

Updating the SEC Transfer Agent Rules



By Paul Capozzi,
Senior Vice President,
Computershare
Investor Services

The SEC has been studying and collecting information regarding transfer agent issues, and transfer agent rules, for some time.

Most recently, in December, SEC Commissioner Luis A. Aguilar posted a Q&A on the SEC website related to transfer agent rules. The comments can be viewed via this link: <http://www.sec.gov/news/statement/spch121714-2laa.html>.

In the comments, Commissioner Aguilar indicates that transfer agents play an important role in the capital markets and that the investing public needs capable, honest and reliable transfer agents to help the capital markets function properly and effectively. Following on earlier comments made in February and December 2014, Commissioner Aguilar acknowledges that the current transfer agent rules need to be reviewed and updated. The current rules were adopted in 1977 with additional rules in the early 1980s; since that time, technological advances and changes to business practices and market structures have created a significant gap between the transfer agent rules and actual transfer agent activities.

The SEC may potentially look to solicit more information via a concept release or other public forum before proceeding with new rule-making. The STA is in favor of updating the transfer agent rules and has been providing on-going feedback to the SEC.

Key areas that have been raised with respect to modernizing the current rules are summarized below:

- Business continuity and disaster recovery – maintaining written programs, and conducting annual testing of critical systems and operations
- Safeguarding of funds – ensuring issuer funds are separated from agent funds and depositing funds with a bank
- Information security and privacy – documenting programs to protect the integrity, safety and confidentiality of records
- Recordkeeping – updating the types of records that must be retained and the form in which they can be stored
- Turnaround times – updating requirements and clarifying definitions
- Conversions – documenting information to be passed to a successor agent, such as required data fields, adverse claims, information on stops, etc.
- Restricted stock – providing specific requirements to remove a legend, including opinion requirements

With respect to the last item, the industry would welcome

SEC guidance and/or rulemaking related to restricted stock. From a regulatory perspective, and in client relationships, transfer agents can find themselves in a difficult position when performing due diligence on restricted transactions in the absence of specific guidance and requirements from the SEC. This has been a topic of discussion for several years, including an SEC Roundtable in October 2011 that highlighted the lack of rules addressing appropriate levels of due diligence by transfer agents and the lack of guidance for removing restrictions from securities.

As the industry continues to move forward, transfer agents, the STA and other stakeholders look forward to continued opportunities to provide information to the SEC as the Commission considers potential changes to the transfer agent rules. In the meantime, SEC staff is available to help with questions regarding the existing rules and provide other assistance. ■

DISASTER RECOVERY – WHAT DOES IT MEAN FOR TRANSFER AGENTS?

(Continued from Page 4)

make sure your website is kept up-to-date. This may mean that someone will need the ability to update the website remotely, through your alternate or back-up server facility. The information on the website should include information for customers (and regulators) regarding the firm's operating status.

Employees also need to be kept informed about the operating status of the firm. This may be done by e-mail (if working), call trees (with multiple contact numbers for employees, such as home, work mobile phone, and personal mobile phone), or on a dedicated internet site for employee access.

As a regular part of your firm's business continuity planning, you must conduct full business continuity tests. At a minimum, these tests should be conducted annually, and should include all business critical functions. The tests should make sure the business can operate from its principal recovery location, as well as from other locations it may use, such as other company offices or using a work from home scenario.

The regulators expect and require that firms be able to continue working in the event of a disaster, and they will test you on it as part of their examinations of you. You need to be ready for this by ensuring that you have a business continuity plan in place, that you have tested that plan, and that your employees understand that plan and their roles in the event you need to activate that plan. ■