Securities Transfer Association of Canada

William J. Speirs
President

April 13, 2016

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC
20549-1090
USA

RE: Securities and Exchange Commission Release No. 34-76743
File Number S7-27-15, Advance Notice of Proposed Rulemaking, Concept Release
And Request for Comment on Transfer Agent Regulations ("Concept Release")

Dear Mr. Fields:

The Securities Transfer Association of Canada ("STAC") welcomes the opportunity to comment on the Concept Release published by the Securities and Exchange Commission (the "Commission") on December 22, 2015. We would like to express our appreciation to the Commission and their staff for the extensive work that has been completed in order to publish the Concept Release and would welcome the opportunity to meet with the Commission if further discussion on any of STAC's comments or issues impacting Canadian transfer agents would be deemed beneficial by the Commission.

STAC is a non-profit association of Canadian transfer agents that, among others, has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To study, develop, implement, and encourage new and improved requirements and practices within the securities industry;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities.

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STAC has a seat on the Board of Directors of the Securities Transfer Association, Inc. ("STA") and has worked with the STA on numerous occasions. We have each examined and assessed the various topics and questions in the Concept Release and have developed our individual responses. STAC has reviewed the response to the Concept Release dated April 13, 2016, that has been submitted by the STA, and agrees with and strongly supports the positions stated therein.

On behalf of our members, we are providing some additional responses on items that directly impact Canadian transfer agents.

Application of Rules to Non-U.S. Transfer Agents

STAC members provide transfer agent services for both Canadian issuers of securities registered under Section 12 of the Securities Exchange Act of 1934 and Canadian issuers with no U.S. nexus. It is important to note that not all Canadian transfer agents have clients with securities registered under Section 12 of the Securities Exchange Act of 1934, and therefore are not registered with the Commission under the current rules. Based on the statistical evidence available effective December 31, 2014, less than 8% of the Canadian issuers listed on the Canadian markets are registered and reporting with the Commission.[1] The current transfer agent rules (the "Rules") as well as those contemplated in the Concept Release are to be applied by the transfer agent regardless of the issuer on whose behalf the function is being performed.

Given the advances and developments in the markets since the implementation of the existing Transfer Agent rules, there is currently confusion and ambiguity regarding the application and interpretation of the Rules to non-U.S. transfer agents. In connection with question 144, we do not believe that the Commission should codify the position statement released in 1980[2] stating that registered transfer agents that service at least one Qualifying Security must apply all of the Rules to all securities serviced by that transfer agent, including non-Qualifying securities. We strongly believe that Canadian transfer agents should only be required to apply the Rules to those issuers who have Qualifying Securities. The Commission's regulatory oversight should not be expanded to include those issuers who choose not to offer their securities in the U.S., and/or have no U.S. nexus, as this would, in our opinion, result in extensive regulatory over-reach.

Broad application of the Rules results in various negative impacts to non-U.S. transfer agents registered with the Commission, including the following:

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[1] Based on statistics from December 31, 2014 -
https://www.sec.gov/divisions/corpfin/internatl/foreignsummary2014.pdf - 295 Canadian issuers
https://www.tsx.com/listings/current-market-statistics/mig-archives - TSX / TSXv listed issuers - 3486
http://blog.thecse.com/2015/01/14/cse-enjoys-record-year-in-2014/ - CSE listed issuers - 244

[2] Exchange Act Release No. 17111 (September 2, 1980), Question I(A)(1) (relating to turnaround processing).

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Financial Obligations - broad application would result in an adverse financial impact on Canadian issuers that do not issue Section 12 registered securities, their securityholders or their transfer agent. Either these non-reporting issuers would be required to bear the cost of this additional compliance, which may ultimately be passed along to their investors, or the costs would instead remain with the transfer agent, when these issuers determine that they have no obligation to reimburse the transfer agent for costs resulting from Rules that do not apply to them. Depending on the number of registered securityholders an issuer has on their books, this recurring amount could potentially be extensive.

Competitive Disadvantage - broad application will force an unnecessary segregation of Canadian transfer agents between those that are registered with the Commission, and those that are not. Canadian issuers that are not registered under Section 12 will have the choice of appointing a transfer agent who will impose additional compliance requirements on them, resulting in potentially increased costs, or a transfer agent that does not require the additional compliance. For many of those issuers, the choice will be a simple one, resulting in a competitive disadvantage for a registered transfer agent.

Annual Statements - Similar to the position taken by the STA in reference to question 96, STAC does not oppose a requirement for annual statements. However, as noted in our general remarks, a significant majority of STAC members' clients are not issuers of Qualifying Securities and consequently may not feel obligated to reimburse the transfer agent for incurred printing and mailing expenses. The Commission needs to consider the financial burden to registered transfer agents where the transfer agent is unable to recover these expenses from the issuer, as well as the competitive disadvantage to the registered transfer agents of issuers of Non-Qualifying Securities. STAC would recommend that a requirement for annual statements be limited to issuers of Qualifying Securities only.

As articulated in the examples provided above, we can see no regulatory justification for this extension of the Commission's regulatory oversight beyond those issuers, and their investors, that the Commission has specific regulatory authority to oversee. STAC therefore requests that the Commission specifically clarify that the Commission's rules apply only to the registers of those issuers who have made the choice to issue Qualifying Securities.

Jurisdictional Impacts on Non-U.S. Transfer Agents

Non-U.S. transfer agents and their Canadian issuer clients are subject to Canadian laws, rules, and regulations that could be in conflict with proposed requirements in certain rules. Further, certain existing Rules as well as those proposed in the Concept Release may be less effective than the Commission would intend due to jurisdictional differences. Where conflicts occur with local laws, rules, or regulations, local law must take precedence. Where rules are less effective due to jurisdictional

differences, the Commission should give consideration to allowing the rule to be applied utilizing local equivalents.

STAC urges the Commission to take care when drafting rules to ensure that it is clearly stated that in situations where there are conflicts between the Rules and local laws applicable to the non-US transfer agent, the transfer agent's local laws must take precedence. It is not reasonable to expect a non-U.S. transfer agent to be in non-compliance with local laws in order to comply with the Rules. This situation could potentially have an adverse effect on the transfer agent, who may be subject to repercussions for non-compliance, but also result in a secondary downstream impact on issuers and their investors.

In response to question 63 in the Concept Release, there are various laws, regulations and rules that Canadian transfer agents comply with in the normal course of taking on transfer agency business in Canada:

Office of the Superintendent of Financial Institutions ("OSFI") - Most STAC members are Canadian, federally registered trust companies and as such must comply with the Trust and Loan Companies Act and regulations made thereunder ("TLCA"). Compliance with the TLCA is regulated by OSFI, which has additional published guidelines applicable to federal trust companies in various areas, such as Operational Risk Management[3], Outsourcing[4] and Background Checks for Directors and Senior Management[5], as well as a Cybersecurity Self-Assessment. OSFI's guidelines set out their expectations for the management of operational risk, which includes the risk of loss resulting from people, inadequate or failed internal processes and systems, or from external events. In determining risk mitigation strategies, Canadian trust companies must implement measures to protect themselves from cybersecurity threats, data privacy breaches and external threats that could disrupt business continuity. OSFI guidelines require a documented risk management framework[6] and OSFI conducts regular onsite reviews.

Personal Information Protection and Electronic Documents Act ("PIPEDA") - In Canada, transfer agents are regulated by privacy laws at both the federal[7] and provincial levels[8].

Financial Statements- STAC agrees with the position that has been stated by the STA in their response. We would like to add, however, that in the event that any new rules are implemented, non U.S. transfer agents should be afforded a similar exemption as

[3] OSFI Guideline E-21 – Operational Risk Management
[4] OSFI Guideline B-10 –Outsourcing of Business Activities, Functions and Processes
[5] OSFI Guideline E-17 –Background Checks on Directors and Senior Management of FREs
[6] OSFI Corporate Governance Guideline
[7] If the transfer agent is regulated as a federally registered trust company, they would be subject to the Personal Information Protection and Electronic Documents Act.
[8] Transfer agents would be subject to provincial level privacy laws to the extent that a province has enacted privacy laws.

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adopted by the SEC for foreign private issuers on March 4, 2008[9], and allowed to submit financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") without a requirement for reconciliation to U.S. GAAP.

Unclaimed Property – Certain Canadian provinces currently have unclaimed property legislation in place, which Canadian transfer agents comply with on behalf of their clients. In response to question 28, STAC would oppose a requirement for transfer agents to disclose information pertaining to unclaimed funds. Escheatment laws in the U.S. are state legislation, which Canadian transfer agents are not subject to, and the unclaimed funds in segregated accounts are held on behalf of securityholders of Canadian issuers – many of whom are issuers of non-qualifying securities with no U.S. nexus. It is difficult to explain to issuers of securities not registered with the Commission why information pertaining to transactions in their securities conducted on non-U.S. exchanges and markets, as well as personal information about their securityholders, must be reported. As stated previously, Canadian issuers that do not want such information disclosed are fully aware that transitioning to a transfer agent not registered with the Commission would avoid this issue, resulting in a competitive disadvantage to the registered transfer agent.

Broker Dealer Registration

STAC subscribes to the same view as the STA on this issue and favours non-bank transfer agents being permitted to offer plan services if they are subject to requirements that are equivalent to those that apply to bank transfer agents. In Canada, for obvious reasons, it has not been feasible for transfer agents to become US banks; therefore, all Canadian transfer agents past and present have not been bank transfer agents. The viability of permitting plan administration by Canadian transfer agents on terms similar to those imposed on bank transfer agents has been proven, as two of the three major transfer agents have been operating on that basis with the Commission's knowledge and approval for several years.

Restricted Securities

STAC agrees with and supports the statements expressed in the STA letter.

STAC would also like to state that Canadian transfer agents encounter additional hurdles and challenges when working with issuers in connection with securities being issued to securityholders with U.S. addresses. This is a situation that affects all issuers that are issuing securities from treasury to holders with U.S. addresses, as Section 5 of the Securities Act of 1933 makes it unlawful for an issuer to offer or sell a security if a registration statement has not been filed for that security with the Commission. Because there is the expectation by the Commission for transfer agents to monitor and take reasonable

[9] Securities Act Release No. 8879 Acceptance from Foreign Private Issuers of Financial Statements Prepared in Accordance with International Financial Reporting Standards Without Reconciliation to U.S. GAAP.

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action to detect and prevent certain offerings to U.S. investors that violate Section 5, they must take steps to ensure that they do not issue securities to U.S. investors without a restrictive legend and that 1933 Act restrictive legends are not removed without an applicable exemption.

Issuers and their advisors in Canada may be less familiar with these requirements, and therefore often look to their transfer agent for information. STAC believes that is essential that clear and concise rules and requirements are promulgated in connection with the role of transfer agents in placing or removing restrictive legends. Although we appreciate that there are multiple scenarios that may be challenging to cover in their entirety, we feel that all attempts must be made to ensure that the rules developed are as clear as possible, and are not open for interpretation.

STAC also requests that the Rules include requirements that the written legal opinions of attorneys must be issued by attorneys that are either practicing law in the U.S., or include statements that the issuing law firm has the relevant knowledge of U.S. securities legislation. Canadian transfer agents experience situations where legal opinions are offered up by Canadian attorneys, and given our limited ability to validate the background of the attorneys, we are often left in a difficult situation where we have no basis to reject the opinion, but are not entirely comfortable with its acceptability.

Registration of Third Party Administrators ("TPA's")

In response to question 134 of the Concept Release, STAC favours the registration of transfer agents being limited to those entities that actually perform transfer agency services. In STAC's view, TPA's have the potential to, and at least one in Canada does, bolster their credibility as a service provider with issuers, investors and other market participants by implying that registration as a transfer agent elevates the quality of related areas of service. In fact, because the Rules are inextricably connected to the performance of transfer agency operations, TPA's generally need not implement standards to conform to the Rules. They can conduct their related but non-Commission regulated services in a manner wholly unconnected to the registration process and the restrictions imposed on registered transfer agents. They do this with the knowledge that their activities may never need to be reviewed by the Commission, because their operations are either outside of the Rules or are almost non-existent within the context of the Rules. The registration of a TPA as a transfer agent can be used to imply to market participants that the majority of its business is regulated by the Commission. This is an abuse of the registration process and does a disservice to securityholders, issuers and to those transfer agents that do, in fact, provide transfer agency services.

Proxy Tabulation Regulation

In response to question 163 in the Concept Release, we wish to advise that the proxy tabulation process in Canada is specifically linked to the local securities laws and issuer corporate statues. Any regulation of proxy tabulation processes by the SEC would need to allow for local regulation and requirements to take precedence in the event that there were any conflicts.

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STAC has been instrumental in the development of guidelines for tabulation of proxies in Canada. As a response to the lack of comprehensive rules or guidelines for the tabulation of proxies, STAC created and published "Protocol Regarding Validity of Proxies", the original version of which was released in March of 1991. The protocol has been updated as changes have occurred in the Canadian industry, with the most recent version, now entitled "Proxy Protocol" published in January of 2016. Proxy Protocol has become the widely accepted standard by which proxies are validated in Canada, not just by Transfer Agents, but also by Broadridge Financial Solutions, Inc. ("Broadridge"), when validating voting instruction forms received from beneficial securityholders, the legal community, and proxy solicitors.

Members of the Canadian Securities Administrators ("CSA") have been undertaking a thoughtful and comprehensive review of the existing proxy voting infrastructure in Canada, with the initial step of publishing a consultation paper on August 15, 2013[10], which provided industry participants the opportunity to provide commentary on various subjects and aspects of the existing system. On January 29, 2015, the CSA published *CSA Staff Notice 54-303 Progress Report on Review of the Proxy Voting Infrastructure* ("CSA Staff Notice 54-303") to provide an update on their review, a summary of comments received, and some initial findings. Given the interconnectedness between the Canadian and U.S. markets, we would encourage the Commission to review the work that has already been completed, especially in connection with items identified that were as a result of cross-border securities holdings.

We also believe it is important to note that any regulation of the proxy tabulation process generally, must encompass all stakeholders, and cannot be narrowed to just the work that is completed by the transfer agent. The majority of this work occurs toward the end of an extensive and complicated process involving data moving through multiple channels, in some instances in a cyclical manner. One of the steps undertaken by the CSA was the implementation of a technical working group which involved the key parties in the proxy voting infrastructure. These key parties were not limited to transfer agents, but included issuers, investors, intermediaries, Broadridge, and The Canadian Depository for Securities, Inc. ("CDS"). STAC members were active participants in the technical working group meetings, and we can state with certainty that without all of these parties actively participating in the conversations, the progress would have been far less successful. We would encourage the Commission to take advantage of the extensive work completed by the CSA and learnings obtained to date.

Rule Updates

STAC agrees with the comments provided in the STA letter in connection with the required updates for various Rules. We also submit the following additional comments on certain specific Rules:

> Rule 17f-2 – Fingerprinting of securities industry personnel – Further to the comments made in the **Jurisdictional Impacts on non-U.S. Transfer Agents** section above, STAC submits that the rule should be updated to reflect the jurisdiction of a non-US transfer

[10] CSA Consultation Paper 54-401, *Review of the Proxy Voting Infrastructure*, August 15, 2013. http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20130815_54-401_proxy-voting.pdf

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agent. The probability of any findings resulting from the sending of fingerprint records of individuals who have likely never lived in the United States to the Attorney General of the U.S. would be projected to be slim to non-existent. We propose that it would be more relevant for any security checks be completed in the local jurisdiction by local law enforcement, in accordance with local laws and regulations. STAC proposes that the registered non-US transfer agent could provide a certification, preferably at the same time as the annual TA-2 forms are filed.

17Ad-17 - Lost securityholders and unresponsive payees - STAC submits that the requirement for Transfer Agents to search for lost securityholders and unresponsive payees should only apply to securityholders of Section 12 issuers whose accounts are administered by a SEC registered Transfer Agent. Furthermore, we question the effectiveness of a Canadian transfer agent conducting searches on the entire securityholder base of a Section 12 issuer on an "Information data base service" as currently defined in 17Ad-17. We believe that the search requirement should be limited to those holders with a last known address in the United States given the limited likelihood that an account with an address in Canada or elsewhere outside the United States would be successfully located.

STAC appreciates the effort and attention that the Commission has taken in preparing the Concept Release, and thanks the Commission for the opportunity to provide our comments. As previously stated, we would be pleased to meet with the Commission to discuss any of the comments or information provided, and we look forward to the opportunity to work with the Commission and its Staff on this important initiative.

Yours truly,

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