

17Ad-16: Regulations and Reality



By Kara Kennedy
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An excerpt from Rule 17Ad-16, about the Assumption and Termination of Transfer Agent Services:

“A registered transfer agent that ceases to perform transfer agent services on behalf of an issuer of securities... shall send written notice of such termination to the appropriate qualified registered securities depository on or before

the later of ten calendar days prior to the effective date of such termination or the day the transfer agent is notified of the effective date of such termination...”
(The same applies for account assumptions...)

In 1934, the SEC’s landmark Act set rule 17Ad-16 in motion. The rule was designed to prevent unnecessary transfer delays that result when issuers change transfer agents.

In 1995, the SEC approved DTC’s motion to become the industry’s sole “appropriate qualified registered securities depository” pursuant to the rule. This step was taken to reduce uncertainty about where 17Ad-16 notices should be sent.

In March 2010, the SEC approved DTC’s request to specify exactly where and how 17Ad-16 notices should be sent. This step was taken to expedite transfer agent changes and further reduce transfer delays. (FYI: All notices have to be completed on transfer agent letterhead, using DTC’s template, and emailed in PDF format to taseservices@dtcc.com.)

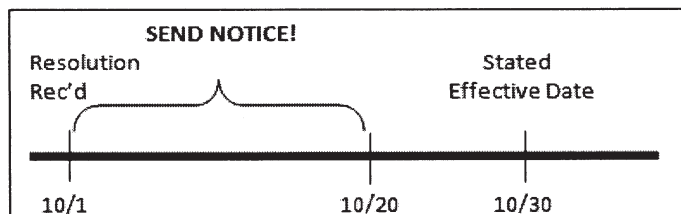
While perhaps not as feather-ruffling as proxy reform or revolutionary as cost basis reporting, 17Ad-16 is a big deal. It affects all transfer agents because it governs new business, clients’ ability to move stock through the marketplace, and all of their shareholders.

By exploring the various interpretations and clarifying the wording of the original text, industry participants can reconcile the operational discrepancies rooted in the rule’s current implementation.

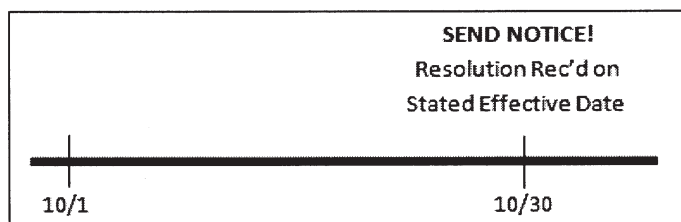
First, the timing requirements of the rule need to be unraveled.

Breaking it down, there are two plain vanilla scenarios provided for in the rule, depending on the issuer’s actions.

In the first case, the issuer provides you with a board resolution on October 1 that states you are appointed transfer agent effective October 30. In this case, “on or before ... ten calendar days prior to the effective date” is relevant.



In the second scenario, the issuer provides you with a board resolution on October 30 appointing you as the agent immediately. In this case, “on or before... the day the transfer agent is notified of the effective date” applies.



Now let’s throw something else into the mix: what exactly is the effective date? Here’s where the Rocky Road, the nuts, the sticky sauce, and all the sparklers get thrown in...

There is a significant difference in the way DTC and the SEC seem to interpret the effective date. In my most recent meeting with SEC auditors, it was explained that the SEC wants to see a 17Ad-16 Notice effective on the date that the issuer’s board resolution declares the agent change effective. For example, if a board resolution appoints ABC Transfer as the new agent effective October 30, the 17Ad-16 notice should state the effective date of the change is October 30.

On the flip side, DTC is concerned with smooth logistics. We are all aware that transfers can be delayed or even rejected if sent to a new agent prior to the old agent releasing the books and records. Consider that the issuer provides a board resolution with an effective date of October 30, but ABC Transfer doesn’t receive the books and records from the old agent until November 5. DTC requires that the effective date on the 17Ad-16 notice be November 5, because that is the date that all books and records were delivered.

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Transfer agents bring their own set of flavors to the party. Some agents use the date prescribed in the board resolution. Others use the date that the issuer pays their final bill. Still others have a thirty day holding period in their agreements, which they may use to determine their own effective date. Other agents arbitrarily add 10 days to the issuer's effective date. Some agents choose an effective date based on when books and records are sent, while others use the date the books and records physically arrive at the appointed agent. The list goes on.

The good news is that there are strategies to satisfy both DTC and the SEC, and ensure timely delivery of books and records between agents. As agents differ greatly in infrastructure, size, operations, and the like, these solutions might not work for all. At the very least they offer open and honest discussion points for consideration internally.

Possible Strategy 1: Send two 17Ad-16 notices, and act immediately. If you always send DTC a notice on the day you receive the resolution from the issuer, you will always comply with the rule and satisfy the SEC. Be mindful of inserting the proper effective date. Clarify with DTC that books and records have not yet been sent, and that the notice is being sent only to satisfy 17Ad-16's timeliness requirements. When the books and records are indeed delivered, send DTC an updated notice that confirms the records were received. The first notice satisfies the SEC, and the second notice will satisfy DTC.

The trouble with this strategy is that it results in multiple notices being sent to DTC and additional operational

burden on your staff. Further, it may be impractical for a variety of reasons to act immediately when a resolution is sent by the issuer.

Possible Strategy 2: Set the effective date, and request an amended resolution. If the effective date set by the board resolution is not feasible for full delivery of books and records, determine an appropriate effective date based on your agreement with the issuer, payment of fees, and delivery arrangements with the other agent. Once a realistic date is set, request the issuer to send an amended resolution with the new effective date. Send DTC a 17Ad-16 notice based on this amended resolution. This option satisfies both the SEC and DTC in one notice.

The trouble with this strategy is that it may be difficult to arrange for an amended board resolution from the issuer. If an amendment cannot be obtained, you risk falling out of compliance with the SEC for failure to provide timely notice based on the first resolution you received.

While there is no one-size-fits-all solution, there is a common goal shared amongst all of us industry players. We strive for market transparency, information integrity, and smooth operations. By working openly with one another as peers and communicating about 17Ad-16, we can promote the fluid, clear environment that our securities industry needs.

-Kara Kennedy, Executive Director of ClearTrust, LLC

ClearTrust, LLC is a full service stock transfer agent located in Tampa, Florida. ■

From the Editor:

As I write this, preparations for the STA Annual Conference are in full swing. The speakers are preparing their material, the panelists are convening to plan for their presentations, and the registrations keep coming in. Our expected attendance has already surpassed last year's, (even in this non robust economy). Is your organization going to benefit from the wealth of information that will be available at this Conference?

We at the STA strongly urge you to attend these meetings. In addition to the information you will obtain from the scheduled presentations, you will have the chance to meet and network with others in your business and discuss common sense solutions to the operational problems that transfer agents have in common. Our members tell us that this is an invaluable benefit of Conference attendance. So if you have not already registered, we urge you to make plans now to join us in Naples October 19-22. Please feel free to refer any questions to me at cjones@stai.org or Carol Gaffney at cgaffney@stai.org. ■



Cynthia