

employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, describe the work that these individuals have performed as of the date of each report;

(D) What is the broker-dealer's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(1) Awareness of potential Year 2000 Problems;

(2) Assessment of what steps the broker-dealer must take to avoid Year 2000 Problems;

(3) Implementation of the steps needed to avoid Year 2000 Problems;

(4) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(5) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other broker-dealers, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(6) Implementation of tested software that will avoid Year 2000 Problems;

(E) Whether the broker-dealer has written contingency plans in the event, that after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(F) Identify what levels of the broker-dealer's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the broker-dealer shall identify a contact person regarding Year 2000 matters.

(v) The report prepared pursuant to paragraph (e)(5)(iii) of this section shall also include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the broker or dealer's assertions in response to the following:

(A) Whether the broker-dealer has developed written plans for preparing and testing the broker-dealer's computer systems for potential Year 2000 Problems;

(B) Whether the board of directors (or similar body) of the broker-dealer has approved the plans described in paragraph (e)(5)(v)(A) of this section;

(C) Whether a member of the broker-dealer's board of directors (or similar body) is responsible for the execution of

the plans described in paragraph (e)(5)(v)(A) of this section;

(D) Whether the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section address the broker-dealer's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions;)

(E) Whether the broker-dealer has assigned existing employees, hired new employees, or engaged third parties to implement the broker-dealer's plans described in paragraph (e)(5)(v)(A) of this section;

(F) Whether the broker-dealer or third party has conducted internal testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the internal testing that the firm has modified its software to correct Year 2000 Problems; and

(G) Whether the broker-dealer has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the broker-dealers' plan described in paragraph (e)(5)(v)(A) of this section, and whether the broker-dealer has determined as a result of the external or industry-wide testing that the firm has modified its software to correct Year 2000 Problems.

(vi) The broker or dealer shall file two copies of each report prepared pursuant to paragraphs (e)(5)(ii) and (e)(5)(iii) of this section with the Commission's principal office in Washington, D.C. and one copy of each report with the broker-dealer's designated examining authority. The reports required by paragraphs (e)(5)(ii) and (e)(5)(iii) of this section will be publicly available.

Dated: March 5, 1998.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-6342 Filed 3-12-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 240

[Release No. 34-39726; File No. S7-8-98]

RIN 3235-AH42

### Year 2000 Readiness Reports To Be Made by Transfer Agents

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is soliciting comment on proposed temporary Rule 17Ad-18 under the Securities Exchange Act of 1934 ("Exchange Act"). The proposed temporary rule would require all non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an independent public accountant that would give the Independent Public Accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. Additionally, the Commission is issuing an advisory notice on its transfer agent record retention and recordkeeping requirements relating to the Year 2000.

**DATES:** The comment period will expire on April 13, 1998.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following E-mail address: rulecomments@sec.gov. Comment letters should refer to File No. S7-8-98 this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (<http://www.sec.gov>).

**FOR FURTHER INFORMATION CONTACT:** Jerry W. Carpenter, Assistant Director, 202/942-4187; Thomas C. Etter, Jr., Special Counsel, 202/942-0178; or Jeffrey S. Mooney, Special Counsel, 202/942-4174, Division of Market Regulation, Securities and Exchange Commission,

450 Fifth Street, N.W., Mail Stop 2-2, Washington, D.C. 20549.

#### SUPPLEMENTARY INFORMATION:

##### Introduction

At midnight on December 31, 1999, unless the proper modifications have been made, the program logic in the vast majority of the world's computer systems will start to produce erroneous results because, among other things, the systems will incorrectly read the date "01/01/00" as being January 1 of the year 1900 or another incorrect date. In addition, systems may fail to detect that the Year 2000 is a leap year. Problems also can arise earlier than January 1, 2000, as dates in the next millennium are entered into non-Year 2000 compliant programs. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. and foreign financial firms and markets.<sup>1</sup>

The Commission is evaluating the ability of participants in the U.S. securities industry to manage and prevent Year 2000 Problems. The Commission has identified six stages involved in the preparation for Year 2000: (1) Awareness of potential Year 2000 Problems; (2) assessment of what steps the transfer agent must take to avoid Year 2000 Problems; (3) implementation of the steps needed to avoid Year 2000 Problems; (4) internal testing of software designed to avoid Year 2000 Problems; (5) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other financial institutions and customers); and (6) implementation of tested software that will avoid Year 2000 Problems. The internal and integrated testing stages are the most difficult, and likely will require the most resources. At the time of the Commission staff's June 1997 "Year 2000 Report" to Congress, most members of the securities industry were engaged in the assessment and remediation phases of the Year 2000 effort.<sup>2</sup> Additionally, beginning in the

third quarter of 1996, the Commission's Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of broker-dealers and transfer agents.

This release focuses on the readiness of registered transfer agents to address the Year 2000 date change. Because accurate output from computer programs is vital to a transfer agent's operations, every transfer agent currently should be taking steps to avoid Year 2000 Problems. For example, a transfer agent with Year 2000 Problems could experience, among other things, computer programs not accepting securities transfers, and difficulty calculating dividend payment dates for equity securities and interest payment and maturity dates for debt securities.

Transfer agents present special considerations for the Commission because, unlike other entities regulated under the Exchange Act, transfer agents have no self-regulatory organization ("SRO") to assist them and the Commission in achieving Year 2000 objectives.<sup>3</sup> Therefore, information about progress in dealing with Year 2000 Problems must be obtained from the transfer agents. All transfer agents for securities registered pursuant to Section 12 of the Exchange Act must register with the Commission.<sup>4</sup> However, the federal banking agencies are the "appropriate regulatory agency" ("ARA") for registered bank transfer agents.<sup>5</sup> The Commission is coordinating its Year 2000 activities with the banking regulators to achieve complete coverage of transfer agents, but avoid duplication of efforts.

## II. Proposed Temporary Rules

To monitor the steps that transfer agents are taking to manage and avoid Year 2000 Problems, the Commission is proposing temporary Exchange Act Rule

17Ad-18.<sup>6</sup> The proposed temporary rule would require registered non-bank transfer agents that do not qualify for an exemption under Rule 17Ad-13 to file with the Commission three reports regarding its Year 2000 readiness. These reports will: (1) Assist the Commission Staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; (2) supplement the Commission's examination module for Year 2000 issues; (3) help the Commission coordinate with SROs on Year 2000 industry-wide testing, implementation, and contingency planning; and (4) increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000.

### A. Initial Report

Proposed paragraph (a) of temporary Rule 17Ad-18 will require each registered non-bank transfer agent to file with the Commission a report describing the transfer agent's preparations for the Year 2000 and the steps the transfer agent is taking to avoid Year 2000 Problems ("Initial Report"). In this report the transfer agent would evaluate its actions regarding the Year 2000 as of December 31, 1997. This report also would describe the transfer agent's future plans and preparations for the Year 2000, including the areas discussed in paragraph II.C. below. The Initial Report would be required to be filed no later than 45 days after the Commission adopts this rule.

### B. Transfer Agent's Follow-Up Reports

Proposed paragraph (b) of temporary Rule 17Ad-18 would require registered transfer agents that do not qualify for an exemption under existing Rule 17Ad-13(d) to file reports with the Commission describing their progress in addressing Year 2000 Problems ("Follow-Up Reports").<sup>7</sup> Generally, Rule 17Ad-13(d) exempts the following transfer agents from the rule's annual reporting requirements: issuer transfer agents; small transfer agents exempt under Rule 17Ad-4(b); and bank transfer agents. Therefore, bank transfer agents would not be required to submit either the Initial Report or the Follow-Up Reports. The Follow-Up Reports would be due on or before August 31, 1998, and on or before August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively. The Follow-Up Reports would include, but not be limited to, the

<sup>1</sup> International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at <http://www.iosco.org>.

<sup>2</sup> At the request of Congressman Dingell, in June 1997, the Commission staff prepared a comprehensive report to Congress describing, in part, the extent to which the securities industry is preparing to avoid Year 2000 Problems. See *Report to the Congress on the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*, (June 1997), available at <http://www.sec.gov/news/studies/yr2000.htm>. The Commission staff will prepare similar reports in

1998 and 1999. See also Testimony of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Concerning the Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000 Before the Subcomm. on Financial Services and Technology of the Senate Comm. on Banking, Housing, and Urban Affairs (July 30, 1997).

<sup>3</sup> See Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26), for the definition of an SRO.

<sup>4</sup> See Section 17A(c) of the Exchange Act, 15 U.S.C. 78q-1(c).

<sup>5</sup> See Section 3(a)(34)(B) of the Exchange Act, 15 U.S.C. 78c(a)(34)(B), for the definition of ARA. Transfer agents that also are banks have either the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation as their ARA. Approximately 1,360 transfer agents are registered with the Commission, and the Commission is the ARA for approximately 740 of them.

<sup>6</sup> Proposed 17 CFR 240.17Ad-18.

<sup>7</sup> 17 CFR 240.17Ad-13(d).

areas discussed in paragraph II.C. below.

Because transfer agents that qualify for the exemption under Rule 17Ad-13(d) are typically small transfer agents or are bank transfer agents subject to the primary supervision of one of the federal banking agencies, the Commission believes that it would be too burdensome to subject these transfer agents to both reporting requirements. The Commission cautions, however, that *all* transfer agents must take necessary and appropriate actions to address Year 2000 Problems.

### *C. Areas Addressed in Initial and Follow-Up Reports*

Both the Initial Report and the Follow-Up Reports would be required to discuss the following areas:

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing the transfer agent's computer systems for potential computer problems caused by Year 2000 Problems;<sup>8</sup>

(2) Whether the transfer agent's plans exist in writing and address all of the transfer agent's computer systems wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the transfer agent's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are: (i) Awareness of potential Year 2000 Problems; (ii) assessment of what steps the transfer agent must take to avoid Year 2000 Problems;<sup>9</sup> (iii) implementation of the steps needed to avoid Year 2000 Problems; (iv) internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing; (v) integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other transfer agents, other financial institutions, customers, and vendors), including the number and the nature of the exceptions resulting from such

testing; and (vi) implementation of tested software that will avoid Year 2000 Problems;<sup>10</sup>

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems;<sup>11</sup> and

(6) Identify what levels of the transfer agent's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individuals' responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the transfer agent shall identify a contact person regarding Year 2000 matters.

The list above is the minimum criteria that should be addressed in the Initial Report. The Follow-Up Reports should also address the above criteria as well as make certain specific assertions described in paragraph II.D. below. A transfer agent should include any additional material information concerning its management of Year 2000 Problems that will help the Commission assess the transfer agent's readiness for the Year 2000.

### *D. Independent Public Accountant's Attestation to be Attached to the Follow-Up Reports*

Transfer Agents would have to file with the Follow-Up Reports an attestation from an Independent Public Accountant ("Attestation"). The Attestation would take the form of a letter that would give the Independent Public Accountant's opinion whether there is a reasonable basis for certain of the transfer agent's assertions in the Follow-Up Reports regarding the areas specified in proposed Rule 17Ad-18(d)(1) through (7). Specifically, the Follow-Up Reports will have to include assertions responding to the following and the Independent Public Accountant will have to attest to the following:<sup>12</sup>

<sup>10</sup>In addition, the transfer agent's contingency plan should provide for the failure of external systems that interact with the transfer agent's computer systems. For example, the transfer agent's plan should anticipate the failure of a vendor that services mission critical applications and should provide for the potential that a significant customer experiences difficulty due to Year 2000 Problems.

<sup>11</sup>Contingency planning should provide for adequate protections to ensure the success of critical systems if interfaces fail or unexpected problems are experienced with operating systems and infrastructure software.

<sup>12</sup>The Commission notes that some of the areas that the transfer agent would be required to respond to in subsection (d) of the proposed rule overlap with the areas set forth in subsection (c). The areas addressed in subsection (d) ask for additional

(1) Whether the transfer agent has developed written plans for preparing and testing the transfer agent computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the transfer agent has approved the plans described in (1) above;

(3) Whether a member of the transfer agent's board of directors (or similar body) is responsible for the execution of the plans described in (1) above;

(4) Whether the transfer agent's plans described in (1) above address the transfer agent's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions. (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions);

(5) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to implement the transfer agent's plans described in (1) above;

(6) Whether the transfer agent or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the transfer agent has determined as a result of the internal testing that the transfer agent has modified its software to correct Year 2000 Problems; and

(7) Whether the transfer agent has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (1) above, and whether the transfer agent has determined as a result of the external or industry-wide testing that the transfer agent has modified its software to correct Year 2000 Problems.

The Attestation only pertains to the areas discussed above. The Commission does not expect the Attestation to address assertions in the Follow-Up Reports that are not pertinent to proposed Rule 17Ad-18(d)(1) through (7). The Attestation would be required to be filed with the Follow-Up Reports.

### **III. Notice Regarding Recordkeeping and Record Retention Requirements**

Rule 17Ad-6 under the Exchange Act requires every registered transfer agent to make and keep current certain information regarding its operations.<sup>13</sup>

information from the transfer agent for which the Commission is not seeking an Independent Public Accountant's attestation. The overlap exists because the Commission wants to narrowly tailor the specific assertions that the Independent Public Accountant must account for in the Attestations attached to the Follow-Up Reports.

<sup>13</sup>17 CFR 240.17Ad-6.

<sup>8</sup>Transfer agents should have all their hardware and software changes in place by December 1998, if not before, so that they can conduct testing, including industry-wide testing, during 1999.

<sup>9</sup>In addition to assessing what steps it should make to its computer systems Year 2000 compliant, the transfer agent must communicate with its vendors and significant customers about their Year 2000 readiness.

Exchange Act Rule 17Ad-7 sets forth the time periods for which a transfer agent must retain the records required by Rule 17Ad-6.<sup>14</sup> The required records facilitate the delivery of transfer agent services to issuers and security holders, and are an integral part of the Commission's regulatory program. Among other things, these records help the Commission to assess whether a transfer agent is operating properly. A transfer agent whose computer systems have not been modified to address Year 2000 Problems may have records that as of January 1, 2000, will be inaccurate or not current, and therefore in violation of Rules 17Ad-6 and 17Ad-7. Because a transfer agent essentially is a system of records, a failure to have accurate records could threaten the transfer agent's viability and have serious consequences for issuers and security holders. The Commission advises transfer agents that a failure to adequately prepare for the Year 2000 will not be considered a valid excuse for noncompliance with the requirements of Rules 17Ad-6 and 17Ad-7.<sup>15</sup>

#### IV. Request for Comments

The Commission solicits commenters' views on any aspect of the proposed temporary Rule 17Ad-18. In particular, the Commission seeks comment on whether the Attestation should be prepared by the same Independent Public Accountant who prepares the annual audit of the transfer agent's 1998 fiscal year-end financial statements. As proposed, the Initial Report and the Follow-Up Reports would be publicly available. The Commission seeks comment on whether certain sections of these reports, or the entire reports, should not be publicly available. The Commission also seeks comment on whether the term "Year 2000 Problems" should be modified to account for any other specific potential computer problems that may occur directly or indirectly due to the Year 2000. Additionally, the Commission seeks comment on the areas that will be addressed in the three reports (*i.e.*, the Initial Report and the two Follow-Up Reports). For example, should the reports include any additional material information specific to an individual transfer agent's management of Year 2000 Problems? If so, what additional material information should be included? For example, should transfer agents report whether their Year 2000 plans are on schedule and, if not, the reasons for the delay? Should the

Commission establish a materiality threshold for determining whether the number and the nature of the exceptions resulting from internal and integrated or industry-wide testing needs to be reported? If so, how should the Commission determine such a threshold? Regarding management responsibility for Year 2000 plans, should a particular officer of the transfer agent be required to sign the reports on behalf of the transfer agent?

The Commission believes that the Attestation could be rendered in accordance with the accounting profession's Statements on Standards for Attestation Engagements.<sup>16</sup> The Commission seeks commenters' views on that issue and on any alternative means that would provide the Commission with an independent assessment of the status and adequacy of a transfer agent's preparation for possible Year 2000 Problems. Specifically, the Commission seeks commenters' views on whether the Commission's desire to receive an Independent Public Accountant's attestation of a transfer agent's preparation for possible Year 2000 Problems can be combined with, or would already be part of, the Independent Public Accountants' responsibilities, in accordance with Generally Accepted Accounting Principles, to opine on whether a transfer agent can continue as a going concern.

#### V. Costs and Benefits of the Proposed Amendment and Its Effect on Competition

The Commission requests that commenters provide analyses and data relating to costs and benefits associated with the proposal herein. This information will assist the Commission in its evaluation of the costs and benefits that may result from the proposed temporary rule. The Commission understands that the reports regarding the transfer agent's readiness for the Year 2000 would impose some costs on transfer agents.<sup>17</sup> Transfer agents are not required to engage additional employees or consultants to prepare the Initial Report. Although transfer agents must engage an accountant to prepare the Attestation to accompany the Follow-Up Reports, the Commission believes that these costs will be significantly outweighed by the benefits the Commission will gain from

learning about the preparations transfer agents are taking to avoid Year 2000 Problems. The Commission also believes that reporting requirements will help Transfer agents understand that they should be taking specific steps now to prepare for Year 2000.

In addition, Section 23(a)(2) of the Exchange Act requires the Commission, in amending rules under the Exchange Act, to consider the anti-competitive effects of such rules, if any.<sup>18</sup> The Commission has considered the proposed temporary rule in light of the standards cited in Section 23(a)(2), and believes that, if adopted, they would not likely impose any significant burden on competition not necessary or appropriate in furtherance of the Exchange Act. Indeed, the Commission believes that the proposed temporary rule will enable the Commission to monitor the steps transfer agents are taking to manage and avoid Year 2000 Problems. The Commission solicits commenters' views regarding the effects of the proposed temporary rule on competition, efficiency, and capital formation. The Commission also seeks comments on the proposed rule's potential impact on the economy on an annual basis, including any empirical data.

#### VI. Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), in accordance with the provisions of the Regulatory Flexibility Act,<sup>19</sup> regarding the rules contained in the proposed temporary Rule 17Ad-18 under the Exchange Act. As discussed more fully in the analysis, some of the transfer agents that the proposed temporary rule would affect are small entities, as defined by the Commission's rules.

The IRFA states that the purpose of the proposed temporary rule is for the Commission to monitor that transfer agents are taking proper steps to manage and avoid Year 2000 Problems. Year 2000 Problems could have negative repercussions throughout the world's financial systems because of the extensive interrelationship and information sharing between U.S. and foreign financial firms and markets.<sup>20</sup> For example, a transfer agent with Year 2000 Problems could experience, among other things, computer programs not accepting securities transfers, and

<sup>16</sup> American Institute of Certified Public Accountants Professional Standards, Vol. 1, pp. 2491-2800.

<sup>17</sup> See *infra* Section VII for the Commission's estimate of the costs that proposed temporary Rule 17Ad-18 will impose on affected transfer agents.

<sup>18</sup> See 15 U.S.C. § 78w(a)(2).

<sup>19</sup> 5 U.S.C. 603.

<sup>20</sup> International Organization of Securities Commissions, *Statement of the IOSCO Technical Committee on Year 2000* (1997), available at <http://www.iosco.org>.

<sup>14</sup> 17 CFR 240.17Ad-7.

<sup>15</sup> Cf. Lowell H. Listrom, 50 SEC 883, 887, n.7 (1992).

difficulty calculating dividend payment dates for equity securities and interest payment and maturity dates for debt securities.

Transfer agents present special consideration for the Commission. This is because transfer agents, unlike other entities regulated under the Exchange Act, have no self-regulatory organization to assist them and the Commission in achieving Year 2000 objectives.<sup>21</sup> Therefore, information about progress in dealing with Year 2000 problems must be obtained from the transfer agents.

The proposed temporary rule would require non-bank registered transfer agents to file with the Commission at least one report regarding its Year 2000 readiness. The initial report would be due no later than 45 days after the Commission adopts this rule. The follow-up reports would be due on August 31, 1998, and on August 31, 1999. The follow-up reports would include an attestation by an Independent Public Accountant that would give the independent public accountant's opinion whether there is a reasonable basis for the transfer agent's assertions in the reports. These reports will: (1) Assist the Commission Staff to report to Congress in 1998 and 1999 regarding the industry's preparedness; (2) supplement the Commission's examination module for Year 2000 issues; (3) help the Commission coordinate with SROs on Year 2000 industry-wide testing, implementation, and contingency planning; and (4) increase transfer agent awareness that they should be taking specific steps now to prepare for the Year 2000.

The IRFA sets forth the statutory authority for the proposed temporary rule. The IRFA also discusses the effect of the proposed rule on transfer agents that are small entities pursuant to Rule 0-10 under the Exchange Act.<sup>22</sup> For purposes of the proposed temporary rule, a small entity is a 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) 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 (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization

under Rule 0-10. Approximately 413 registered transfer agents qualify as "small entities" for purposes of the RFA and would be subject to the requirements of proposed Rule 17Ad-18.<sup>23</sup>

The IRFA states that the proposed temporary rule would impose new reporting requirements because certain transfer agents would have to file three reports regarding the transfer agents' readiness for the Year 2000 with the Commission. The IRFA also states that the proposed temporary rule would not impose any other reporting, recordkeeping, or compliance requirements and that the Commission believes that no rules duplicate, overlap, or conflict with the proposed temporary rule.

The analysis discusses the various alternatives which were considered by the Commission in connection with the proposed temporary rule, that might minimize the effect on small entities, including: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed temporary rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities.

Under the proposal, taking into account the burden that would be imposed on small transfer agents, the Commission is proposing that non-bank transfer agents that meet the definition of a small entity be required to submit only the Initial Report, which does not require an Attestation from an Independent Public Accountant. Bank transfer agents, regardless of size, would not be required to submit any reports. Therefore, small entities would be subject to a minimal amount of compliance cost under the proposal. Accordingly, the Commission has determined that it is not feasible to further clarify, consolidate, or simplify the proposed temporary rule for small entities. The Commission also believes that it would be inconsistent with the purpose of the Exchange Act to exempt small entities from the proposed temporary rule any further or to use performance standards to specify different requirements for small entities.

The Commission encourages the submission of written comments with

respect to any aspect of the IRFA. Those comments should specify costs of compliance with the proposed temporary rule, and suggest alternatives that would accomplish the objective of proposed temporary rule. A copy of the IRFA may be obtained by contacting Jeffrey S. Mooney, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5-1, Washington, D.C. 20549, (202) 942-4174.

## VII. Paperwork Reduction Act

Proposed temporary Rule 17Ad-18 contains "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995,<sup>24</sup> and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is:

"Proposed Temporary Rule 17Ad-18."

The proposed temporary rule would require information collection because non-bank transfer agents would have to file either one or three reports with the Commission, depending primarily on their size. The initial report would need to be filed no later than 45 days after the Commission adopts this rule. Transfer agents that do not qualify for an exemption under existing Rule 17Ad-13(d) would file follow-up reports with an Independent Public Accountant's attestation and subsequent accountant's reports on or before August 31, 1998, and August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively. Generally, Rule 17Ad-13(d) exempts small transfer agents, issuer transfer agents, and bank transfer agents. Therefore, bank transfer agents would not be required to submit the initial report or the follow-up reports. These reports are necessary for the Commission to monitor the steps transfer agents are taking to manage and avoid Year 2000 Problems. While the amount of time needed to comply with the temporary rule will vary from a minimum of 8 hours to a maximum of 150 hours, the Commission estimates that, on average, each respondent will devote approximately 50 employee hours of preparation time to each report and 30 employees hours of discussion time with the Independent Public Accountant who prepares the Attestation. Additionally, a transfer agent would have to pay additional fees for preparation of the Attestation. While the Commission estimates that the amount of additional accounting fees to comply with the rule amendment would

<sup>21</sup> See Section 3(a)(26) of the Exchange Act, 15 U.S.C. § 78c(a)(26), for the definition of an SRO.

<sup>22</sup> 17 CFR 240.0-10.

<sup>23</sup> See *infra* Section VII, the Commission estimates that, on average, small transfer agents will incur 50 hours of employee time to complete the initial report.

<sup>24</sup> 44 U.S.C. § 3501 *et seq.*

vary from a minimum of \$5,000 to a maximum of \$200,000, the Commission estimates that, on average, a respondent would spend approximately \$25,000 for the preparation of each Attestation. Although, there are approximately 1,360 transfer agents registered with the Commission, the Commission is the ARA for approximately 740 of them. All of these non-bank transfer agents would be required to file the initial report described in the proposed temporary rule. However, only non-bank transfer agents that are not (1) Small transfer agents or (2) issuer transfer agents would be required to file the follow-up reports. Therefore, the Commission estimates that approximately 330 transfer agents would be required to submit the follow-up reports.

As proposed, all reports filed under the temporary rule would not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

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

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;
- (ii) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms for information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the following persons: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, and refer to File No. S7-8-98. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of this publication.

## VIII. Statutory Basis

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-18 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 general authority citation for Part 240 is revised to read in part as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78j(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 § 240.17Ad-18 to read as follows:

#### § 240.17Ad-18 Year 2000 Reports to be made by certain transfer agents.

(a) Each registered transfer agent, except for those transfer agents whose appropriate regulatory agency is the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, must file a report with the Commission describing the transfer agent's preparation for Year 2000 Problems. The report shall address each topic in paragraph (c) of this section. The report shall be filed no later than 45 days after the Commission adopts this section.

(b) Each registered transfer agent, except for those transfer agents exempt under paragraph (d) of § 240.17Ad-13, must file with the Commission follow-up reports on the transfer agent's preparations for Year 2000. The reports must be filed on or before August 31, 1998, and August 31, 1999, as of June 30, 1998, and June 30, 1999, respectively.

(c) The reports prepared pursuant to paragraphs (a) and (b) of this section shall include a discussion of the following: A transfer agent should include any additional material

information in both reports concerning its management of Year 2000 Problems that will help the Commission assess the transfer agent's readiness for the Year 2000.

(1) Whether the board of directors (or similar body) of the transfer agent has approved and funded plans for preparing and testing the transfer agent's computer systems for potential computer problems caused by Year 2000 Problems;

(2) Whether the transfer agent's plans exist in writing and address all of the transfer agent's major computer systems wherever located throughout the world;

(3) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to provide assistance in avoiding Year 2000 Problems; and if so, the work that these individuals have performed as of the date of each report;

(4) What is the transfer agent's current progress on each stage of preparation for potential computer problems caused by Year 2000 Problems. These stages are:

(i) Awareness of potential Year 2000 Problems;

(ii) Assessment of what steps the transfer agent must take to avoid Year 2000 Problems;

(iii) Implementation of the steps needed to avoid Year 2000 Problems;

(iv) Internal testing of software designed to avoid Year 2000 Problems, including the number and the nature of the exceptions resulting from such testing;

(v) Integrated or industry-wide testing of software designed to avoid Year 2000 Problems (including testing with other transfer agents, other financial institutions, and customers), including the number and the nature of the exceptions resulting from such testing; and

(vi) Implementation of tested software that will avoid Year 2000 Problems;

(5) Whether the transfer agent has written contingency plans in the event that, after December 31, 1999, it has computer problems caused by Year 2000 Problems; and

(6) Identify what levels of the transfer agent's management are responsible for addressing potential computer problems caused by Year 2000 Problems, including a description of these individual's responsibilities regarding the Year 2000 and an estimate of the percentage of time that each individual has spent on Year 2000 issues during the preceding twelve month period; in each report, the transfer agent shall identify a contact person regarding Year 2000 matters.

(d) Each report prepared pursuant to paragraph (b) of this section shall also

include assertions in response to the following and an opinion by an independent public accountant attesting to whether there is a reasonable basis for the transfer agent's assertions in response to the following:

(1) Whether the transfer agent has developed written plans for preparing and testing the transfer agent computer systems for potential Year 2000 Problems;

(2) Whether the board of directors (or similar body) of the transfer agent has approved the plans described in paragraph (d)(1) of this section;

(3) Whether a member of the transfer agent's board of directors (or similar body) is responsible for the execution of the plans described in paragraph (d)(1) of this section;

(4) Whether the transfer agent's plans described in paragraph (d)(1) of this section address the transfer agent's domestic and international operations, including the activities of each of the firm's subsidiaries, affiliates, and divisions; (Subsidiaries, affiliates, and divisions that are regulated by U.S. or foreign regulators other than the Commission are exempted from these provisions.)

(5) Whether the transfer agent has assigned existing employees, hired new employees, or engaged third parties to implement the transfer agent's plans described in paragraph (d)(1) of this section;

(6) Whether the transfer agent or third party has conducted internal testing, whether such testing is on schedule in accordance with the plan described in paragraph (d)(1) of this section, and whether the transfer agent has determined as a result of the internal testing that the transfer agent has modified its software to correct Year 2000 Problems; and

(7) Whether the transfer agent has conducted external or industry-wide testing, whether such testing is on schedule in accordance with the plan described in paragraph (d)(1) of this section, and whether the transfer agent has determined as a result of the external or industry-wide testing that the transfer agent has modified its software to correct Year 2000 Problems.

(e) The transfer agent shall file two copies of each report prepared pursuant to paragraphs (a) and (b) of this section with the Commission's principal office in Washington, D.C. The reports required by paragraphs (a) and (b) will be publicly available.

(f) For purposes of this section, the term Year 2000 Problem shall include any erroneous result caused by:

(1) Computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year;

(2) Computer software incorrectly identifying a date in the Year 1999 or any year thereafter;

(3) Computer software failing to detect that the Year 2000 is a leap year; or

(4) Any other computer software error that is directly or indirectly caused by paragraph (f)(1), (2), or (3) of this section.

Dated: March 5, 1998.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 98-6341 Filed 3-11-98; 8:45 am]

BILLING CODE 8010-01-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### 43 CFR Part 414

#### RIN 1006-AA40

### Public Meeting on Proposed Rule and Draft Programmatic Environmental Assessment for Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Proposed rule; public meeting.

**SUMMARY:** The Bureau of Reclamation (Reclamation) published a notice of proposed rulemaking on December 31, 1997 (62 FR 68491), which included the text of a proposed rule titled, "Offstream Storage of Colorado River Water and Interstate Redemption of Storage Credits in the Lower Division States." Reclamation also published a notice of availability of a draft programmatic environmental assessment on December 31, 1997 (62 FR 68465).

**DATES:** The public meeting will be held on March 27, 1998, at 2 p.m., Ontario, California.

**ADDRESSES:** The public meeting will be held at the Marriott Hotel Airport, 2200 East Holt Boulevard, Ontario, California.

**FOR FURTHER INFORMATION CONTACT:** Any person with questions concerning the public meeting can contact Mr. Dale Ensminger at telephone (702) 293-8659 or fax (702) 293-8402.

**SUPPLEMENTARY INFORMATION:** This public meeting will be conducted as an open house where Reclamation will discuss and answer questions from the public on various aspects of its proposed rule and draft programmatic

environmental assessment. The meeting will commence at 2 p.m. and will conclude when all persons wishing to speak have had an opportunity to do so or 6 p.m., whichever is earlier. Each individual who wishes to participate will be initially allotted 20 minutes in which to make a statement or ask questions. After all persons wishing to speak have had a chance to be heard, if requested, Reclamation will consider allowing additional time.

Any person, whether or not that individual attends the public meeting or submits oral testimony at the meeting, may submit written comments on the proposed rule and the draft programmatic environmental assessment. There is no limit to the length of written comments. However, written comments should be specific, confined to the issues pertinent to the proposed rule or the draft programmatic environmental assessment, and should explain the reason for any recommended change. Reclamation will accept written comments through April 3, 1998 (63 FR 9992, February 27, 1998 and 63 FR 10039, February 27, 1998), in accordance with the criteria set forth in the notice of proposed rulemaking published in the **Federal Register** on December 31, 1997 (62 FR 68491).

Dated: March 6, 1998.

**Steven C. Hvinden,**

*Water Administration Manager, Boulder Canyon Operations Office.*

[FR Doc. 98-6364 Filed 3-11-98; 8:45 am]

BILLING CODE 4310-94-P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### 45 CFR Parts 1215 and 2507

#### RIN 3045-AA16

### Freedom of Information Act Regulation and Implementation of Electronic Freedom of Information Act Amendments of 1996

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation") revises its regulations under the Freedom of Information Act (FOIA). The Corporation seeks to redesignate the existing regulations under former ACTION's CFR chapter as updated regulations under the Corporation's CFR chapter. The Corporation expects this proposed rule will promote consistency in its processing of FOIA requests. These