

MEMO# 16222

June 19, 2003

SEC PROPOSES RULE AMENDMENTS CLARIFYING THE USE OF ELECTRONIC RECORDS BY TRANSFER AGENTS

[16222] June 19, 2003 TO: OPERATIONS COMMITTEE No. 10-03 SEC RULES COMMITTEE No. 58-03 TRANSFER AGENT ADVISORY COMMITTEE No. 60-03 RE: SEC PROPOSES RULE AMENDMENTS CLARIFYING THE USE OF ELECTRONIC RECORDS BY TRANSFER AGENTS The Securities and Exchange Commission has proposed amendments to Rule 17Ad-7 under the Securities Exchange Act of 1934 concerning recordkeeping requirements for registered transfer agents.¹ Specifically, the amendments would clarify that: (1) registered transfer agents may rely on electronic, microfilm, or microfiche media as a substitute for hard copy records, including cancelled stock certificates, for purposes of the Commission's transfer agent recordkeeping rules; and (2) a third party on behalf of the transfer agent may place into escrow agent the required software information. The comment period for the Commission's rule proposal ends 30 days after publication in the Federal Register. If there are comments that you would like the Institute to consider in its comment letter, please provide them to Kathy Joaquin or Barry Simmons at the Institute by Monday, July 7, 2003. Kathy may be reached by phone at (202) 326-5930, by fax at (202) 326-5853, and by email at kjoaquin@ici.org. Barry may be reached by phone at (202) 326-5923, by fax at (202) 326-5827, and by email at bsimmons@ici.org. The Commission's rule proposal would amend paragraph (f) of Rule 17Ad-7 to clarify that records, including cancelled securities certificates, stored electronically or micrographically in accordance with the provisions of Rule 17Ad-7 may serve as a substitute for hard copy records required to be maintained pursuant to Rule 17Ad-6. The proposing release makes clear that this "substitution" provision would allow, but would not mandate, the destruction of hard copy records, including securities certificates, after electronic or micrographic records have been created in conformity with Rule 17Ad-7(f). The Commission also proposes to amend paragraph (f) to clarify that a transfer agent may fulfill its software escrow obligation by having a third party deposit with an independent escrow agent a copy of all the documentation required under Rule 17Ad-7(f)(5)(ii) on behalf of 1 Recordkeeping Requirements for Registered Transfer Agents, SEC Release No. 34-48036 (June 16, 2003). The release is available from the Commission's website at <http://www.sec.gov/rules/proposed/34-48036.htm>. 2 the transfer agent. Thus, the amendment would permit a third party vendor to place in escrow a copy of the vendor's proprietary source code on behalf of the transfer agent using the vendor's services, and would also allow a vendor that maintains the records of multiple transfer agents to place in escrow one copy of the vendor's proprietary source code for all the transfer agents for which it acts. Barry E. Simmons Associate Counsel

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