 9-10-80; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 282

[Docket No. RM79-48; Order No. 96]

#### Section 206(d) Exemption for Small Industrial Boiler Fuel Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Correction

September 3, 1980.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Correction notice to final rule.

**SUMMARY:** This notice contains a correction to the final regulations promulgated in Order No. 96, issued July 29, 1980 (45 FR 52359, August 7, 1980) which exempts certain small industrial boiler fuel facilities from incremental pricing.

**EFFECTIVE DATE:** September 5, 1980, or such later date as represents the first day following 30 days of continuous session of the Congress, if not disapproved by either House.

**FOR FURTHER INFORMATION CONTACT:** Alice Fernandez, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North

Capitol Street NE, Washington, D.C. 20426, (202) 357-9095, or Carol M. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, D.C. 20426, (202) 357-8114.

Kenneth F. Plumb,  
Secretary.

On mimeo page 18, 45 CFR 52363, in the first column, change § 282.203(a)(2) from: "(2) all gas used for an agricultural use;"

to: "(2) all gas consumed in an agricultural use unless by rule or order the Commission determines that there is an alternative fuel; or feedstock for the agricultural use that is economically practicable and reasonably available;"

[FR Doc. 80-27574 Filed 9-10-80; 8:45]

BILLING CODE 6450-85-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Assistant Secretary for Housing—Federal Housing Commissioner

#### 24 CFR Part 200

[Docket No. R-80-633]

#### Revision to Thermal Requirements for HUD Minimum Property Standards (MPS) for One- and Two-Family Dwellings

**AGENCY:** Department of Housing and Urban Development (HUD).

**ACTION:** Final rule.

**SUMMARY:** This rule incorporates modified interim regulations for thermal requirements into the HUD MPS for One- and Two-Family Dwellings, 4900.1. This rule modifies the thermal requirements published in 44 FR 22444, April 16, 1979, effective as an Interim Rule May 16, 1979. These modifications are in response to a legislative mandate contained in House of Representatives Report No. 96-706, December 13, 1979, accompanying H.R. 3875, enacted as Section 322 of the Housing and Community Development Amendments of 1979, Public Law 96-153, December 21, 1979, and other comments made on the Interim Rule.

**EFFECTIVE DATE:** October 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mervin Dizenfeld, Office of Architecture and Engineering Standards, Room 6170, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 755-6590. (This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** HUD Minimum Property Standards are published in Handbooks, MPS for One- and Two-Family Dwellings 4900.1, MPS for Multifamily Housing 4910.1, and MPS for Care-Type Housing 4920.1. The MPS are the standards for all new construction in HUD associated programs. The MPS are incorporated by reference into 24 CFR 200.919.

All substantive changes in the MPS are required by 24 CFR 200.933 to be published in the Federal Register using the same procedure as for the publication of regulations. The MPS for which these changes are proposed are available for examination in all HUD Field Offices and in Room 6170 of the Headquarters at the above address during business hours.

On April 16, 1979 (44 FR 22444) HUD published Increases in Thermal Requirements for HUD Minimum Property Standards. Interested persons were given until June 15, 1979 to comment on the amendment. House of Representatives Report No. 96-706 of December 13, 1979 accompanying H.R. 3875 contained a disapproval of the thermal standards as applied to masonry and included the following:

The objective of the provision is not to exempt the masonry components of construction from increased thermal energy requirements. Rather, the conferees expect the Secretary of HUD, after consulting with the Farmers Home Administration and the Department of Energy, and after carefully reviewing data that has become available since the interim rule was published, and other data developed pursuant to the recent National Bureau of Standards cost-benefit analysis, to move immediately to issue final thermal standards for the masonry components of construction no later than one month after enactment of this Act. During the interim period and prior to the issuance of the revised standards, masonry components shall comply with those thermal requirements existing prior to April 16, 1979, except that any local acceptable standard exemptions granted by HUD as of June 8, 1979, may remain in effect until the revised standards become final.

The conferees believe that the three agencies involved in developing conservation standards for new and rehabilitated residential construction—the Department of Housing and Urban Development, the Farmers Home Administration and the Department of Energy—should develop standards for various programs that are consistent. In order for the Federal Government to develop a rational and consistent approach to energy conservation, these three agencies should work closely together and reach a consensus on the assumptions and data used in various residential conservation standards.

Forty-one comments were received from other sources. These comments dealt with the requirement for an