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Via Electronic Submission

Mr. Austin Gerig
Director, Chief Data Officer
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Re: FR Doc. 2025-03434, Comment Request: Rule 17Ad-16

Mr. Gerig,

The American Bankers Association[1] (ABA) and its Corporate Trust Committee[2] (the Committee) appreciate the Securities and Exchange Commission (SEC) providing an opportunity to comment on the necessity, utility, and efficiency of SEC's current interpretation of Rule 17Ad-16 (the Rule) and related examination practices. Since the Rule's adoption, the securities industry's issuance, transfer, and recordkeeping practices have evolved alongside technological developments and their broad adoption, such that market participants now have access to far more information much more quickly than when the Rule was adopted. Yet, ABA is concerned that, quite inexplicably, SEC examiners' expectations of registered transfer agents' (transfer agent) compliance with the Rule appear to have evolved on the assumption that market participants increasingly have less information and less timely access to information.

Though no change to the regulatory text of the Rule is necessary, ABA strongly believes SEC examiner expectations have diverged from the Rule's original purpose in ways that unduly burden industry and undermine SEC's broader mission. Requiring transfer agents to provide qualified registered securities depositories (depositories) detailed Rule 17Ad-16 notices comprised of information depositories already independently collect and publish is not only unnecessarily duplicative but also risks introducing reporting errors that may materially undermine the quality, clarity, and subsequent utility of information available to SEC and market participants and hampers further industry innovation.

[1] The American Bankers Association is the voice of the nation's $24 trillion banking industry, which is composed of small, regional, and large banks that together employ more than 2.1 million people, safeguard $19 trillion in deposits, and extend $12.4 trillion in loans. Learn more at www.aba.com.
[2] The ABA Corporate Trust Committee is comprised of bank indenture trustees providing more than 90 percent of the corporate trust services in the U.S. as well as transfer agent and paying agent services for issuers of corporate and municipal debt.

As detailed below, ABA strongly encourages SEC to issue Staff Guidance making clear that depositories, like the Depository Trust Company (DTC), are the primary and comprehensive source of information on securities issuances and clarifying that the Rule's requirement that a transfer agent provide written notice to the appropriate depository when the transfer agent assumes transfer agent services on behalf of an issuer does not apply at a security's issuance.

As part of such Staff Guidance, ABA also encourages SEC to clarify that examination sampling and testing should only be performed for a post-issuance change of a transfer agent, 90% Rule compliance should be considered a "passing" score, and the Rule applies only to securities which are made eligible at issuance with a recognized depository – or, alternatively – that the Rule does not apply to privately placed securities unless they are made eligible at issuance with a recognized depository.

Applying the Rule's transfer agent notification requirements at securities' issuances is unnecessarily duplicative and serves no practical purpose for SEC or market participants.

As SEC recognizes in its Comment Request, the Rule is not intended to be an information collection tool but rather a reasonable means "*…to address the problem of certificate transfer delays caused by transfer requests that are directed to the wrong transfer agent or the wrong address."* SEC examiner expectations tracked this goal and the Rule's regulatory text for years. Starting around 2005, however, some SEC examiners began to interpret the Rule as applying to transfer agents both at securities' issuances and as post-issuance changes arise – giving rise to significant regulatory uncertainty which persists today.

In short, SEC examiners adopting an unreasonably expansive view of the Rule and requiring transfer agents to provide depositories detailed information about securities issues is, at best, highly inefficient and unnecessarily duplicative. This shift in SEC examiner expectations dramatically increased the number of Rule 17Ad-16 filings and, consequently, immaterial exam findings, and industry compliance costs. This shift also ran counter to the securities industry's decades-long movement away from the transfer of physical certificates to a centralized, book-entry-only framework facilitated and overseen by depositories – a point SEC appears to have recognized in its December 2015 *Transfer Agent Regulations* advance notice of proposed rulemaking (2015 ANPR).[3] As part of the 2015 ANPR's Question 85, SEC asked, "*Is the information required by Rule 17Ad–16 already provided to the industry, including DTC?*"

[3] *Transfer Agent Regulations*, 80 Fed. Reg. 81,948 (December 31, 2015).

Depositories acquire directly from underwriters all the information about security issues with which the Rule could be concerned – often well in advance of the Rule's required 10-day lead time and, sometimes, even before a transfer agent is advised of its retention. Registered transfer agents' information also already exists in a variety of easily accessible supplemental market research resources, including commercial data aggregator services and, for municipal securities, the Municipal Security Rulemaking Board's (MSRB) Electronic Municipal Market Access (EMMA) system. Comparatively, at a security's issuance, transfer agents have relatively little information – often, only the date of their appointment and corresponding CUSIP identifiers – and must rely on issuers, underwriters, securities depositories and clearinghouses, and the same supplemental market research resources already available to SEC examiners.

Furthermore, depositories' operational agreements already require transfer agents to meet securities information confirmation notification deadlines that are more aggressive than those required under the Rule for post-issuance transfer agent changes. Too, significant inconsistencies among individual SEC examiners' expectations lead to divergent reporting practices among transfer agents and the Rule does not apply to agents who are not registered transfer agents. Therefore, SEC would have access to far more reliable information about securities issuances much more quickly if SEC makes clear that depositories are the primary and comprehensive source of information on securities issuances and clarifies that the Rule's requirements do not apply to transfer agents at a security's issuance.

The agency's estimate of industry's compliance burden is likely materially inaccurate.

As described in its Comment Request, SEC used as a basis for its compliance cost estimates industry salary data that is more than a decade old and a loosely described 535% multiplier intended "to account for bonuses, firm size, employee benefits, and overhead." Based on member conversations, ABA believes SEC's total industry burden estimate is materially low, primarily due to SEC's underestimating transfer agents' internal counsel salaries, compliance infrastructure investments, and routine post-filing expenses.

For SEC's estimated per notice compliance cost of $96 to be accurate under SEC's current methodology, transfer agents' average internal counsel base salaries could not exceed $130,000.[4] ABA believes internal counsel base salaries are, in fact, substantially higher than they were a decade ago. If internal counsel base salaries are now nearer to $200,000, estimated compliance costs under SEC's current methodology would be nearer to $149 per notice.

[4] $385 (per hour base rate) divided by 5.35 (multiplier) multiplied by 1,800-hour work year.

However, even this much higher per notice compliance cost estimate appears materially low. As described in its Comment Request, SEC did not separately consider the significant resources transfer agents expend developing, routinely monitoring, and auditing their Rule compliance systems and further upgrading their internal systems to match regular and ongoing changes to depositories' operational arrangements. Too, SEC appears not to have separately considered the significant post-filing expenses transfer agents routinely face – *e.g.* managerial and senior legal counsel labor attributable to SEC examination and examination follow-up activities. When properly accounting for all attributable costs, ABA conservatively estimates transfer agents' costs are closer to $500 per notice

Furthermore, SEC bases its estimate of 16,412 annually submitted Rule 17Ad-16 notices on values received by DTC. Though DTC is the primary U.S. securities depository and the largest depository by value and volume of securities issuances, DTC does not handle all securities issuances. As a result, SEC's estimate of annually submitted Rule 17Ad-16 notices does not reflect the full universe of Rule 17Ad-16 notices that transfer agents generate. Some sources suggest a more accurate estimate of annually submitted Rule 17Ad-16 notices may be roughly 20% higher – closer to 19,700.

Based on these higher estimates of annually submitted Rule 17Ad-16 notices and transfer agents' per notice costs, ABA believes annual industry-wide internal compliance costs are likely closer to $9,850,000 – more than six times SEC's estimate.

How SEC may enhance the quality, clarity, and subsequent utility of the information collected

ABA's principal ask in this comment – that SEC issue Staff Guidance clarifying the Rule's requirements do not apply to transfer agents at securities' issuances, considering that making depositories are the primary and comprehensive sources of information about securities issues, is effectively a request that SEC adhere to basic market practices concerning information collection. Important information, like that with which the Rule is concerned, should be collected from the most robust, timely information sources, *and those sources are more than sufficient*. By adhering to such a standard, SEC would greatly enhance the quality, clarity, and subsequent utility of the information it collects.

As described above and by virtue of their increasingly central role in the securities industry, depositories are plainly the most robust, timely sources for information about securities issues. At a security's issuance, a depository has not only the often limited information shared by an issuer and underwriter with an assigned transfer agent and all necessary information to

accurately identify the assigned transfer agent but substantially more detailed information about the issuance – including extensive trade data.

Requiring a transfer agent to provide a depository security issuance information that the depository already has effectively forces a transfer agent to engage in a game of "telephone" that not only unnecessarily balloons the annual number of SEC Rule 17Ad-16 filings and industry compliance costs but risks introducing reporting errors that may materially undermine the overall reliability of the information SEC collects and considers about securities issues.

How SEC may minimize industry burden and support industry innovation while retaining necessary insight

Based on member conversations, ABA estimates as much as 96% of transfer agents' Rule 17Ad-16 filings relate to securities' issuances. As described above, new issuance filings are, at best, duplicative and, perhaps, deleterious to SEC's securities information collection and analyses. Therefore, by adopting ABA's recommendation to clarify that the Rule's requirements do not apply to transfer agents at securities' issuances, SEC could immediately reduce Rule 17Ad-16 filings and, correspondingly, industry burden by as much as 96% – all without sacrificing any insight necessary to appropriately oversee the securities industry or the availability of information that investors need.

Transfer agents and depositories now operate much more transparently, efficiently, and timely than they were capable of at any point in the past – thanks to transfer agents' and depositories' voluntary investments in process automation and coordinated information sharing frameworks. Transfer agents not only voluntarily invest in systems and relationships that drive positive market outcomes for law-abiding market participants but voluntarily invest significant resources – well beyond those required to meet regulators' requirements – to help combat fraud, terrorism financing, and other financial crimes. Reducing unnecessary regulatory burden will only speed these and other voluntary industry investments which ultimately benefit all market participants and support SEC industry insight and oversight capabilities.

Other comments

Currently, despite transfer agents' obvious and unavoidable reliance on third parties, SEC examiners view even the smallest, least meaningful lapses in Rule compliance as basis for issuing a Letter of Deficiency or referring an examinee for SEC enforcement. This is inconsistent with other SEC transfer turnaround rules, and, as it does with other rules, SEC should benchmark Rule compliance of 90+% as successful.

SEC should also consider that the Rule's application to issuances of and subsequent transfers involving privately placed securities is inconsistent with the Rule's purpose and unnecessarily exposes transfer agents to breach of privacy actions from which there is no safe harbor. And ABA encourages SEC to clarify that the Rule applies only to securities which are made eligible at issuance with a recognized depository – or, alternatively – that the Rule does not apply to privately placed securities unless they are made eligible at issuance with a recognized depository.

Conclusion

ABA applauds SEC's interest in and dedication to ensuring the Rule effectively and efficiently fulfills the Rule's goal and supports, rather than undermine, SEC's broader mission without unduly burdening industry.

As SEC considers its next steps, ABA strongly encourages SEC to issue Staff Guidance incorporating its recommendations. If you need additional information or have questions, please contact me at DBaker@aba.com or (202) 663–7614.

Sincerely,

Dale Baker
Vice President, Trust Policy