

Securities and Exchange Commission

§ 240.17Ad-13

(3) When the recordkeeping transfer agent has any debits or credits for securities transferred, purchased, redeemed or issued that are unposted to the master securityholder and/or subsidiary files for more than five business days after debits and credits are required to be posted to the master securityholder file or subsidiary files pursuant to § 240.17Ad-10, it shall immediately report such fact to its appropriate regulatory agency in accordance with § 240.17Ad-2(h) and shall state in that report what steps have been, and are being, taken to correct the situation.

(d) *Content of reports.* (1) Each report pursuant to paragraphs (b)(1) and (c)(1) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount and related market value of debt securities or the number of shares and related market value of equity securities comprising the aged record difference (including information concerning aged record differences existing as of the effective date of this section);

(ii) The reasons for the aged record difference; and

(iii) The steps being taken or to be taken to resolve the aged record difference.

(2) Each report pursuant to paragraphs (b)(2) and (c)(2) of this section shall set forth with respect to each issue of securities:

(i) The principal dollar amount of debt securities and related market value or the number of shares and related market value of equity securities comprising any buy-in executed pursuant to § 240.17Ad-10(g);

(ii) The party that executed the buy-in; and

(iii) The reason for the buy-in.

(e) For purposes of this section, the market value of an issue shall be determined as of the last business day on which market value information is available during the reporting period.

(f) A copy of any report required under this section shall be retained by the reporting transfer agent for a period of not less than three years, the first year in an easily accessible place.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q-1(d) and 78w(a))

[48 FR 28247, June 21, 1983]

§ 240.17Ad-12 Safeguarding of funds and securities.

(a) Any registered transfer agent that has custody or possession of any funds or securities related to its transfer agent activities shall assure that:

(1) All such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss or destruction (other than by a transfer agent's certificate destruction procedures pursuant to § 240.17Ad-19); and

(2) All such funds are protected, in light of all facts and circumstances, against misuse. In evaluating which particular safeguards and procedures must be employed, the cost of the various safeguards and procedures as well as the nature and degree of potential financial exposure are two relevant factors.

(b) For purposes of this section, the term *securities* shall have the same meaning as the term *securities certificate* as defined in § 240.17f-1(a)(6).

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q-1(d) and 78w(a))

[48 FR 28248, June 21, 1983, as amended at 68 FR 74401, Dec. 23, 2003]

§ 240.17Ad-13 Annual study and evaluation of internal accounting control.

(a) *Accountant's report.* Every registered transfer agent, except as provided in paragraph (d) of this section, shall file annually with the Commission and the transfer agent's appropriate regulatory agency in accordance with § 240.17Ad-2(h), a report specified in paragraph (a)(1) of this section prepared by an independent accountant concerning the transfer agent's system of internal accounting control and related procedures for the transfer of record ownership and the safeguarding of related securities and funds. That report shall be filed within 90 calendar days of the date of the study and evaluation set forth in paragraph (a)(1).

(1) The accountant's report shall:

(i) State whether the study and evaluation was made in accordance with generally accepted auditing standards using the criteria set forth in paragraph (a)(3) of this section;

§ 240.17Ad-13

17 CFR Ch. II (4-1-10 Edition)

(ii) Describe any material inadequacies found to exist as of the date of the study and evaluation and any corrective action taken, or if no material inadequacy existed, the report shall so state;

(iii) Comment on the current status of any material inadequacy described in the immediately preceding report; and

(iv) Indicate the date of the study and evaluation.

(2) The study and evaluation of the transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds shall cover the following:

(i) Transferring securities related to changes of ownership (i.e., cancellation of certificates or other instruments evidencing prior ownership and issuance of certificates or instruments evidencing current ownership);

(ii) Registering changes of ownership on the books and records of the issuer;

(iii) Transferring record ownership as a result of corporate actions (e.g., issuance, retirement, redemption, liquidation, conversion, exchange, tender offer or other types of reorganization);

(iv) Dividend disbursement or interest paying-agent activities;

(v) Administering dividend reinvestment programs; and

(vi) Distributing statements respecting initial offerings of securities.

(3) For purposes of this report, the objectives of a transfer agent's system of internal accounting control for the transfer of record ownership and the safeguarding of related securities and funds should be to provide reasonable, but not absolute, assurance that securities and funds are safeguarded against loss from unauthorized use or disposition and that transfer agent activities are performed promptly and accurately. For purposes of this report, a material inadequacy is a condition for which the independent accountant believes that the prescribed procedures or the degree of compliance with them do not reduce to a relatively low level the risk that errors or irregularities, in amounts that would have a significant adverse effect on the transfer agent's ability promptly and accurately to transfer record ownership and safe-

guard related securities and funds, would occur or not be detected within a timely period by employees in the normal course of performing their assigned functions. Occurrence of errors or irregularities more frequently than in isolated instances may be evidence that the system has a material inadequacy. A significant adverse effect on a transfer agent's ability promptly and accurately to transfer record ownership and safeguard related securities and funds could result from any condition or conditions that individually, or taken as a whole, would reasonably be expected to:

(i) Inhibit the transfer agent from promptly and accurately discharging its responsibilities under its contractual agreement with the issuer;

(ii) Result in material financial loss to the transfer agent; or

(iii) Result in a violation of § 240.17Ad-2, 17Ad-10 or 17Ad-12(a).

(b) *Notice of corrective action.* If the accountant's report describes any material inadequacy, the transfer agent shall, within sixty calendar days after receipt of the report, notify the Commission and its appropriate regulatory agency in writing regarding the corrective action taken or proposed to be taken.

(c) *Record retention.* The accountant's report and any documents required by paragraph (b) of this section shall be maintained by the transfer agent for at least three years, the first year in an easily accessible place.

(d) *Exemptions.* The requirements of § 240.17Ad-13 shall not apply to registered transfer agents that qualify for exemptions pursuant to this paragraph, 17Ad-13(d).

(1) A registered transfer agent shall be exempt if it performs transfer agent functions solely for:

(i) Its own securities;

(ii) Securities issued by a subsidiary in which it owns 51% or more of the subsidiary's capital stock; and

(iii) Securities issued by another corporation that owns 51% or more of the capital stock of the registered transfer agent.

(2) A registered transfer agent shall be exempt if it:

(i) Is an exempt transfer agent pursuant to § 240.17AD-4(b); and

(ii) In the case of a transfer agent that performs transfer agent functions for redeemable securities issued by companies registered under section 8 of the Investment Company Act of 1940, maintains master securityholder files consisting of fewer than 1000 shareholder accounts, in the aggregate, for each of such issues for which it performs transfer agent functions.

(3) A registered transfer agent shall be exempt if it is a bank or financial institution subject to regulation by the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation, provided that it is not notified to the contrary by its appropriate regulatory agency and provided that a report similar in scope to the requirements of § 240.17Ad-13(a) is prepared for either the bank's board of directors or an audit committee of the board of directors.

(Secs. 2, 17(a), 17A(d) and 23(a) thereof, 15 U.S.C. 78b, 78q(a), 78q-1(d) and 78w(a))

[48 FR 28248, June 21, 1983]

§ 240.17Ad-14 Tender agents.

(a) *Establishing book-entry depository accounts.* When securities of a subject company have been declared eligible by one or more qualified registered securities depositories for the services of those depositories at the time a tender or exchange offer is commenced, no registered transfer agent shall act on behalf of the bidder as a depository, in the case of a tender offer, or an exchange agent, in the case of an exchange offer, in connection with a tender or exchange offer, unless that transfer agent has established, within two business days after commencement of the offer, specially designated accounts. These accounts shall be maintained throughout the duration of the offer, including protection periods, with all qualified registered securities depositories holding the subject company's securities, for purposes of receiving from depository participants securities being tendered to the bidder by book-entry delivery pursuant to transmittal letters and other documentation and for purposes of allowing tender agents to return to depository

participants by book-entry movement securities withdrawn from the offer.

(b) *Exclusions.* The rule shall not apply to tender or exchange offers (1) that are made for a class of securities of a subject company that has fewer than (i) 500 security holders of record for that class, or (ii) 500,000 shares of that class outstanding; or (2) that are made exclusively to security holders of fewer than 100 shares of a class of securities.

(c) *Definitions.* For purposes of this rule, (1) the terms *subject company*, *business day*, *security holders*, and *transmittal letter* shall be given the meanings provided in § 240.14d-1(b); (2) unless the context otherwise requires, a tender or exchange offer shall be deemed to have commenced as specified in § 240.14d-2; (3) the term *bidder* shall mean any person who makes a tender or exchange offer or on whose behalf a tender or exchange offer is made; (4) a *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Securities Exchange Act of 1934 to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository; and (5) the term *depository* refers to that agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer.

(d) *Exemptions.* The Commission may exempt from the provisions of this rule, either unconditionally or on specified terms and conditions, any registered transfer agent, tender or exchange offer, or class of tender or exchange offers, if the Commission determines that an exemption is consistent with the public interest, the protection of investors, the prompt and accurate clearance and settlement of securities transactions, the maintenance of fair and orderly markets, or the removal of