

offer or on whose behalf a tender or exchange offer is made; (4) a *qualified registered securities depository* shall mean a registered clearing agency having rules and procedures approved by the Commission pursuant to section 19 of the Securities Exchange Act of 1934 to enable book-entry delivery of the securities of the subject company to, and return of those securities from, the transfer agent through the facilities of that securities depository; and (5) the term *depository* refers to that agent of the bidder receiving securities from tendering depository participants and paying those participants for shares tendered. The term *exchange agent* refers to the agent performing like functions in connection with an exchange offer.

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

(Secs. 2, 11A(a)(1)(B), 14(d)(4), 15(c)(3), 15(c)(6), 17A(a), 17A(d)(1), and 23(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78k-1(a)(1)(B), 78n(d)(4), 78o(c)(3), 78o(c)(6), 78q-1(a), 78q-1(d)(1) and 78w(a)))

[49 FR 3071, Jan. 25, 1984]

#### § 240.17Ad-15 Signature guarantees.

(a) *Definitions*. For purposes of this section, the following terms shall mean:

(1) *Act* means the Securities Exchange Act of 1934;

(2) *Eligible Guarantor Institution* means:

(i) Banks (as that term is defined in section 3(a) of the Federal Deposit Insurance Act [12 U.S.C. 1813(a)]);

(ii) Brokers, dealers municipal securities dealers, municipal securities brokers, government securities dealers, and government securities brokers, as those terms are defined under the Act;

(iii) Credit unions (as that term is defined in Section 19 (b)(1)(A) of the Federal Reserve Act [12 U.S.C. 461(b)]);

(iv) National securities exchanges, registered securities associations, clearing agencies, as those terms are used under the Act; and

(v) Savings associations (as that term is defined in section 3(b) of the Federal Deposit Insurance Act [12 U.S.C. 1813(b)]).

(3) *Guarantee* means a guarantee of the signature of the person endorsing a certificated security, or originating an instruction to transfer ownership of a security or instructions concerning transfer of securities.

(b) *Acceptance of signature guarantees*. A registered transfer agent shall not, directly or indirectly, engage in any activity in connection with a guarantee, including the acceptance or rejection of such guarantee, that results in the inequitable treatment of any eligible guarantor institution or a class of institutions.

(c) *Transfer agent's standards and procedures*. Every registered transfer agent shall establish:

(1) Written standards for the acceptance of guarantees of securities transfers from eligible guarantor institutions; and

(2) Procedures, including written guidelines where appropriate, to ensure that those standards are used in determining whether to accept or reject guarantees from eligible guarantor institutions. Such standards and procedures shall not establish terms and conditions (including those pertaining to financial condition) that, as written or applied, treat different classes of eligible guarantor institutions inequitably, or result in the rejection of a guarantee from an eligible guarantor institution solely because the guarantor institution is of a particular type specified in paragraphs (a)(2)(i)-(a)(2)(v) of this section.

(d) *Rejection of items presented for transfer*. (1) No registered transfer agent shall reject a request for transfer of a certificated or uncertificated security because the certificate, instruction, or documents accompanying the certificate or instruction includes an unacceptable guarantee, unless the transfer agent determines that the

guarantor, if it is an eligible guarantor institution, does not satisfy the transfer agent's written standards or procedures.

(2) A registered transfer agent shall notify the guarantor and the presenter of the rejection and the reasons for the rejection within two business days after rejecting a transfer request because of a determination that the guarantor does not satisfy the transfer agent's written standards or procedures. Notification to the presenter may be accomplished by making the rejected item available to the presenter. Notification to the guarantor may be accomplished by telephone, facsimile, or ordinary mail.

(e) *Record retention.* (1) Every registered transfer agent shall maintain a copy of the standards and procedures specified in paragraph (c) of this section in an easily accessible place.

(2) Every registered transfer agent shall make available a copy of the standards and procedures specified in paragraph (c) of this section to any person requesting a copy of such standards and procedures. The registered transfer agent shall respond within three days of a request for such standards and procedures by sending the requesting party a copy of the requested transfer agent's standards and procedures.

(3) Every registered transfer agent shall maintain, for a period of three years following the date of the rejection, a record of transfers rejected, including the reason for the rejection, who the guarantor was and whether the guarantor failed to meet the transfer agent's guarantee standards.

(f) *Exclusions.* Nothing in this section shall prohibit a transfer agent from rejecting a request for transfer of a certificated or uncertificated security:

(1) For reasons unrelated to acceptance of the guarantor institution;

(2) Because the person acting on behalf of the guarantor institution is not authorized by that institution to act on its behalf, provided that the transfer agent maintains a list of people authorized to act on behalf of that guarantor institution; or

(3) Because the eligible guarantor institution of a type specified in paragraph (a)(2)(ii) of this section is neither

a member of a clearing corporation nor maintains net capital of at least \$100,000.

(g) *Signature guarantee program.* (1) A registered transfer agent shall be deemed to comply with paragraph (c) of this section if its standards and procedures include:

(i) Rejecting a request for transfer because the guarantor is neither a member of nor a participant in a signature guarantee program; or

(ii) Accepting a guarantee from an eligible guarantor institution who, at the time of issuing the guarantee, is a member of or participant in a signature guarantee program.

(2) Within the first six months after revising its standards and procedures to include a signature guarantee program, the transfer agent shall not reject a request for transfer because the guarantor is neither a member of nor participant in a signature guarantee program, unless the transfer agent has given that guarantor ninety days written notice of the transfer agent's intent to reject transfers with guarantees from non-participating or non-member guarantors.

(3) For purposes of paragraph (g) of this section, the term "signature guarantee program," means a program, the terms and conditions of which the transfer agent reasonably determines:

(i) To facilitate the equitable treatment of eligible guarantor institutions; and

(ii) To promote the prompt, accurate and safe transfer of securities by providing:

(A) Adequate protection to the transfer agent against risk of financial loss in the event persons have no recourse against the eligible guarantor institution; and

(B) Adequate protection to the transfer agent against the issuance of unauthorized guarantees.

[57 FR 1095, Jan. 10, 1992]

**§ 240.17Ad-16 Notice of assumption or termination of transfer agent services.**

(a) A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities, including a registered transfer agent that ceases to perform transfer agent