§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Colstrip, MT [Revised]

Colstrip Airport, Colstrip MT
(Lat. 45°51′10″ N, long. 106°42′34″ W)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport, that airspace extending upward from 1,200 feet above the surface bounded on the north along V–2, on the east along V–254; on the south along lat. 45°30′00″ N., to long. 107°40′00″ W., on the west along long. 107°40′00″ W., to V–2; excluding that airspace within Federal airways, the Billings, the Forsyth and the Miles City, MT, Class E airspace areas

* * * * *

Issued in Seattle, Washington, on February 18, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–6054 Filed 3–10–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41142; File No. S7–8–99]

RIN 3235–AH61

Operational Capability Requirements of Registered Broker-Dealers and Transfer Agents and Year 2000 Compliance

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (''Commission) is soliciting comment on new proposed Rules 15b7–2 and 17Ad–20 and temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T under the Securities Exchange Act of 1934 (''Exchange Act''). Broker-dealers and transfer agents are becoming increasingly reliant on computer systems to perform their functions. Thus, it is critical that they have sufficient operational capability. In addition, broker-dealers, transfer agents, and other securities market participants are facing a critical test of their operational capability with the upcoming Year 2000. These proposed rules would require registered broker-dealers and transfer agents to have sufficient operational capability and their computer systems to be Year 2000 compliant. These proposed rules are intended to protect investors and the securities markets by reducing the potential systemic risk as a result of operational failures in general, and in particular, computer systems failures related to the Year 2000 at registered broker-dealers and non-bank transfer agents.

DATES: You should send us your comments so that they arrive at the Commission on or before April 12, 1999.

ADDRESSES: You should submit three copies of your comments to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. You can also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. In your comment letters, you should refer to File No. S7–8–99, which should be included on the subject line if E-mail is used. We will make all comments received available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: *Broker-Dealers (Rules 15b7–2 and 15b7–3T)* Sheila Slevin, Assistant Director, 202–942–0796, S. Kevin An, Special Counsel, 202–942–0198, or Kevin Ehrlich, Attorney, 202–942–0778; *Transfer Agents (Rules 17Ad–20 and 17Ad–21T)* Jerry W. Carpenter, Assistant Director, 202–942–4187, or Lori R. Bucci, Special Counsel, 202–942–4187; *Recordkeeping (Rule 17a–9T)* Tom McGowan, Assistant Director, 202–942–0177, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction and Executive Summary

Because of the tremendous growth in the volume and complexity of securities trading in recent years, broker-dealers and transfer agents are becoming increasingly reliant on computer systems to perform their functions. Securities firms rely on computers to handle every aspect of trading, from routing orders to various markets to maintaining customer accounts. As with broker-dealers, the majority of transfer agents also now rely on computers instead of manual processing to record changes of ownership of securities, maintain issuer securityholder records, cancel and issue certificates, and distribute dividends. Accordingly, it has become more essential than ever that broker-dealers have sufficient operational capability to process transactions for customers as well as to maintain control of customer funds and securities, and for transfer agents to assure the prompt transfer and processing of securities and maintenance of securityholder files.

This obligation is not new. Broker-dealers and transfer agents have always been expected under the federal securities laws to have the ability to properly handle customer transactions, whether manually or electronically. For example, in connection with the back office problems in the 1960s, we warned broker-dealers that if they did not have the personnel and facilities to enable them to promptly execute and consummate all of their securities transactions, they could be in violation of the antifraud provisions if they accepted or executed any customer order.[1] More recently, the Division of Market Regulation stated that broker-dealers should take steps to prevent their operational systems from being overwhelmed by high trading volume and that they should have the systems capacity to handle exceptional situations.[2]

In light of broker-dealers' and transfer agents' increasing reliance on computer systems, we believe it is appropriate to provide further guidance by setting objective standards relating to operational capability that registered broker-dealers must meet under Section 15(b)(7) of the Exchange Act[3] and that registered transfer agents must meet under Section 17A(d)(1) of the Exchange

[1] Exchange Act Rel. No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

[2] Staff Legal Bulletin No. 8 (September 9, 1998), which can be found at <http://www.sec.gov/rules/othern/slbmr8.htm>. At the time we announced the Automation Review Policy Statement for self-regulatory organizations (''SROs), we stated that broker-dealers should also engage in systems testing. Exchange Act Rel. No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989).

[3] The Congress recognized the importance of the operational capability of broker-dealers by including Exchange Act Section 15(b)(7) as part of the 1975 Amendments. Pub. L. No. 94–29, 89 Stat. 97 (1975). That section allows us to establish by rule such operational capability standards as we find necessary or appropriate in the public interest or for the protection of investors. We also note that we have broad authority to promulgate rules and regulations as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of broker-dealers. Exchange Act Section 15(c)(3), 15 U.S.C. 8o(c)(3).

Act.[4] We are proposing these standards at this time because broker-dealers, transfer agents, and other securities market participants are facing a critical test of their operational capability with the upcoming Year 2000 (''Y2K'').[5] As the next millennium approaches, unless proper modifications have been made, the program logic in many computer systems will start to produce erroneous results because the systems will incorrectly read dates such as ''01/01/00'' as being in 1900 or in some other incorrect year. While we do not anticipate widespread failures by broker-dealers or transfer agents as a result of the Y2K problem, we want to reduce the potential risk to the markets by reserving the right to take prophylactic measures against broker-dealers and non-bank transfer agents whose systems will not be ready for Year 2000. Accordingly, we are also proposing temporary rules to specifically address the Year 2000 problem by giving us the ability to take the steps necessary in the event that a broker-dealer or a non-bank transfer agent will not be Year 2000 compliant.

II. Our Efforts to Date on the Y2K Problem

The Commission views the Y2K problem as an extremely serious issue and has already taken various steps to address it. For example, we adopted Rules 17a–5(e)(5) and 17Ad–18 under the Exchange Act requiring certain broker-dealers and non-bank transfer agents to file reports with us and their DEAs regarding their Year 2000 preparedness.[6] We also provided interpretive guidance for public companies, investment advisers, investment companies, and municipal securities issuers regarding their disclosure obligations about their Year 2000 issues.[7] Since 1996, our Division of Market Regulation has periodically surveyed the exchanges, Nasdaq, and the clearing agencies for detailed information regarding their Year 2000 efforts. In addition, since the third quarter of 1996, our Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of transfer agents and selected broker-dealers.[8] Finally, we instituted public administrative and cease-and-desist proceedings against broker-dealers and transfer agents that failed to file in a timely manner all or part of the required Y2K forms.[9] Through these efforts, we have made clear that a failure to adequately address the Y2K problem cannot serve as an excuse for failing to protect investors.

To date, our efforts have mostly focused on increasing broker-dealer and transfer agent awareness of the Year 2000 problem, on requiring broker-dealers and non-bank transfer agents to disclose their Year 2000 readiness, and encouraging point-to-point and industry-wide testing.[10] Based on the experience and information obtained from these efforts, we have determined that it would be prudent to adopt additional safeguards to prevent or reduce any adverse effects of non-Year 2000 compliant broker-dealers and non-bank transfer agents on investors and the securities markets. It is crucial that all broker-dealers and transfer agents be Year 2000 compliant because the problems of any non-compliant broker-dealer or transfer agent could have detrimental and potentially widespread consequences for other market participants. For this reason, we have decided to propose measures that would allow us to take a proactive approach in dealing with broker-dealers and non-bank transfer agents that are not ready for Y2K.

III. Discussion of Proposed Rules

A. Proposed Rule 15b7–2

Proposed Rule 15b7–2 is intended to protect investors and the securities markets in general by requiring registered broker-dealers to have sufficient operational capability in order to conduct a securities business.[11] Under the proposed rule, registered broker-dealers must have and maintain operational capability, taking into consideration the nature of their business, to assure the prompt and accurate entry of customer orders, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities.[12] We are proposing this rule under Exchange Act Section 15(b)(7), which allows us to establish by rule such standards of operational capability as we find necessary or appropriate in the public interest or for the protection of investors.[13]

Broker-dealers have always been required to properly handle customer orders. If a broker-dealer fails to comply with this requirement, we can bring enforcement actions for, among other things, violating the antifraud provisions of the Exchange Act and/or

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[4] Exchange Act Section 17A(d)(1) gives us broad authority to prescribe rules for registered transfer agent activity as necessary or appropriate in the public interest, for the protection of investors, or for the safeguarding of securities and funds.

[5] *See generally* Exchange Act Rel. No. 40162 (July 2, 1998), 63 FR 37668 (July 13, 1998); Exchange Act Rel. No. 40163 (July 2, 1998), 63 FR 37688 (July 13, 1998).

[6] *Id.* In addition, we later amended Rule 17a–5 and Rule 17Ad–18 to require these entities to file a report prepared by an independent public accountant regarding their process for preparing for the Year 2000. Exchange Act Rel. No. 40608 (October 28, 1998), 63 FR 59208 (November 3, 1998); Exchange Act Rel. No. 40587 (October 22, 1998), 63 FR 58630 (November 2, 1998).

[7] Exchange Act Rel. No. 40277 (July 29, 1998), 63 FR 41394 (August 4, 1998). We subsequently issued a release publishing guidance in the form of Frequently Asked Questions to clarify recurring issues regarding Year 2000 disclosure obligations. Exchange Act Rel. No. 40649 (November 9, 1998), 63 FR 63758 (November 16, 1998).

[8] In addition, in June 1997 and 1998, our staff published reports to Congress on the *Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*. Both of these reports are available at <http://www.sec.gov/news/studies/yr2000.htm> (and yr2000-2.htm). Our staff will prepare a similar report in 1999.

[9] *See, e.g.*, Exchange Act Release No. 40573 [Adm. Proc. File No. 3–9758] (October 20, 1998) (broker-dealers that failed to file Form BD–Y2K); Exchange Act Release No. 40895 [Adm. Proc. No. 3–9801] (January 7, 1999) (transfer agents that failed to file Form TA–Y2K).

[10] We also reminded broker-dealers and non-bank transfer agents that failure to adequately prepare for the Year 2000 will not be considered a valid excuse for noncompliance with the requirements of Exchange Act Rules 17a–3, 17Ad–6, and 17Ad–7 to make and keep current books and records. *Supra* note 5. *See also* In re Lowell H. Listrom, Adm. Proc. File No. 3–7156, footnote 7 (March 19, 1992) (Commission stating that ''if a broker-dealer or its agent develops a computer-communications system to facilitate regulatory compliance, failure of that system does not excuse the broker-dealer from its obligation to comply with each of its regulatory responsibilities.ä)

[11] Areas that would be encompassed by the term ''operational capability include the following broker-dealer computer operations: controls in the data center computer operations, such as facilities management; controls regarding infrastructure and physical hazards, staffing and operations practices of the data center; data security practices and policies; controls, practices and policies to ensure adequate development and maintenance of information systems; capacity planning and testing to ensure the continual capability of systems to handle varying amounts of data in a timely fashion; and contingency planning, in particular, the plans and procedures to resolve systems failures and to ensure adequate investor protection in the case of systems failure.

[12] Proposed Rule 15b7–2(a). The term ''customer'' includes a broker or dealer so that a clearing broker that handles orders from other brokers and carries their funds and securities would also be covered by the rule. Proposed Rule 15b7–2(b).

[13] We also note that the national securities exchanges and the National Association of Securities Dealers (''NASD'') may deny membership to broker-dealers that do not meet such standards of operational capability as prescribed by their rules. Exchange Act Sections 6(c)(3)(A), 15 U.S.C. 78f(c)(3)(A), and 15A(g)(3)(A), 15 U.S.C. 78o–3(g)(3)(A). For example, the New York Stock Exchange (''NYSE'') may summarily suspend a member who is in such operating difficulty that the exchange determines and so notifies us that the member cannot be permitted to continue to do business. NYSE Rule 475(b)(ii). The NASD also has a similar rule under which the NASD may impose various restrictions on its members experiencing operational difficulties. NASD Rule 3130 and IM–3130.

violating the books and records provisions. However, these actions generally can only be brought after customers are harmed by such a failure. By codifying the operational capability requirement into a Commission rule, we can take preventive measures before a broker-dealer's operational problems adversely affect its customers or the markets. For example, in a cease-and-desist proceeding, the Commission would have the ability to require a broker-dealer experiencing an operational difficulty to take remedial steps to effect compliance with the proposed rule upon such terms and conditions and within such time as the Commission may specify.[14]

Because the rule is aimed at overall capacity and mission critical systems that affect processing of customer securities transactions, isolated systems problems unrelated to a broker-dealer's core business would not violate the rule. For example, there can be occasional delays or outages in electronic systems due to a high demand or software glitches. However, if delays or system outages occur consistently due to insufficient systems capacity that result in customer orders not receiving timely executions or customers not receiving timely confirmations, then a broker-dealer could be in violation of the proposed rule and would need to take appropriate actions before it could resume its normal operation.

Under the Exchange Act, we have broad authority to conduct reasonable examinations of registered broker-dealers.[15] We and the SROs will conduct examinations of registered broker-dealers, including their automated systems and records, as are necessary to assess their operational capability and, as discussed below, whether they have a material Year 2000 problem.[16] We seek comment on whether we should specifically include a requirement in the proposed rule for broker-dealers to document their operational capability, and what types of documents would suffice.

Some brokers (''introducing broker-dealers'') have agreements with another broker (''clearing broker-dealer'') pursuant to which the clearing broker-dealer performs many of the functions related to securities transactions.[17] In these situations, the introducing and clearing broker-dealers agree on the allocation of responsibilities for handling customer trades and accounts and other matters.[18] We note, however, that such arrangements do not relieve either broker-dealer of its responsibilities under the federal securities laws, including this proposed rule and proposed temporary Rule 15b7–3T discussed below.[19] For example, an introducing broker-dealer that has an arrangement with a clearing broker-dealer should confirm that the clearing broker-dealer is able to perform the functions it has agreed to perform. If an introducing broker-dealer becomes aware that its clearing broker-dealer is experiencing operational difficulty, the introducing broker-dealer should promptly make other arrangements to assure appropriate processing of its trades.

B. Proposed Temporary Rule 15b7–3T (Operational Capability in a Year 2000 Environment)

Proposed temporary Rule 15b7–3T specifically addresses what it means to be operationally capable in the context of Y2K, and outlines the procedures for those broker-dealers that are not Year 2000 compliant by August 31, 1999, but are in the process of remediating their Y2K problems.

a. Material Year 2000 Problems

The rule states that a registered broker-dealer would not be considered operationally capable if it has a material Year 2000 problem. We understand that the determination of whether a particular broker-dealer has a material Year 2000 problem depends on the specific facts and circumstances of a particular case. To provide some measure of certainty in this regard, however, the proposed rule states that a broker-dealer would have a material Year 2000 problem if, at any time on or after August 31, 1999:

- Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter, and
- The error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[20]

The proposed definition is not intended to include a broker-dealer whose systems have minor technical problems regarding the reading of dates if these problems do not adversely affect the broker-dealer's core business.

A broker-dealer would be *presumed* to have a material Year 2000 problem (and would therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, it:

- Does not have written procedures designed to identify, assess, and remediate any Year 2000 problems in its mission critical systems;[21]
- Has not verified its Year 2000 remediation efforts through reasonable internal testing of its mission critical systems;[22]
- Has not verified its Year 2000 remediation efforts by satisfying any applicable Year 2000 testing requirements imposed by a self-regulatory organization;[23] or

[14] *See* 15 U.S.C. 78u–3.

[15] *See, e.g.,* 15 U.S.C. 78q(b).

[16] We, of course, have the ability to bring enforcement cases against those who violate these rules.

[17] Under these arrangements, in general, introducing brokers transmit orders, funds, and securities of customers to the clearing broker, which then executes the orders and maintains custody of the funds and securities. In addition to holding funds and securities, clearing brokers are contractually responsible for the settlement of the securities transactions of the other broker-dealer and the maintenance of certain records relating to those transactions. The exact scope of the respective responsibilities depends upon the individual arrangements.

[18] *See, e.g.,* NYSE Rule 382.

[19] *See* 17 CFR 240.17a–4(i) (agreement with an outside entity does not relieve broker-dealers from the responsibility to prepare and maintain the required records). We note, however, that broker-dealers that rely upon the systems of an SRO, including a registered clearing agency, for processing securities transactions would not be responsible in the event the SRO's systems fail.

[20] Proposed temporary Rule 15b7–3T(b)(1). The term ''mission critical system'' is defined as any system that is necessary, depending on the nature of the broker-dealer's business, to assure the prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities. Proposed temporary Rule 15b7–3T(f)(1). The phrase ''depending on the nature of their business'' is intended to tailor the definition of a ''material Year 2000 problem'' to different broker-dealers' businesses and operations. For example, broker-dealers that do not use computer systems in the conduct of their business may have little or no direct obligations under this proposal. To the extent, however, that some broker-dealers rely on third parties in processing their securities transactions and related activities, these broker-dealers should take reasonable steps to verify that such third parties do not have material Y2K problems. Otherwise, these broker-dealers would not be in compliance with the proposed rules.

[21] The appropriate scope of such procedures would obviously vary depending on the nature of a broker-dealer's business and the size and complexity of its computer systems. To provide flexibility, we are not prescribing specific written procedures. However, as a baseline, broker-dealers should, at a minimum, use industry standards. For example, the NASD has published a High-Level Plan, prepared by the Securities Industry Association, summarizing the standard components of a sample Year 2000 Project Plan. NASD Year 2000 Member Information (1998).

[22] The General Accounting Office has recommended a set of testing guidelines that we believe is reasonable for broker-dealers to follow. It describes five phases of Year 2000 testing activities, beginning with establishing an organizational testing infrastructure, followed by designing, conducting and reporting on software unit testing, software integration testing, system acceptance testing, and end-to-end testing. GAO Year 2000 Computing Crisis: A Testing Guide (November 1998) (''GAO Guidelines'').

[23] We have approved SRO rule changes that permit the SROs to require their members to

Continued

• Has not remediated all exceptions contained in any public independent accountant's report prepared on behalf of the broker-dealer pursuant to Exchange Act Rule 17a-(5)(e)(5)(vi).

If a broker-dealer fails to meet any of the four conditions above, it will be presumed to have a material Year 2000 problem.

b. Notification to the Commission and DEA

The proposed rule requires any registered broker-dealer that experiences, detects, or continues to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission and its DEA of the problem.[24] Broker-dealers that are presumed to have a material Year 2000 problem must notify us as well. Notice to the Commission must be sent by overnight delivery to the attention of the Secretary, Mail Stop 0609, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. The notification requirement is intended to alert the Commission and a broker-dealer's DEA so that we can assess the broker-dealer's condition and decide if its Year 2000 problems threaten customers or the integrity of the markets. We intend to make this information public so that customers and counterparties of these broker-dealers can assess the potential impact on them and take any appropriate action.

c. Prohibition on Non-compliant Broker-Dealers and Certification

A broker-dealer that is not operationally capable because it has a material Year 2000 problem would be prohibited, on or after August 31, 1999, from effecting any transaction in, inducing the purchase or sale of, any security, receiving or holding customer funds or securities, or carrying customer accounts.[25] However, a broker-dealer with a material Y2K problem on or after August 31, 1999, could continue to operate its business if, in addition to providing us and its DEA with the notice required by paragraph (c) of the rule, it provided us a certificate signed by its chief executive officer (or an individual with similar authority) stating:[26]

• The broker-dealer is in the process of remediating its material Year 2000 problem;

• The broker-dealer has scheduled testing of its affected mission critical systems to verify that the material Year 2000 problem has been remediated and specifies the testing dates;

• The date (which cannot be later than October 15, 1999) by which the broker-dealer anticipates it will have remediated the Year 2000 problem and will therefore be operationally capable; [27] and

• Based on inquiries and to the best of his or her knowledge, the broker or dealer does not anticipate that the existence of the material Year 2000 problem will impair its ability, depending on the nature of its business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities. We intend to make this information public so that customers and counterparties of these broker-dealers can take any appropriate action.

There are two proposed limitations to this certification provision. First, as stated above, the target remediation date cannot be later than October 15, 1999.[28] The purpose of this limitation is to protect investors by providing sufficient time for a broker-dealer that does not meet its target remediation date to unwind its business and to either return funds and securities that belong to its customers or make alternative arrangements with a Y2K compliant broker-dealer, as appropriate.[29] This date is also intended to require a broker-dealer that is not Y2K compliant to cease operation so that it does not communicate inaccurate and damaging information to the markets. Second, notwithstanding the fact that a broker-dealer has filed a certificate, the Commission or a court of competent jurisdiction can order a broker-dealer to comply with Rule 15b7–3T(d) (*i.e.*, to cease to do business) if it is in the public interest or for the protection of investors. For example, we would take action in the public interest under this provision if the representations contained in the certificate were false.

C. Proposed Temporary Rule 17a–9T

Proposed temporary Rule 17a–9T would require certain broker-dealers to make a separate copy of their trade blotter and their securities record or ledger (''stock record'') for the last two business days of 1999.[30] This proposed rule is intended to assist broker-dealers, the Commission, the DEAs, and the

conduct Year 2000 testing. *See* Exchange Act Rel. No. 40745 (December 3, 1998), 63 FR 68324 (December 10, 1998) (NASD); Exchange Act Rel. No. 40836 (December 28, 1998), 64 FR 1037 (January 7, 1999) (American Stock Exchange); Exchange Act Rel. No. 40837 (December 28, 1998), 64 FR 1055 (January 7, 1999) (NYSE); Exchange Act Rel. No. 40838 (December 28, 1998), 64 FR 1044 (January 7, 1999) (Chicago Board Options Exchange); Exchange Act Rel. No. 40839 (December 28, 1998), 64 FR 1046 (January 7, 1999) (Chicago Stock Exchange); Exchange Act Rel. No. 40870 (December 31, 1998), 64 FR 1263 (January 8, 1999) (Philadelphia Stock Exchange); Exchange Act Rel. No. 40871 (December 31, 1998), 64 FR 1838 (January 12, 1999) (Boston Stock Exchange); Exchange Act Rel. No. 40893 (January 7, 1999) (Pacific Stock Exchange), 64 FR 2932 (January 19, 1999); Exchange Act Rel. No. 40696 (November 20, 1998), 63 FR 65829 (November 30, 1998) (Depository Trust Company); Exchange Act Rel. No. 40889 (January 6, 1999), 64 FR 2691 (January 15, 1999) (MBS Clearing Corporation); and Exchange Act Rel. No. 40946 (January 14, 1999), 64 FR 3328 (January 21, 1999) (National Securities Clearing Corporation).

[24] Proposed temporary Rule 15b7–3T(c). This notification requirement is in addition to the other requirements to file reports with us under Rule 17a-5(e)(5), 17 CFR 240.17a-5(e)(5). We anticipate that the vast majority of broker-dealers that have a material Y2K problem will file one notice regarding their problem. However, if a broker-dealer experiences another material problem that was not discussed in an earlier notice, it would need to file an additional notice to discuss the new problem.

[25] Proposed temporary Rule 15b7–3T(d). A broker-dealer that is presumed to have a material Year 2000 problem has the burden to prove that it does not have a material Y2K problem, and must come forward before October 15, 1999 with sufficient evidence to rebut the presumption. We ask comment on the appropriate procedures for rebutting the presumption.

[26] Proposed temporary Rule 15b7–3T(e)(1). The Commission expects that a broker-dealer that is presumed to have a material Y2K problem would also rely upon this provision.

[27] We call this date ''the target remediation date.''

[28] We seek comment on whether the rule should specifically allow for the filing of more than one such certificate in case a broker-dealer does not complete its remediation efforts by a target remediation date that precedes October 15, 1999 or in case it has filed an additional notice discussing a new problem. We also seek comment on whether the certificate should also be filed with DEAs.

[29] We seek comment on whether the proposed date of October 15, 1999, would be too late or too early.

[30] Rule 17a–3(a)(1) requires every broker-dealer to make and keep current a trade blotter containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The trade blotter is required to show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. 17 CFR 240.17a–3(a)(1). Rule 17a–3(a)(5) requires every broker-dealer to make and keep current a stock record reflecting separately for each security all long or short positions (including securities in safekeeping and securities that are the subject of repurchase or reverse repurchase agreements) carried by the broker-dealer for its account or for the account of its customers, including the name or designation of the account in which each position is carried. The stock record is also required to show the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date the differences were discovered. 17 CFR 240.17a–3(a)(5).

Securities Investor Protection Corporation in identifying all securities positions carried by the broker-dealer and the location of the securities in the event that a broker-dealer experiences Year 2000 problems. Specifically, a broker-dealer that is required to maintain as of December 30 and December 31, 1999, minimum net capital of $250,000 [31] would be required to make and to preserve a separate copy of its trade blotter and stock record as of the close of business of each of the last two business days of 1999.[32] The record may be kept on paper or on any micrographic or electronic storage media acceptable under Rule 17a–4(f). Proposed temporary Rule 17a–9T would only require broker-dealers to make and preserve a separate copy of an existing record and to ensure that the record is created at the close of business on December 30 and December 31, 1999. It would not require a broker-dealer to create any new record.[33] The Commission requests comment on whether we should provide for exemptions from any of the requirements of this proposed rule, either unconditionally or on specified terms and conditions.[34]

D. Proposed Rule 17Ad–20

Under the proposed rules, transfer agents would be subject to similar obligations. Specifically, all registered transfer agents would be required to have operational capability, taking into consideration the nature of their business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records, including:

- Countersigning such securities upon issuance;
- Monitoring the issuance of such securities with a view to preventing unauthorized issuance;
- Registering the transfer of such securities;
- Exchanging or converting such securities; and
- Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.[35]

We are proposing this rule under Exchange Act Section 17A(d)(1), which allows us to prescribe rules for registered transfer agent activity as necessary or appropriate in the public interest, for the protection of investors, or for the safeguarding of securities and funds.

Some registered transfer agents have agreements with another registered transfer agent (variously referred to as the recordkeeping transfer agent,[36] co-transfer agent,[37] or service company [38]) pursuant to which the third party performs many of the transfer agent functions. The exact scope of the respective responsibilities depends upon individual arrangements. Such arrangements do not relieve the registered transfer agent of its responsibilities under the federal securities laws, including this proposed rule and proposed temporary Rule 17Ad–21T. For example, a registered transfer agent that has an arrangement with a service company should ensure that the service company has sufficient operational capability to perform the functions it has agreed to perform, or if a registered transfer agent becomes aware that its service company is experiencing operational difficulty, the registered transfer agent should promptly make appropriate arrangements.

Similar to our ability to examine broker-dealers, the Exchange Act gives us broad authority to conduct reasonable examinations of registered transfer agents.[39] We plan to conduct examinations of registered non-bank transfer agents, including their automated systems and records, as necessary to assess their operational capability and whether they have a material Year 2000 problem, as discussed below. We seek comment on whether we should specifically include a requirement to document their operational capability and what types of documents would suffice.

E. Proposed Temporary Rule 17Ad–21T (Operational Capability in a Year 2000 Environment)

a. Definition of Material Year 2000 Problem

This proposed rule, applicable to non-bank transfer agents, is similar to proposed temporary Rule 15b7–3T, applicable to broker-dealers.[40] In this regard, proposed temporary Rule 17Ad–21T defines a ''material Year 2000 problem.'' According to the proposed rule, a non-bank transfer agent would have a material Year 2000 problem if, at any time on or after August 31, 1999:

- Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter, and
- The error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[41]

The proposed definition is not intended to include a non-bank transfer agent whose system has a minor technical problem regarding the reading of dates if such problem does not adversely affect the transfer agent's core business.

b. Presumption of a Material Year 2000 Problem

In order to provide additional guidance, the proposed rule would provide that a non-bank transfer agent would be *presumed* to have a material Year 2000 problem (and would therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, it:

- Does not have written procedures designed to identify, assess, and

[31] *See* 17 CFR 240.15c3–1(a)(2).

[32] A broker-dealer that makes a stock record that reflects both trade date and settlement date positions would not be required to make a separate trade blotter.

[33] We understand that most broker-dealers already make and preserve a separate copy of their record as a good business practice.

[34] If such exemptions were to be included in Rule 17a–9T, the Commission also asks comment on whether the Director of the Division of Market Regulation should have delegated authority to grant such exemptions on the Commission's behalf.

[35] Proposed Rule 17Ad–20.

[36] ''Recordkeeping transfer agent,'' as defined in Rule 17Ad–9(h), 17 CFR 240.17Ad–9(h), means a registered transfer agent that maintains and updates the master securityholder file.

[37] ''Co-transfer agent,'' as defined in Rule 17Ad–9(i), 17 CFR 240.17Ad–9(i), means a registered transfer agent that transfers securities but does not maintain and update the master securityholder file.

[38] ''Service company,'' as defined in Rule 17Ad–9(k), 17 CFR 240.17Ad–9(k), means a registered transfer agent engaged by another registered transfer agent to perform transfer agent functions.

[39] 15 U.S.C. 78q(b).

[40] Registered transfer agents that are also banks are subject to the jurisdiction of the federal banking agencies. This proposed rule would only apply to registered transfer agents that are not banks. The term ''non-bank transfer agent'' means a transfer agent, whose appropriate regulatory agency (''ARA'') is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation. The term ARA is defined in Exchange Act Section 3(a)(34), 15 U.S.C. 78c(a)(34).

[41] Proposed temporary Rule 17Ad–21T(b)(1). The term ''mission critical system'' is defined as any system that is necessary, depending on the nature of the transfer agent's business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d). Proposed temporary Rule 17Ad–21T(g)(1). The phrase ''depending on the nature of their business'' is intended to tailor the definition of a ''material Year 2000 problem'' to different transfer agents' businesses and operations. Some non-bank transfer agents rely on third parties to handle their transfer agent functions. In order for such transfer agents to be in compliance with the proposed rules, the transfer agents should take reasonable steps to verify that third parties do not have material Year 2000 problems.

remediate any Year 2000 problems in its mission critical systems;[42]

- Has not verified its Year 2000 remediation efforts through reasonable internal testing of its mission critical systems and reasonable testing of its external links;[43] or
- Has not remediated all exceptions contained in any public independent accountant's report prepared on behalf of the transfer agent pursuant to Rule 17Ad–18(f).

If a non-bank transfer agent fails to meet any of the three conditions above, it would be presumed to have a material Year 2000 problem.

c. Notification to the Commission

The rule would require any registered non-bank transfer agent that experiences, detects, or continues to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify us of the problem.[44] Non-bank transfer agents that are presumed to have a material Year 2000 problem must notify us as well. As with broker-dealers, this information would be released to the public.

d. Prohibition on Non-compliant Transfer Agents and Certification

Similar to proposed temporary Rule 15b7–3T, a non-bank transfer agent that is not operationally capable because it has a material Year 2000 problem would not be permitted to, on or after August 31, 1999, engage in any transfer agent function, including: (i) Countersigning securities upon issuance; (ii) monitoring the issuance of securities with a view to preventing unauthorized issuance; (iii) registering the transfer of securities; (iv) exchanging or converting securities; or (v) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.[45] A transfer agent with a material Year 2000 problem on or after August 31, 1999, would be permitted to continue to operate its business if, in addition to providing us the notice required by paragraph (c) of the rule, it provided us with a certificate of its chief executive officer (or an individual with similar authority).[46]

There are two proposed limitations to this certification provision. First, the target remediation date cannot be later than October 15, 1999.[47] The purpose of this limitation is to provide sufficient time for a non-bank transfer agent that does not meet its target remediation date to unwind its business and to transfer and convert its database, file layouts, and securityholder files to a compliant registered transfer agent.[48] Second, notwithstanding the fact that a transfer agent has filed a certificate, we or a court of competent jurisdiction can order a non-bank transfer agent to comply with proposed Rule 17Ad–21T(d) if it is in the public interest or for the protection of investors; that is, we can order it to cease doing business.

e. Recordkeeping

Proposed temporary Rule 17Ad–21T contains a recordkeeping requirement.[49] Specifically, the rule would require every non-bank transfer agent to maintain a segregated copy of its database, file layouts (defined in the rule as ''the description and location of information contained in the database''), and all relevant files beginning August 31, 1999, and ending in March 31, 2000. This back-up copy of the database and file layouts must not be located with or held in the same computer system as the primary records. These records must be copied at the end of every business day and must be stored for five business days in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.[50] In the event of a transfer agent failure, it may be impossible to retrieve files unless the transfer agent has previously stored a separate set of back-up records. Thus, this requirement would help facilitate the transfer to and conversion of records to another registered transfer agent, if necessary.[51]

IV. Request for Comments

We solicit commenters' views on all aspects of the proposed rules. In addition, we solicit comments on alternative ways of minimizing the risk that broker-dealers or non-bank transfer agents that are not Year 2000 compliant may harm investors and the securities markets in general.

In addition to the specific comments we ask in other parts of this release, we also seek comment on the following issues:

- Whether the proposed standards for Rules 15b7–2 and 17Ad–20 are sufficiently objective or whether there are alternative standards that could be used;
- Whether the scope of the proposed rules is appropriate or certain broker-dealers or transfer agents should be excluded from the rules;
- Whether August 31, 1999 as the date after which a notification to us is required is reasonable, or whether another date would be more appropriate;
- Whether the proposed definition of a material Year 2000 problem is appropriate;
- Whether the proposed testing as required by SROs would provide an appropriately consistent testing method for broker-dealers, or whether there is another alternative testing method that can be used for broker-dealers and non-bank transfer agents;[52]
- The appropriate division of responsibilities of introducing and clearing brokers and of registered transfer agents and service companies regarding operational capability and Year 2000 compliance;
- Whether the proposed rules should expressly require that broker-dealers and non-bank transfer agents that are

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[42] *See supra* note 21.

[43] Unlike broker-dealers, transfer agents do not belong to any SROs. Accordingly, this proposed rule permits any reasonable testing of external links. We believe, however, that it would be reasonable for certain transfer agents to rely on testing guidelines established by SROs. We specifically seek comment on whether testing requirements established by national securities exchanges, the NASD, the Federal banking regulators, or the Depository Trust Company could be used for the purposes of the proposed rule. *See also* GAO Guidelines, *supra* note 22.

[44] Proposed temporary Rule 17Ad–21T(c). This notification requirement is in addition to the other requirements to file reports with us under Rule 17Ad–18. Notice must be sent by overnight delivery to the attention of the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

[45] Proposed temporary Rule 17Ad–21T(d). A transfer agent that is presumed to have a material Year 2000 problem has the burden to prove that it does not have a material Y2K problem, and must come forward before October 15, 1999 with sufficient evidence to rebut the presumption. We ask comment on the appropriate procedures for rebutting the presumption.

[46] Proposed temporary Rule 17Ad–21T(e)(1). The Commission expects that a transfer agent that is presumed to have a material Y2K problem would also rely upon this provision. The required contents of the certificate of transfer agents are similar to the broker-dealer certificate, as discussed earlier. As with broker-dealers, this information will be released to the public.

[47] We seek comment on whether the rule should specifically allow for the filing of more than one such certificate in case a transfer agent does not complete its remediation efforts by a target remediation date that precedes October 15, 1999.

[48] We seek comment on whether the proposed date of October 15, 1999 would be too late or too early.

[49] Proposed temporary Rule 17Ad–21T(f).

[50] We understand that most transfer agents already make and preserve a separate copy of their record as a good business practice.

[51] We understand that the logistics of the transfer and conversion process could be time consuming and would involve getting approval from the issuers to the appointment of the successor transfer agent.

[52] We note that the banking regulators recently published interagency guidelines establishing Year 2000 standards that also included the scope of required testing. *Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness*, 63 FR 55486 (October 15, 1998). Would such testing requirement be appropriate for broker-dealers or non-bank registered transfer agents?

not Year 2000-compliant notify their customers of their non-compliant status in addition to notifying the Commission and, in the case of broker-dealers, DEAs;

- Whether the proposed date of October 15, 1999, as the final date after which no broker-dealers and non-bank transfer agents that are not Year 2000-compliant could continue to operate is appropriate or should be earlier or later;
- Whether the proposed definitions of ''mission critical system'' are appropriate, too narrow, or too broad, and whether the phrase ''depending on the nature of the business'' is clear or provides sufficient flexibility;
- Whether we should require that an independent third party verify the remediation efforts, and if so, whether such third party must be an outside auditor or consultant or could be a qualified independent internal party;
- Whether there are any practical concerns regarding chief executive officers (or individuals with similar authority) signing the certificate, and if so, whether there are any ways to mitigate such concerns;
- Whether the conditions set out for presuming broker-dealers and non-bank transfer agents to have a material Year 2000 problem are appropriate or whether we should also include as a condition that the registrant has not complied with the applicable requirements of Rule 17a–5(e)(5) and of Rule 17Ad–18; [53]
- Whether the proposed recordkeeping requirements are appropriate (for example, whether the proposed one-year retention period for broker-dealers and the proposed five-day period for non-bank transfer agents is too short or too long; whether the proposed period of August 31, 1999 to March 31, 2000, for non-bank transfer agents is too long or too short; and whether we should require broker-dealers to make separate records for more than the proposed two days);
- Whether we should permit the filing of another notice in the event broker-dealers and non-bank transfer agents that have filed a notification and/or a certificate believe that they no longer have a material Year 2000 problem; and
- Whether compliance with the Commission's automation review program standards should create a presumption that broker-dealers are operationally capable.[54]

V. Costs and Benefits of the Proposed Rule and Its Effect on Competition, Efficiency and Capital Formation

We request that commenters provide analyses and data relating to the costs and benefits associated with the proposed rules. This information will assist us in our evaluation of the costs and benefits that may result from the proposed rules.

We recognize that the proposed rules may impose certain costs on broker-dealers and transfer agents. To avoid being presumed to have a material Year 2000 problem, broker-dealers and non-bank transfer agents must, on or after August 31, 1999, have written procedures, have verified their Year 2000 remediation efforts through appropriate testing, and have remediated all exceptions contained in any public independent accountant's report. However, these are costs most broker-dealers and non-bank transfer agents already must incur in order to comply with other Commission and/or SRO rules. In addition, virtually all broker-dealers and non-bank transfer agents must already incur these costs in order to take the necessary steps to become Year 2000 compliant and therefore to stay in business post-Year 2000.

Broker-dealers and transfer agents that have material Year 2000 problems or do not have the operational capability to conduct their respective businesses could bear additional costs—that is, the costs of not being able to engage in their business. However, the market itself may impose these costs on them once it became clear that they were not ready for the Year 2000 or do not have the required operational capability.

Moreover, we believe that the benefits of the proposed rules are significant. The implementation of these rules will (1) protect investors by reducing individual firm risk and systemic risk as a result of computer systems failures at broker-dealers and transfer agents, and (2) minimize any potential disruptions to the functioning of the securities markets. Customers of broker-dealers and transfer agents that are not ready for the Year 2000 could suffer severe consequences, including loss of their ability to effect transactions in their accounts in a timely manner. Non-Year 2000 compliant broker-dealers and non-bank transfer agents also pose risks to the financial system as a whole. If buyers and sellers of securities are unable to effect transactions, the financial markets will not efficiently operate and investors will be subject to unnecessary risk. By providing the ability to take prophylactic measures designed to minimize these risks, we believe that the proposed rules will offer significant benefits to investors and markets as a whole.

We also recognize that the proposed rules will place burdens to make and keep records on broker-dealers and non-bank transfer agents. The records required to be made and kept under the proposed rules are records that are currently kept by broker-dealers and transfer agents. Thus, we are not proposing that respondents generate new records but only requiring that a back-up copy be made and kept. The proposed rules will aid the Commission and the public in the event of operational failures by broker-dealers and non-bank transfer agents in identifying all securities positions carried by the broker-dealer, and transferring to and conversion of records to another entity. We believe that the proposed rules will offer significant benefits of guarding against the impact of Year 2000 problems.

Section 23(a)(2) of the Exchange Act requires us to consider the anti-competitive effects of proposed rules, if any.[55] We ask for comment on any anti-competitive effects of the proposed rules. We also solicit commenters' views regarding the effects of the proposed rules on competition, efficiency, and capital formation. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also seek comments on the proposed rules' potential impact (including any empirical data) on the economy on an annual basis, any increase in costs or prices for consumers, and any effect on competition, investment or innovation.

VI. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis (''IRFA''), which has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[56] relates to the proposed new Rules 15b7–2, 15b7–3T, 17a–9T,

[53] Broker-dealers with a minimum net capital requirement of $5,000 or more must file Form BD–Y2K. Transfer agents that are not banks or savings associations must file Form TA–Y2K. The next reports are due on April 30, 1999. 17 CFR 240.17a–5(e)(5) and 17 CFR 240.17Ad–18.

[54] *See* Exchange Act Rel. No. 27445 (November 16, 1989), 54 FR 48704 (''ARP I''); Exchange Act Rel. No. 29185 (May 9, 1991), 56 FR 22489 (''ARP II''). ARP I and ARP II were published in response to operational difficulties experienced by SRO automated systems during the October 1987 market break. While the program did not directly apply to broker-dealers, the Commission noted that all broker-dealers should engage in testing and use the policy statement as a guideline. *See* ARP I, 54 FR at 48706; ARP II, 56 FR at 22493, at n.15.

[55] 15 U.S.C. 78w(a)(2).

[56] 5 U.S.C. 603(a).

17Ad–20, and 17Ad–21T under the Exchange Act.

A. Reason for Proposed Action

It is essential that broker-dealers and transfer agents have sufficient operational capability to process transactions for their customers. In addition, unless proper modifications have been made, many computer systems will incorrectly read the date ''01/01/00'' as being in the year 1900 or another incorrect date. Year 2000 problems could have negative repercussions throughout the financial system because of the extensive interrelationship between broker-dealers, transfer agents, other market participants and markets. The reason for the proposed rules is to reduce the chances of harm to investors and the potential systemic risk to the public and the financial markets as a result of operational failures by registered broker-dealers and non-bank transfer agents.

B. Objectives

a. Proposed Rule 15b7–2

The objective of proposed Rule 15b7–2 is to require that every registered broker-dealer has the operational capability to conduct its business. The proposed rule prohibits registered broker-dealers that are not operationally capable from effecting any transactions in securities, inducing the sale or purchase of securities, receiving or holding customer funds or securities, or carrying customer accounts.

b. Proposed Temporary Rule 15b7–3T

The objective of proposed temporary Rule 15b7–3T is to require broker-dealers that have or are presumed to have a material Year 2000 problem on or after August 31, 1999 to notify the Commission and their designated examining authority. Those broker-dealers that have a material Year 2000 problem must also cease to conduct securities business. The proposed rule, however, is also intended to permit those brokers or dealers that are not operationally capable as a result of having a material Year 2000 problem on or after August 31, 1999 to submit a certificate containing certain attestations regarding their Year 2000 status and still continue to operate their business, but in no event later than October 15, 1999.

c. Proposed Temporary Rule 17a–9T

The objective of proposed temporary Rule 17a–9T is to require certain broker-dealers to make and preserve a separate trade blotter pursuant to Rule 17a–3(a)(1)[57] and a separate securities record pursuant to Rule 17a–3(a)(5) as of the close of business each of the last two business days of 1999. Proposed Rule 17a–9T would only require a broker-dealer to make and preserve a copy of an existing record and to ensure that the record is created at the close of business on December 30 and December 31, 1999. Proposed temporary Rule 17a–9T would also require those brokers or dealers to keep and make available those records for a period of not less than one year.

d. Proposed Rule 17Ad–20

The objective of proposed Rule 17Ad–20 is to require that every registered transfer agent has the operational capability to conduct its business. The proposed rule would prohibit transfer agents from engaging in any transfer function unless they have and maintain operational capability to assure the prompt and accurate transfer or processing of securities, the maintenance of master securityholder files, and the production and retention of required records.

e. Proposed Temporary Rule 17Ad–21T

The objective of proposed temporary Rule 17Ad–21T is to require non-bank transfer agents that have or are presumed to have a material Year 2000 problem on or after August 31, 1999 to notify the Commission. Those transfer agents that have a material Year 2000 problem must also cease to conduct transfer agent business. The proposed rule, however, is also intended to permit those transfer agents that are not operationally capable as a result of having a material Year 2000 problem on or after August 31, 1999 to submit a certificate containing certain attestations regarding their Year 2000 status and still continue to operate their business, but in no event later than October 15, 1999.

In addition, the proposed temporary rule would require registered non-bank transfer agents to maintain a separate copy of its database, file layouts and all relevant files in an easily accessible off-site location from August 31, 1999 to March 31, 2000. The proposed rule would require such records to be stored for five business days. The objective of this recordkeeping requirement is to help facilitate the transfer to and conversion of records to a Year 2000 compliant transfer agent, if necessary.

C. Legal Basis

Proposed Rules 15b7–2, 15b7–3T and 17a–9T are being proposed pursuant to Sections 3(b), 15(b) and (c), 17, and 23(a) of the Exchange Act [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)]. Proposed Rule 17Ad–20 and 17Ad–21T are being proposed pursuant to Sections 17(a), 17A(d), and 23(a) of the Exchange Act [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)].

D. Small Entities Subject to the Rules

For purposes of Commission rulemaking, paragraph (c) of Rule 0–10 under the Exchange Act[58] defines the term ''small business'' or '' small organization'' to include any broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section. For purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act[59] defines the term ''small business'' or ''small organization'' to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) Transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in this section; (3) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

The Commission staff estimates that approximately 5200 registered brokers or dealers qualify as ''small entities'' for purposes of the RFA. All registered brokers or dealers would be subject to the requirements of proposed Rule 15b7–2 and proposed temporary Rule 15b7–3T.

The Commission staff estimates that approximately 750 out of 1,120 registered transfer agents (thus subject to proposed Rule 17Ad–20) qualify as ''small entities'' for purposes of the RFA. Approximately 430 out of 600 non-bank transfer agents (thus subject to

[57] 17 CFR 240.17a–3.

[58] 17 CFR 240.0–10(c).

[59] 17 CFR 240.0–10(h).

proposed Rule 17Ad–21T) qualify as small entities.

Proposed temporary Rule 17a–9T applies only to broker-dealers that are required to maintain a minimum net capital of $250,000 pursuant to Rule 15c3–1(a)(2)(i) as of December 30 and 31, 1999. Because of the minimum capital requirement, the Commission staff estimates that 4,300 of the 8,000 registered broker-dealers would be required to comply.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission believes that, for business reasons, prudent broker-dealers and transfer agents should already have developed plans for potential computer problems caused by Year 2000 problems. Therefore, the Commission believes that the reporting obligations of broker-dealers and transfer agents subject to the proposed rules relate to notifying the Commission of material Year 2000 problems on or after August 31, 1999 and submitting the certificate signed by their chief executive officer to continue to operate their business beyond August 31, 1999.

Proposed temporary Rule 17a–9T provides that only those broker-dealers required to maintain a minimum net capital of $250,000 would be required to make and preserve a separate trade blotter and a separate securities record or ledger as of the close of business of each of the last two business days of 1999. The trade blotter and securities record or ledger would only require a broker-dealer to make and preserve a copy of an existing record. The Commission notes that this is not a continuing obligation, but would only be for December 30 and 31, 1999.

Proposed Rule 17Ad–21T(f) would require non-bank registered transfer agents to maintain a separate copy of their database, file layouts and all relevant files in an easily accessible off-site location beginning August 31, 1999, and ending March 31, 2000. The proposed rule would require that such records are copied at the end of every business day and stored for five days on a rolling basis in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rules.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse economic impact on small entities. Pursuant to Section 3(c) of the RFA, the Commission considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables the take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities;

(c) The use of performance rather than design standards; and

(d) An exemption from coverage of the rules, or any part thereof, for such small entities.

Regarding the first alternative, the Commission has incorporated such a compliance threshold for proposed temporary Rule 17a–9T. This threshold, based on capital, would exclude many smaller broker-dealers from the rule. The Commission believes it is important for all registered broker-dealers and transfer agents to be operationally capable and report material Year 2000 problems to the Commission and, in the case of broker-dealers, their designated examining authority.

Regarding the second alternative, the Commission believes that the proposal could not be formulated differently for small entities and still achieve the stated objectives. The Commission notes that it considered small entities in developing proposed Rule 17a–9T and incorporated a minimum capital level for compliance.

Regarding the third alternative, the proposed rules incorporate the use of performance standards because they do not require how broker-dealers or transfer agents become operationally capable, but only require them to be operationally capable in order to be able to perform their functions for investors. Similarly, the notice requirements do not specify the form those notices must take. Adequate notice must be provided to the Commission for purposes of temporary Rules 15b7–3T and 17Ad–221T, but the Commission is not proposing to determine the design or the format of those notices.

Regarding the fourth alternative, the Commission notes that smaller broker-dealers would be exempt from the requirements of proposed temporary Rule 17a–9T. The Commission believes, however, that with respect to the other proposed rules including all registered broker-dealers and transfer agents is important in protecting investors from operational and Year 2000 problems.

Therefore, having considered the foregoing alternatives in the context of the proposed rules, the Commission believes the proposed rules include regulatory alternatives that minimize the impact on small entities while achieving the stated objectives.

H. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments received on the proposed rules themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–8–99; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

VII. Paperwork Reduction Act

Certain provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: ''Rule 15b7–3T,'' ''Rule 17a–9T,'' ''Rule 17Ad–21T(c) and (e),'' and ''Rule 17Ad–21T(f),'' all under the Exchange Act.[60] The proposed rules are necessary to protect investors and the financial markets from Year 2000 problems. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

A. Rule 15b7–3T

Proposed temporary Rule 15b7–3T requires every registered broker or dealer that has or is presumed to have a material Year 2000 problem at any

[60] Proposed rules 15b7–2 and 17Ad–20 do not contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act.

time on or after August 31, 1999, to immediately notify the Commission and its designated examining authority of the problem. In addition, such a broker or dealer may provide a certificate stating that they are in the process of remediating the Year 2000 problem, describing associated testing procedures, stating the date by which they expect to be operationally capable, and asserting that the existence of the Year 2000 problem will not impair their ability to carry out certain functions.

The Commission staff estimates that there would be approximately 59 brokers or dealers that would be affected under the proposed rule. There are approximately 8,000 registered broker-dealers and the Commission staff estimates that approximately 5,900 will have their own systems that will need to be Year 2000 compliant. Based on experience with the Year 2000 problem, the Commission staff estimates that approximately one percent of those broker-dealers might be required to submit notices and may choose to submit certificates under the proposed rule. The Commission emphasizes the serious difficulty in estimating the number of broker-dealers that will have material Year 2000 problems at some point in the future. The Commission expects that most broker-dealers will not have such problems. The Commission staff also estimates that each affected broker-dealer would, on average, submit one certificate and one notice under the proposed rule.

The Commission staff's estimates for burden hours associated with submitting notices and certificates are based on the Commission staff's experience with notices made pursuant to other Commission rules. The Commission staff estimates that each respondent submitting a notice of a material Year 2000 problem would incur an average burden of 0.5 hours. In addition, the Commission staff estimates that each respondent submitting a certificate would incur an average of 0.5 hours. The notice requirement of the proposed rule is mandatory for all affected brokers and dealers. The certificate requirement is optional for those brokers or dealers that have material Year 2000 problems on or after August 31, 1999. The Commission, however, expects most brokers or dealers with material Year 2000 problems after August 31, 1999 to submit such certificates in order to continue performing certain functions. Thus, the aggregate burden for 59 broker-dealer respondents would be approximately 59 hours.

All notices and certificates filed under proposed Rule 15b7-3T will not be considered confidential and will be made available to the public so that customers and counterparties of those broker-dealers can assess the potential impact on them and take any appropriate action.

B. Rule 17a–9T

Proposed temporary Rule 17a-9T would require certain broker-dealers to make a separate copy of their trade blotter and their securities record or ledger for the last two business days of 1999. It would not require such broker-dealers to make any new records, but only to preserve a separate copy of an existing record. The records would be required to be kept in an easily accessible place for a period of not less than one year. The records required to be preserved would be considered confidential and would not be available to the public.

The Commission staff estimates that there are approximately 4,300 broker-dealers affected under the proposed rule.[61] The Commission staff estimates that each such broker-dealer would incur an average burden of approximately 0.5 hours to make and keep the records. The Commission staff estimates that the total aggregate burden under the proposed rule would be approximately 2,150 hours (4,300 brokers or dealers at 0.5 hours per broker or dealer).

C. Rule 17Ad–21T(c) and (e)

Proposed Rule 17Ad–21T(c) requires every non-bank registered transfer agent that has or is presumed to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission of the problem. In addition, proposed Rule 17Ad–21T(e) permits such non-bank transfer agents to provide a certificate stating that they are in the process of remediating the Year 2000 problem, describing associated testing procedures, stating the date by which they expect to be operationally capable, and asserting that the existence of the Year 2000 problem will not impair their ability to carry out certain functions.

The Commission staff estimates that there would be approximately 6 non-bank transfer agents that would be affected under the proposed rule. The Commission staff estimates that there are approximately 600 non-bank transfer agents. Based on experience with the Year 2000 problem, the Commission staff estimates that approximately one percent of those non-bank transfer agents might be required to submit notices and may choose to submit certificates under the proposed rule. The Commission emphasizes the serious difficulty in estimating the number of non-bank transfer agents that will have material Year 2000 problems at some point in the future. The Commission expects that most non-bank transfer agents will not have such problems. The Commission staff also estimates that each respondent would, on average, submit one certificate and one notice under the proposed rule.

The Commission staff's estimates for burden hours associated with submitting notices and certificates are based on the Commission staff's experience with notices made pursuant to other Commission rules. The Commission staff estimates that each respondent submitting a notice of a material Year 2000 problem would incur an average burden of 0.5 hours. In addition, the Commission staff estimates that each respondent submitting a certificate would incur an average of 0.5 hours. The notice requirement of the proposed rule is mandatory for all non-bank transfer agents with a material Year 2000 problem on or after August 31, 1999. The certificate requirement is optional for those non-bank transfer agents that have material Year 2000 problems on or after August 31, 1999. The Commission, however, expects most non-bank transfer agents with material Year 2000 problems on or after August 31, 1999, to submit such certificates in order to continue performing certain functions. Thus, the Commission staff estimates that the annual aggregate burden for 6 non-bank transfer agent respondents would be 6 hours.

All notices and certificates filed under proposed Rule 17Ad–21T(c) and (e) will not be considered confidential and will be made available to the public so that customers of those non-bank transfer agents can assess the potential impact on them and take any appropriate action.

D. Rule 17Ad–21T(f)

Proposed Rule 17Ad–21T(f) would require registered non-bank transfer agents to maintain a separate copy of their database, file layouts and all relevant files in an easily accessible off–site location beginning August 31, 1999,

[61] The Commission staff estimates that there are approximately 8,000 registered broker-dealers. Only those broker-dealers that are required to maintain certain net capital pursuant to Rule 15c3–1(a)(2)(i), 17 CFR 240.15c3–1(a)(2)(i), would be required to comply with the proposed rule. The Commission staff estimates that approximately 3,700 broker-dealers would not be required to comply with the proposed temporary rule due to the net capital standard. Thus, the Commission staff estimates that approximately 4,300 registered broker-dealers would be required to comply with the proposed temporary rule.

and ending March 31, 2000. The proposed rule would require that such records are copied at the end of every business day and stored for five days on a rolling basis in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.

The Commission staff estimates that there are approximately 600 non-bank transfer agents. Because these records will already exist and the proposed rule only requires non-bank transfer agents to make separate copies, the Commission staff estimates that non-bank transfer agents will incur a burden of 0.25 hours per business day to comply with the proposed recordkeeping requirement. Thus, the Commission staff estimates that the total burden for each non-bank transfer agent for the period between August 31, 1999, and March 31, 2000 would be approximately 38 hours (approximately 151 business days at 0.25 hours per business day). The Commission staff estimates that the aggregate burden for all non-bank transfer agents under the proposed rule would be approximately 22,800 hours (600 transfer agents at 38 hours per transfer agent).

The recordkeeping requirement would be mandatory for all non-bank transfer agents. The records required to be preserved would be considered confidential and would not be available to the public. The required records would be preserved for five business days after they are made.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–8–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3(b), 15(b) and (c), 17, and 23(a) thereof [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)], the Commission proposes to adopt 240.15b7–2, 240.15b7–3T and 240.17a–9T of Title 17 of the Code of Federal Regulation in the manner set forth below. Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)], the Commission proposes to adopt 240.17Ad–20 and 240.17Ad–21T of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By adding § 240.15b7–2 to read as follows:

§ 240.15b7–2 Operational capability requirement.

(a) This section applies to every broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o). If you do not have the operational capability, taking into consideration the nature of your business, to assure the prompt and accurate order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities, you may not:

(1) Effect any transaction in securities;

(2) Induce the purchase or sale of securities;

(3) Receive or hold customer funds or securities; or

(4) Carry customer accounts.

(b) For the purposes of this section, the term *customer* includes a broker or dealer.

3. By adding § 240.15b7–3T to read as follows:

§ 240.15b7–3T Operational capability in a year 2000 environment.

(a) This section applies to every broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o). If you have a material Year 2000 problem, then you do not have operational capability within the meaning of § 240.15b7–2.

(b)(1) You have a material Year 2000 problem under paragraph (a) of this section if, at any time on or after August 31, 1999:

(i) Any of your computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical computer systems.

(2) You will be presumed to have a material Year 2000 problem (and will therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures designed to identify, assess, and remediate any Year 2000 problems in your mission critical systems;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems;

(iii) Have not verified your Year 2000 remediation efforts by satisfying any applicable Year 2000 testing requirements imposed by a self-regulatory organization; or

(iv) Have not remediated all exceptions contained in any public independent accountant's report prepared on your behalf pursuant to § 240.17a–5(e)(5)(vi).

(c) If you experience, detect, or continue to have, or are presumed to have, a material Year 2000 problem at any time on or after August 31, 1999, you must immediately notify the Commission and your designated examining authority of the problem. You must send this notice to the Commission by overnight delivery to the Secretary, Mail Stop 0609, U.S.

Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

(d) If you are a broker or dealer that is not operationally capable because you have a material Year 2000 problem, then you may not, on or after August 31, 1999:

(1) Effect any transaction in, or induce the purchase or sale of, any security; or

(2) Receive or hold customer funds or securities, or carry customer accounts.

(e)(1) If you are a broker or dealer that is not operationally capable because you have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(i) You are in the process of remediating your material Year 2000 problem;

(ii) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(iii) The date (which cannot be later than October 15, 1999) by which you anticipate completing remediation of the Year 2000 problem and will therefore be operationally capable; and

(iv) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem will impair your ability, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities.

(2) Notwithstanding paragraph (d) of this section, if you have submitted a certificate to the Commission in compliance with paragraph (e)(1) of this section, you may do the following, but only until the date specified in your certificate and in no event later than October 15, 1999:

(i) Continue to effect transactions in securities;

(ii) Induce the purchase or sale of securities;

(iii) Continue to receive or hold customer funds or securities, and

(iv) Carry customer accounts.

(3) Notwithstanding paragraph (e)(2) of this section, you must comply with the requirements of paragraph (d) of this section if you have been so ordered by the Commission or by a court as being in the public interest or for the protection of investors.

(f) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities; and

(2) The term *customer* includes a broker or dealer.

4. By adding § 240.17a–9T to read as follows:

§ 240.17a–9T Records to be made and retained by certain exchange members, brokers and dealers.

This section applies to every member, broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o), that is required to maintain, as of December 30 and December 31, 1999, minimum net capital of $250,000 pursuant to § 240.15c3–1(a)(2)(i).

(a) You must make and preserve, as of the close of business December 30 and December 31, 1999, a separate trade blotter pursuant to § 240.17a–3(a)(1) and a separate stock record pursuant to § 240.17a–3(a)(5). If the stock record reflects both trade date and settlement date positions, then you do not have to make and preserve a separate trade blotter.

(b) You must preserve these records in an easily accessible place for at least one year.

(c) You may preserve these records on any micrographic or electronic storage media that meets the requirements § 240.17a–4(f), but you must be able to immediately produce or reproduce them.

(d) You must furnish promptly to a representative of the Commission such legible, true and complete copies of those records, as may be requested.

5. By adding § 240.17Ad–20 to read as follows:

§ 240.17Ad–20 Operational capability requirement.

This section applies to every registered transfer agent. If you do not have the operational capability, taking into consideration the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records, you may not engage in any transfer agent function, including:

(a) Countersigning such securities upon issuance;

(b) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(c) Registering the transfer of such securities;

(d) Exchanging or converting such securities; or

(e) Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

6. By adding § 240.17Ad–21T to read as follows:

§ 240.17Ad–21T Operational capability in a year 2000 environment.

(a) This section applies to every registered non-bank transfer agent. If you have a material Year 2000 problem, then you do not have operational capability within the meaning of § 240.17Ad–20.

(b)(1) You have a material Year 2000 problem under paragraph (a) of this section if, at any time on or after August 31, 1999:

(i) Any of your computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical computer systems.

(2) You will be presumed to have a material Year 2000 problem (and will therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures designed to identify, assess, and remediate any Year 2000 problems in your mission critical systems;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems and reasonable testing of your external links; or

(iii) Have not remediated all exceptions contained in any public independent accountant's report prepared on your behalf pursuant to § 240.17Ad–18(f).

(c) If you experience, detect, or continue to have, or are presumed to have, a material Year 2000 problem at any time on or after August 31, 1999, you must immediately notify the Commission of the problem. You must send this notice to the Commission by overnight delivery to the Secretary, Mail Stop 0609, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

(d) If you are a registered non-bank transfer agent that is not operationally capable because you have a material Year 2000 problem, then you may not, on or after August 31, 1999, engage in any transfer agent function, including:

(1) Countersigning such securities upon issuance;

(2) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(3) Registering the transfer of such securities;

(4) Exchanging or converting such securities; or

(5) Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

(e)(1) If you are a registered non-bank transfer agent that is not operationally capable because you have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(i) You are in the process of remediating your material Year 2000 problem;

(ii) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(iii) The date (which cannot be later than October 15, 1999) by which you anticipate completing remediation of the Year 2000 problem and will therefore be operationally capable; and

(iv) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem will impair your ability, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, or the production and retention of required records.

(2) Notwithstanding paragraph (d) of this section, you may continue to engage in transfer agent functions, if you have submitted a certificate to the Commission in compliance with paragraph (e)(1) of this section but only until the date specified in your certificate and in no event later than October 15, 1999. However, you must comply with the requirements of paragraph (d) of this section if you have been so ordered by the Commission or by a court as being in the public interest or for the protection of investors.

(f) You must maintain a back-up copy of your database and file layouts for each business day, and you must store these records for five business days in a place easily accessible to Commission examiners beginning August 31, 1999, and ending March 31, 2000. This back-up copy of the database and file layouts must not be located with or held in the same computer system as the primary records. You may store these records on any electronic storage media.

(g) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of this section;

(2) The term *customer* includes an issuer, transfer agent, or other person for which you provide transfer agent services;

(3) The term *registered non-bank transfer agent* means a transfer agent, whose appropriate regulatory agency is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and

(4) The term *file layout* means the description and location of information contained in the database.

Dated: March 5, 1999.

By the Commission.

Margaret H.McFarland,

Deputy Secretary.

[FR Doc. 99–6043 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCS–1999–5198]

Port Access Route Study for Approaches to Los Angeles and Long Beach

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a study of port-access routes for the approaches to Los Angeles and Long Beach. The study will evaluate potential effects of recent port improvement projects on navigational safety and vessel traffic management efficiency in the study area and may recommend changes to existing vessel routing measures. The recommendations of the study may lead to future rulemaking. The Coast Guard asks for comments on the issued raised and questions listed in this document.

DATES: Comments must be received on or before May 10, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5198), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951; or Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1999–5198) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ inches by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard does not plan to hold a public meeting. Persons may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If we determine that the opportunity for oral