

## § 240.17Ad-7

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frames and the number of such inquiries pending as of the close of business on the last business day of each month;

(8) Any document, resolution, contract, appointment or other writing, any supporting document, concerning the appointment and the termination of such appointment of such registered transfer agent to act in any capacity for any issue on behalf of the issuer, on behalf of itself as the issuer or on behalf of any person who was engaged by the issuer to act on behalf of the issuer;

(9) Any record of an active (i.e., unreleased) stop order, notice of adverse claim or any other restriction on transfer;

(10) A copy of any transfer journal and registrar journal prepared by such registered transfer agent; and

(11) Any document upon which the transfer agent bases its determination that an item received for transfer was received in connection with a reorganization, tender offer, exchange, redemption, liquidation, conversion or the sale of securities registered pursuant to the Securities Act of 1933 and, accordingly, was not routine under § 240.17Ad-1(i) (5) or (8).

(b) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue or which acts as a registrar for an issue shall, with respect to such issue, obtain from the issuer or its transfer agent and retain documentation setting forth the total number of shares or principal amount of debt securities or total number of units if relating to any other kind of security authorized and the total issued and outstanding pursuant to issuer authorization.

(c) Every registered transfer agent which, under the terms of its agency, maintains securityholder records for an issue shall, with respect to such issue, retain each cancelled registered bond, debenture, share, warrant or right, other registered evidence of indebtedness, or other certificate of ownership and all accompanying documentation, except legal papers returned to the presenter.

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

[42 FR 32413, June 24, 1977]

### § 240.17Ad-7 Record retention.

(a) The records required by § 240.17Ad-6(a)(1), (3)(i), (6) or (11) shall be maintained for a period of not less than two years, the first six months in an easily accessible place.

(b) The records required by § 240.17Ad-6(a) (2), (3)(ii), (4), (5) or (7) shall be maintained for a period of not less than two years, the first year in an easily accessible place.

(c) The records required by § 240.17Ad-6(a) (8), (9) and (10) and (b) shall be maintained in an easily accessible place during the continuance of the transfer agency and shall be maintained for one year after termination of the transfer agency.

(d) The records required by § 240.17Ad-6(c) shall be maintained for a period of not less than six years, the first six months in an easily accessible place.

(e) Every registered transfer agent shall maintain in an easily accessible place:

(1) All records required under § 240.17f-2(d) until at least three years after the termination of employment of those persons required by § 240.17f-2 to be fingerprinted; and

(2) All records required pursuant to § 240.17f-2(e).

(f) Subject to the conditions set forth in this section, the records required to be maintained pursuant to § 240.17Ad-6 may be retained using electronic or micrographic media and may be preserved in those formats for the time required by § 240.17Ad-7. Records stored electronically or micrographically in accordance with this paragraph may serve as a substitute for the hard copy records required to be maintained pursuant to § 240.17Ad-6.

(1) For purposes of this section:

(i) The term *micrographic media* means microfilm or microfiche or any similar medium.

(ii) The term *electronic storage media* means any digital storage medium or system.

(iii) The term *ARA* means your appropriate regulatory agency as that term is defined in 15 U.S.C. 78c(a)(34).

(2) If you as a registered transfer agent use electronic storage media or micrographic media to store your records, you must:

(i) Have available at all times for examination by the staffs of the Commission and of your ARA facilities to project or produce immediately easily readable images of such records;

(ii) Be ready at all times to provide such records that the staffs of the Commission and your ARA or their representatives may request;

(iii) Create an accurate index of such records, store the index with those records, and have the index available at all times for examination by the staffs of the Commission and your ARA;

(iv) Have quality assurance procedures to verify the quality and accuracy of the electronic or micrographic recording process; and

(v) Maintain separately from the originals duplicates of the records and the index that you store on electronic storage media or micrographic media. You may store the duplicates of the indexed records on any medium permitted by this section. You must preserve the duplicate records and index for the same time that is required by this section for the indexed records, and you must have them available at all times for examination by the staffs of the Commission and your ARA.

(3) Any electronic storage media that you use to store your records must:

(i) Ensure the security and integrity of the records by means of manual and automated controls that assure the authenticity and quality of the electronic facsimile, detect attempts to alter or remove the records, and provide means to recover altered, damaged, or lost records resulting from any cause;

(ii) Externally label all removable units of storage media using a unique identifier that allows the manual association of that removable storage unit with its place and order in the record-keeping system; and

(iii) Uniquely identify files and internally label each file with its unique name, the date and time of file creation, the date and time of last modification or extension, and a file sequence number when the file spans more than one volume.

(4) If you use electronic storage media or micrographic media to store your records, you must establish an audit system that accounts for the

inputting of and any changes to every record that is stored on electronic storage media or micrographic media. The results of such audit system must:

(i) Be available at all times for examination by the staffs of the Commission and your ARA; and

(ii) Be preserved for the same time that is required by this section for the underlying records.

(5) If you use electronic storage media or micrographic media to store your records, you must:

(i) Maintain, keep current, and provide promptly upon request by the staffs of the Commission and your ARA all information necessary to access the records and indexes stored on electronic storage media or micrographic media; and

(ii) Place, or have a third party place on your behalf, in escrow with an independent third party and keep current a copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access records and indexes. The independent escrow agent must file an undertaking signed by a duly authorized person with the Commission and your ARA stating that:

“[Name of Third Party] hereby undertakes to furnish promptly upon request to the U.S. Securities and Exchange Commission, its designees, or representatives, upon reasonable request, a current copy of the physical and logical format of the electronic storage or micrographic media, the field format of all different information types written on the electronic storage media and source code, and the appropriate documentation and information necessary to access the records and indexes of [Name of Transfer Agent]’s electronic records management system.

(6) (i) If you use a third party to maintain or preserve some or all of the required records using electronic storage media or micrographic media, such third party shall file a written undertaking signed by a duly authorized person with the Commission and your ARA stating that:

“With respect to any books and records maintained or preserved on behalf of [Name of Transfer Agent], [Name of Third Party] hereby undertakes to permit examination of

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such books and records at any time or from time to time during business hours by representatives or designees of the U.S. Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copies of any or all or any part of such books and records.”

(ii) Agreement with a third party to maintain your records shall not relieve you from the responsibility to prepare and maintain records as specified in this section or in § 240.17Ad-6.

(g) If the records required to be maintained and preserved by a registered transfer agent pursuant to the requirements of §§ 240.17Ad-6 and 240.17Ad-7 are maintained and preserved on behalf of the registered transfer agent by an outside service bureau, other recordkeeping service or the issuer, the registered transfer agent shall obtain, from such outside service bureau, other recordkeeping service or the issuer, an agreement, in writing, to the effect that:

(1) Such records are subject at any time, or from time to time, to reasonable periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency for such registered transfer agent if it is not the Commission; and

(2) The outside service bureau, recordkeeping service, or issuer will furnish to the Commission and the appropriate regulatory agency, upon demand, at either the principal office or at any regional office, complete, correct and current hard copies of any and all such records.

(h) When a registered transfer agent ceases to perform transfer agent functions for an issue, the responsibility of such transfer agent under § 240.17Ad-7 to retain the records required to be made and kept current under § 240.17Ad-6(a) (1), (6), (9), (10) and (11), (b) and (c) shall end upon the delivery of such records to the successor transfer agent.

(i) The records required by §§ 240.17Ad-17(c) and 240.17Ad-19(c) shall be maintained for a period of not less than three years, the first year in an easily accessible place.

[42 FR 32414, June 24, 1977, as amended at 47 FR 54063, Dec. 1, 1982; 62 FR 52237, Oct. 7, 1997; 66 FR 21659, May 1, 2001; 68 FR 74401, Dec. 23, 2003; 68 FR 75054, Dec. 29, 2003]

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### § 240.17Ad-8 Securities position listings.

(a) For purposes of this section, the term *securities position listing* means, with respect to the securities of any issuer held by a registered clearing agency in the name of the clearing agency or its nominee, a list of those participants in the clearing agency on whose behalf the clearing agency holds the issuer's securities and of the participants' respective positions in such securities as of a specified date.

(b) Upon request, a registered clearing agency shall furnish a securities position listing promptly to each issuer whose securities are held in the name of the clearing agency or its nominee. A registered clearing agency may charge issuers requesting securities position listings a fee designed to recover the reasonable costs of providing the securities position listing to the issuer.

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

[44 FR 76777, Dec. 28, 1979]

### § 240.17Ad-9 Definitions.

As used in this section and §§ 240.17Ad-10, 240.17Ad-11, 240.17Ad-12 and 240.17Ad-13:

(a) *Certificate detail*, with respect to certificated securities, includes, at a minimum, all of the following, and with respect to uncertificated securities, includes items (2) through (8):

- (1) The certificate number.
- (2) The number of shares for equity securities or the principal dollar amount for debt securities;
- (3) The securityholder's registration;
- (4) The address of the registered securityholder;
- (5) The issue date of the security;
- (6) The cancellation date of the security;

(7) In the case of redeemable securities of investment companies, an appropriate description of each debit and credit (i.e., designation indicating purchase, redemption, or transfer); and

(8) Any other identifying information about securities and securityholders the transfer agent reasonably deems essential to its recordkeeping system for the efficient and effective research of record differences.